

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 2 March 2006

SUBJECT: Order granting special use permit amendment -- Hospice

ATTACHMENT(S): Proposed Order

SUMMARY OF REQUEST:

Attached is a proposed order from the Board's 6 February 2006 hearing on the proposed special use permit amendment.

COUNTY MANAGER RECOMMENDATION/BOARD ACTION REQUESTED:

The County manager supports this proposal.

County staff will be present and prepared if requested to give further information on this matter.

PROPOSED MOTION:

I move that the Board adopt as its Order the proposal attached to the Board's agenda item on this matter.

IN THE MATTER OF THE APPLICATION OF PARTNERS IN HEALTH CONDOMINIUM
ASSOCIATIONS, L.L.C.,
Applicant

TO THE

HENDERSON COUNTY BOARD OF COMMISSIONERS,
Permit Authority

**ORDER GRANTING APPLICATION SP-46-96-A3
AMENDMENT TO SPECIAL USE PERMIT**

The Henderson County Board of Commissioners held a quasi-judicial public hearing on 6 February 2006, to consider the application (#SP-46-96-A3) for the amendment of a previously granted Special Use Permit. This application was submitted by Partners In Health Condominium Association, L.L.C. Prior to the hearing of this matter, the Board allowed Commissioner McGrady to recuse himself from this hearing, due to a conflict of interest. Having heard all of the evidence and arguments presented at the hearing, the Board of Commissioners makes the following findings of fact:

1. A quasi-judicial public hearing was commenced by the Henderson County Board of Commissioners on the proposed amendment of a previously granted special use permit pursuant to application #SP-46-96-A3 on 6 February 2006. With the exception of Commissioner McGrady (allowed to recuse himself as stated above), all members of the Board of Commissioners were present and participated in this hearing.
2. Notice of a quasi-judicial public hearing, pursuant to the Ordinance, the Henderson County Code, and the Rules of the Henderson County Board of Commissioners was duly and timely given. This notice included legal advertisement in *The Times-News* newspaper, notices sent by certified mail to the applicant and property owners within a 100-foot diameter of the boundary of the subject property, and the posting of notice on the subject property.
3. At the commencement of this hearing, the Chairman stated that the Board recognized the applicant and the Henderson County Planning Department as parties to this hearing, and inquired whether any person or entity sought to become a party to this action. No person or entity indicated an interest in becoming a party. The applicant was represented by William Lapsley.
4. This Order, and the approval of the modification of the previously granted special use permit, was moved by Chairman Moyer and approved by all the other members of the Board of Commissioners hearing this matter, Commissioner McGrady not participating.
5. Partners In Health Condominium Association, L.L.C. (“the applicant”) owns certain real property located in Henderson County, North Carolina, being known by Henderson County parcel identification number 9588-02-5700 (“the subject property”). The applicant has previously been granted a special use permit, pursuant to the Henderson County Zoning Ordinance, Section 200-1 *et seq* of the Henderson County Code (“the Ordinance”), and now seeks expansion of said special use permit.

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6. Autumn Radcliff and Matt Cable are planners in the Henderson County Planning Department and Natalie Berry is the Zoning Administrator in the Henderson County Development and Enforcement Services Department. As agents for Henderson County, Ms. Radcliff, Mr. Cable, and Ms. Berry were made parties to this hearing.

7. All parties, and all witnesses presented by any party, were sworn as witnesses in this proceeding on 6 February 2006.

8. Without objection from any party, the Board of Commissioners received into evidence, on 6 February 2006, a Board Action Form consisting of 2 pages and 2 attachments, a memorandum from Natalie Berry, Zoning Administrator, consisting of 1 page and 5 attachments (Exhibit A), a memorandum from Autumn Radcliff, Planner, consisting of 4 pages and 3 attachments (Exhibit B), and the Notice of Public Hearing, consisting of 1 page and 0 attachments (Exhibit C). No party disputed any of the information contained in these materials or these attachments, and the Board of Commissioners finds all the information contained in these materials and its attachments to be credible and to be fact for the purpose of this hearing.

9. The subject property consists of approximately 9.83 acres, located near the intersection of College Drive and Allen Road, having frontage on both such roads. Both roads are "state-maintained" roads, maintained by the North Carolina Department of Transportation.

10. The subject property is located within the O & I Office and Institutional zone, as defined by the Ordinance.

11. To allow this amendment, the Board must and does find the following:

a. If granted, the use as proposed would provide satisfactory provision as to buildings and structures with reference to location, size and use.

b. If granted, the use as proposed would provide satisfactory provision as to open spaces, accessways and pedestrian ways with reference to location, size and suitability.

c. If granted, the use as proposed (and as orally amended at hearing) would provide satisfactory arrangement as to buffering in type, location and dimension.

d. If granted, all utilities would be in compliance with the Henderson County Zoning Ordinance in all respects.

e. If granted, the use as proposed would provide sufficient and adequate parking for the type use to be allowed.

f. Notice as required by the Henderson County Zoning Ordinance was provided.

g. If granted, the use as proposed will not have an adverse affect on the health or safety of persons residing or working in the neighborhood of the project, nor would it be detrimental to the public welfare or injurious to property or public improvements.

h. If granted, the use as proposed will be located in a manner to minimize the effects of noise, glare, dust, solar access and odor on persons residing or working in the neighborhood of the project.

i. If granted, the use as proposed would provide satisfactory ingress and egress.

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j. If granted, the use as proposed would be consistent with the Henderson County 2020 Comprehensive Plan.

k. If granted, the use as proposed would be consistent with Federal and State law.

l. If granted, the use as proposed would minimize the environmental impacts on the neighborhood in all ways.

12. The applicant, through land planner William Lapsley and Associates, submitted Master and Preliminary Development Plans for this project to the Henderson County Planning Department.

13. This matter was reviewed by the Henderson County Planning Board on 20 December 2005, which recommended approval.

14. The application (as revised) does not satisfy at present the Board of Commissioners as to meeting the general site standards, in the following:

a. The additional provisions for the items regarding the pathway designation for the bicycle and pedestrian path between Four Seasons Hospice and Blue Ridge Community College (BRCC), as noted in the original special use permit, which was not installed, should be a condition of the proposed amendment to the special use permit.

b. The landscape buffering along College Drive and South Allen Road, as listed in the Findings of Fact for the original special use permit that was not installed, should be a condition of the proposed amendment to the special use permit.

c. Timeframe: The above stated condition for the pathway designation should be installed and the Certificate of Occupancy (CO) be withheld until this item is completed. The above stated condition for the landscape buffering should be installed prior to the applicant receiving a zoning permit for the new expansion.

15. The items listed in finding 14., above, may be cured by the imposition of conditions upon the approval of this application by the Board of Commissioners, as stated below.

From the foregoing, the Board of Commissioners concludes as follows:

1. All parties were properly before the Board, and all evidence presented herein was under oath, and was not objected to by any party. All evidence relied upon in this Order was credible and reliable.

2. The Board of Commissioners has jurisdiction to hear this matter.

3. All parties, and all persons entitled to notice, have been given proper notice of this hearing and afforded the right to be heard.

4. The application meets all the standards of the Ordinance, subject to the conditions set forth below, and the application to amend the special use permit should be granted, subject to the conditions set forth below.

IT IS THEREFORE ORDERED by the Henderson County Board of Commissioners that Henderson County special use application number SP-46-96-A3 is hereby amended as requested by the Applicant, subject to the following conditions:

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1. Any conditions set herein shall apply to the applicant, and to any transferee from the applicant.

2. The additional provisions for the items regarding the pathway designation for the bicycle and pedestrian path between Four Seasons Hospice and Blue Ridge Community College (BRCC), as noted in the original special use permit, which was not installed, should be a condition of the proposed amendment to the special use permit.

3. The landscape buffering along College Drive and South Allen Road, as listed in the Findings of Fact for the original special use permit that was not installed, should be a condition of the proposed amendment to the special use permit.

4. Timeframe: The above stated condition for the pathway designation should be installed and the Certificate of Occupancy (CO) be withheld until this item is completed. The above stated condition for the landscape buffering should be installed prior to the applicant receiving a zoning permit for the new expansion.

Announced 6 February, and approved in final form, this the 1st day of March, 2006.

THE 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, _____, do hereby on behalf of Partners In Health Condominium Association, LLC., acknowledge:

- (1) the receipt of this order on behalf of Partners In Health Condominium Association, LLC., 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 Partners In Health Condominium Association, LLC., and its successors in interest.

This the ____ day of _____, 2006.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, _____, Notary Public for said County and State, certify that _____, _____ of Partners In Health Condominium Association, LLC., personally came before me this day and acknowledged the due execution of foregoing instrument on behalf of Partners In Health Condominium Association, LLC.

THIS the ____ day of _____, 2006.

Notary Public

My Commission Expires: