

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 20 July 2005

SUBJECT: Carriage Park special use permit amendment (quasi-judicial order)

ATTACHMENT(S): Draft order

SUMMARY OF REQUEST:

This is the matter in which the Board held a quasi-judicial public hearing on 8 July 2005. A proposed Order including findings and conclusions, allowing the amendment (of the definition of townhouses/townhomes) requested by Carriage Park Associates, L.L.C., is attached.

Your approval of this Order is requested.

**IN THE MATTER OF THE APPLICATION OF
CARRIAGE PARK ASSOCIATES, L.L.C., APPLICANT**

ORDER AMENDING SPECIAL USE PERMIT

The Board of Commissioners of Henderson County held a quasi-judicial hearing in this matter on July 5, 2005, to consider an application to amend the special use permit for the Carriage Park planned unit development previously granted in Henderson County file SP-93-13, as amended. Having heard all the evidence, the Board makes the following findings of fact:

1. All members of the Board of Commissioners were present for this hearing. No member of the Board had a conflict of interest sufficient to justify their recusal from the hearing of this matter.
2. The Board determined that the following should be made parties to this action for the purpose of this hearing:
 - Henderson County Planning Director Karen Smith, and her staff
 - Carriage Park Associates, L.L.C., and its agent, Dale Hamlin
 - Kathleen Byrne, resident of Carriage Park
 - Richard Krupp, president of the Carriage Park Homeowners Association
3. Carriage Park is a Planned Unit Development that was approved by the Board of Commissioners under Special Use Permit #SP-93-13 on October 11, 1993. Special Use Permit #SP-93-13 has been amended four times in the past. Under the terms of the Permit as amended, the issue of its amendment comes before the Board of Commissioners in a quasi-judicial setting.
4. On April 8, 2005, Dale Hamlin, Manager of Carriage Park Associates, L.L.C. (“the Applicant”), submitted an application (#SP-93-13-A5) to amend Special Use Permit #SP 93-13 (as amended) by changing the definition of a “townhouse” found in the original permit conditions.
5. Prior to this hearing, the definition of “townhouse (townhome)” pursuant to Special Use Permit #SP 93-13 (as amended) is “a residential structure containing multiple dwelling units, with party walls, with each unit having its own deeded lot often with shared common areas”.
6. The definition sought by the Applicant for “townhouse (townhome)” to apply from this date is “a residential structure which may contain multiple dwelling units, with each unit having its own deeded lot, often with shared common areas”.
7. At the March 15, 2005, Henderson County Planning Board meeting, the Applicant held a pre-application conference on the proposed amendment with the Planning Board and Planning Staff. Following the submittal of application for this amendment, this Board referred the application to the Planning Board for a review and a recommendation.
8. At the Planning Board’s May 17, 2005 meeting, the Planning Board gave a favorable recommendation of the application to this Board.
9. On June 6, 2005, the Board of Commissioners scheduled a quasi-judicial public hearing on Special Use Permit Application #SP-93-13-A5 for July 5, 2005. The public hearing was advertised in

accordance with the Henderson County Zoning Ordinance and this Board's Rules of Procedure for Quasi-Judicial Proceedings. Staff sent notices via certified mail to the applicant and the owners of property adjacent to the outer boundary of Carriage Park on June 13, 2005. Staff posted notice of the public hearing on the Carriage Park property on June 15, 2005, and had notices of the public hearing published as legal advertisements in the Times-News on June 20, 2005 and June 27, 2005.

10. The proposed modification sought by the Applicant will not result in any instance in which the Planned Unit Development fails to comply with either the Henderson County Zoning Ordinance or the Henderson County Subdivision Ordinance, or with other applicable law.

11. No person or entity, whether party or otherwise, indicated any opposition to the granting of the proposed modification sought by the Applicant.

12. The modification if granted would be in compliance with both the letter and the spirit of the Henderson County Code, and of the Planned Unit Development as contemplated.

13. In its discretion, the Board is inclined to grant this permit.

CONCLUSIONS

1. That the Board of Commissioners has jurisdiction to hear and consider requests by Carriage Park Associates, L.L.C., requesting amendment to Special Use Permit # sp-93-13 (as amended).

2. That neither Special Use Permit #SP-93-13 (as amended) nor the Henderson County Code prohibit the amendment as requested by the Applicant.

3. That no person has alleged any harm as a result of the granting of the amendment as requested by the Applicant.

NOW, THEREFORE, based on the foregoing FINDINGS OF FACT and CONCLUSIONS, the Henderson County Board of Commissioners unanimously orders that the definition of "townhouse (townhome)" in Special Use Permit SP 93-13 (as amended) shall be "a residential structure which may contain multiple dwelling units, with each unit having its own deeded lot, often with shared common areas". A motion to that effect was made and unanimously agreed to by the Board of Commissioners of Henderson County on July 5, 2005. This order was unanimously approved by the Board of Commissioners of Henderson County on July 20, 2005.

Signed this the ____ day of July, 2005.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
WILLIAM L. MOYER, Chairman

Attest:

Elizabeth W. Corn, Clerk to the Board of Commissioners

ACCEPTANCE BY THE APPLICANT

I, Dale Hamlin, General Manager for Carriage Park Associates, L.L.C., do hereby on behalf of Carriage Park Associates, L.L.C., acknowledge:

- (1) the receipt of this order on behalf of Carriage Park Associates, L.L.C., the owner of the property which is the subject of this Order;
- (2) that nothing may be done pursuant to this Order except in accordance with all of its conditions and requirements; and,
- (3) that this restriction is and shall remain binding on Carriage Park Associates, L.L.C., and its successors in interest.

This the ____ day of _____, 2005.

DALE HAMLIN, General Manager, on behalf of
CARRIAGE PARK ASSOCIATES, L.L.C.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, _____, Notary Public for said County and State, certify that Dale Hamlin, General Manager for Carriage Park Associates, L.L.C., personally came before me this day and acknowledged the due execution of foregoing instrument on behalf of Carriage Park Associates, L.L.C.

THIS the ____ day of _____, 2005.

Notary Public

My Commission Expires: