

# REQUEST FOR BOARD ACTION

## HENDERSON COUNTY BOARD OF COMMISSIONERS

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### QUASI-JUDICIAL PUBLIC HEARING

#### Special Use Permit Amendment Application SP-04-01-A1 for the Planned Unit Development Known as Leoni's Mountain Lake Homes

Camp Riley, Inc., Applicant

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**MEETING DATE:** Monday, December 4, 2006

**ATTACHMENTS:**

1. Special Use Permit Order SP-04-01
2. Site / Current Zoning Map
3. Aerial Photo Map
4. Development and Adjacent Property Owners Map
5. Required Findings of Fact for Planned Unit Development Special Use Permits
6. Notice of Public Hearing

#### **SUMMARY OF REQUEST:**

Mr. Todd Leoni, agent and owner of Camp Riley, Inc., property owner and applicant, has submitted an application to amend the special use permit SP-04-01 for the planned unit development (PUD) known as Leoni's Mountain Lake Homes. The PUD is located in an R-20 (Low-Density Residential) zoning district along South Lakeside Drive, with the intersection of South Lakeside Drive and Old South Carolina Avenue to the north (See Attachments 2 and 3, Site / Current Zoning Map and Aerial Photo Map). The PUD, as proposed, is to contain 12.01 acres of land, 26 single-family detached dwellings on individual lots, and approximately 4.65 acres of open space (See attachment 1, Special Use Permit Order SP-04-01). The amendment request would not change the acreage, density, or open space proposed for the PUD, but would change group septic systems to public sewer service.

Pursuant to §200-33.A of the Henderson County Code, before the Board of Commissioners may act on such a request, this matter requires "the advice and recommendation" of the Henderson County Planning Board. On September 20, 2006, the Henderson County Board of Commissioners accepted and referred the Special Use Permit Amendment Application (SP-04-01-A1) to the Planning Board for its review and recommendation. During the October 17, 2006 Planning Board meeting, amendment application SP-04-01-A1 was reviewed and the Planning Board offered a recommendation to the Board of Commissioners. The Planning Board recommendation, along with Staff comments, will be submitted as evidence to the Board of Commissioners during the public hearing.

In accordance with Sections 200-56D and 200-70A(6) of the Zoning Ordinance (See Attachment 5, Required Findings of Fact), the Board of Commissioners must make findings of fact regarding compliance with the ordinance in order to grant a Special Use Permit Amendment and may impose conditions on the permit to assure that a proposed use will meet the requirements of the Zoning Ordinance. Section 200-56D lists the general site standards that apply to all special uses. If a general site standard cannot be met and, based on evidence provided during the hearing, the Board finds that imposing conditions (such as increasing minimum specific site standards), will allow such general site standards to be met, then the Board may impose the conditions. However, the applicant does not bear

the burden of demonstrating that all of the general site standards have been met. Section 200-70A(6) requires that the Board of Commissioners also make findings to demonstrate that the proposed use complies with any specific requirements for the use and that provisions have been made for the following, if applicable: ingress/egress; parking and loading; utilities; buffering; playgrounds; open spaces; yards; access ways and pedestrian ways and building and structure location, size and use.

In accordance with the Henderson County Zoning Ordinance, notices of the hearing on the Special Use Permit Amendment Application (SP-04-01-A1) were published in the Times-News on Wednesday, November 15, 2006 and on Wednesday, November 22, 2006 (See Attachment 6, Notice of Public Hearing). On November 15, 2006 the Planning Department posted notices at the project site to advertise the hearing. On November 15, 2006 the Planning Department sent notices of the public hearing via certified mail to the applicant and adjacent property owners.

**BOARD ACTION REQUESTED:**

Since the matter requires a quasi-judicial public hearing, the Board of Commissioners must consider the evidence presented at the hearing and make findings of fact based on that evidence in order to take action on the Special Use Permit Amendment Application. The Board must issue a written decision within 45 days of the conclusion of the hearing.

**Suggested Motion:**

No motion is suggested at this time due to the nature of a quasi-judicial public hearing.

STATE OF NORTH CAROLINA  
COUNTY OF HENDERSON

BEFORE THE BOARD OF COMMISSIONERS  
FILE NUMBER SP-04-01

IN THE MATTER OF THE APPLICATION OF TODD LEONI  
ON BEHALF OF CAMP RILEY, INC.,  
Applicant

TO THE

HENDERSON COUNTY BOARD OF COMMISSIONERS,  
Permit Authority

BILL HARPER, JR., MARCIA HAMMEL, BRENDA COATES  
DIANA GREEN, JUDITH SLOAN, GEORGINA HOLMES,  
JUNE REESE, POLLY DAVIS, JERRY JONES and  
DIANA SIMPSON,  
Additional Parties

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**ORDER GRANTING APPLICATION SP-04-01 (as revised)  
SPECIAL USE PERMIT FOR PLANNED UNIT DEVELOPMENT**

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The Henderson County Board of Commissioners held a quasi-judicial public hearing on 10 November 2004, to consider the application (#SP-04-01) for a Special Use Permit, as revised, submitted by Todd Leoni on behalf of the Camp Riley, Inc. The following persons were made parties to this proceeding: Todd Leoni on behalf of Camp Riley, Inc.; Henderson County Planning Department staff (Karen C. Smith, Director); Bill Harper, Jr.; Marcia Hammel; Brenda Coates; Diana Green; Judith Sloan; Georgina Holmes; June Reese; Polly Davis; Jerry Jones; and Diane Simpson. 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 held by the Henderson County Board of Commissioners on special use permit application #SP-04-01 (as revised) on 10 November 2004. A quorum of the Board of Commissioners, consisting of Commission Chair Grady Hawkins, Vice-Chair Larry Young, and Commissioners William Moyer and Charlie Messer, was present and participated in this hearing. Upon inquiry by the Chair of the Board of Commissioners, no party objected to the hearing of this matter on 10 November 2004 by the Board of Commissioners as actually attending.
2. This Order, and the approval of the special use permit granted herein, was moved by Commissioner Messer and approved by a majority of the Board of Commissioners as attending the 10 November 2004 hearing, with Commissioner Young voting in opposition.
3. Todd Leoni ("Leoni") is the agent and owner of Camp Riley, Inc. ("the applicant"). The applicant owns certain real property located in Henderson County, North Carolina, being known by Henderson County parcel identification number 00-9567-29-4058-55 ("the subject property"). Leoni, on behalf of the applicant, applied for a special use permit, pursuant to the Henderson County Zoning Ordinance, Section 200-1 *et seq* of the Henderson County Code ("the Ordinance"), to allow a planned use development ("PUD") on the subject property. As a result, Leoni and the applicant were made parties to this proceeding.

In the Matter of the Application of Leoni and Camp Riley, Inc.  
Order Granting Application for Special Use Permit  
File Number SP-04-01

4. Karen C. Smith is the Planning Director for Henderson County. As an agent for Henderson County, Ms. Smith was made a party to this hearing.
5. 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.
6. Bill Harper, Jr., ("Harper"), Marcia Hammel ("Hammel"), Brenda Coates ("Coates"), Diana Green ("Green"), Judith Sloan ("Sloan"), Georgina Holmes ("Holmes"), June Reese ("Reese"), Polly Davis ("Davis"), Jerry Jones ("Jones") and Diane Simpson ("Simpson") all sought to become parties to this hearing. As no other party objected, the Board of Commissioners in its discretion made Harper, Hammel, Coates, Green, Sloan, Holmes, Reese, Davis, Jones and Simpson parties to this hearing.
7. Upon inquiry by the Chair of the Board of Commissioners, no party objected to any of the other persons or entities made parties to this action being a party to this action.
8. All parties, and all witnesses presented by any party, were sworn as witnesses in this proceeding on 10 November 2004.
9. Without objection from any party, the Board of Commissioners received into evidence a memorandum from Karen C. Smith, Planning Director, consisting of three pages and ten attachments. No party disputed any of the information contained in this memorandum or these attachments, and the Board of Commissioners finds all the information contained in the memorandum and its attachments to be credible and to be fact for the purpose of this hearing.
10. The subject property consists of 12.01 acres, located across South Lakeside Drive from Lake Osceola. The subject property has frontage on both South Lakeside Drive and Bonner Street. Both Bonner Street and South Lakeside Drive are "state-maintained" roads, maintained by the North Carolina Department of Transportation.
11. The subject property is entirely located in a R-20 Low Density Residential zoning district, as the same is defined by the Ordinance.
12. Under the provisions of the R-20 zoning district, the subject property could be subdivided into 26 lots.
13. Under the Ordinance, a PUD is allowed as a special use in R-20 zoning districts. The Ordinance provides specific site standards for a PUD, as well as general site standards applicable to all special uses.
14. The applicant, in the application for a special use permit as revised (the application, its supporting documentation and all revisions to it collectively "the application"), proposed a PUD to be sited on the subject property. The application proposes a PUD with 26 lots, averaging 12,632 square feet (0.29 acres) in area.
15. As the proposed PUD would contain the same number of single-family residences as would be allowed in a non-PUD development in a R-20 zoning district for the subject property, there would be no additional increment to traffic caused by the approval of the PUD (as opposed to non-PUD development of the subject property).

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16. The proposed PUD would utilize two types of single-family dwellings: seven "cottages", which have traditional separated single-family residences; and, nineteen "villas", which make extensive use of "zero lot lines", where two "villas" share a common wall.

17. The proposed PUD would include a new 1,200 foot long private road, which would cross the subject property from South Lakeside Drive to Bonner Street. The North Carolina Department of Transportation has granted driveway permits for this private road onto both South Lakeside Drive and Bonner Street.

18. The proposed PUD would be served by public water, from the City of Hendersonville. The application shows two fire hydrants to be located on the subject property.

19. The proposed PUD would have group septic systems, wherein each lot would have a separate septic tank, but share with one or more other lots a common effluent drain field. The common drain fields will be located on open space dedicated in the proposed PUD. The nearest public gravity sewer is 7,000 feet from the nearest point on the subject property.

20. The review and, if appropriate, approval for a group septic system such as proposed in the PUD must be done by the North Carolina Department of Environment and Natural Resources.

21. The proposed PUD would have 4.65 acres of open space (which includes the proposed private road (consisting of approximately 0.5 acres), as well as the common drain fields), and 7.36 acres in residential lots.

22. The proposed design of the residential lots, with the "cottage" and "villa" lots, allows the lots facing the outer perimeter of the subject property, primarily "cottage" lots, to fit into the character of the existing neighborhood bordering the subject property.

23. A pre-application conference was held between the applicant's representative, the Henderson County Planning Department staff, and the Henderson County Planning Board on 17 August 2004. The applicant caused to be filed a special use permit application (#SU-04-01) on 1 September 2004. On 7 September 2004, the Board of Commissioners referred the application to the Henderson County Planning Board, pursuant to Sections 200-56 and 200-70 of the Ordinance.

24. As the PUD includes the division of land into lots for sale, the same falls within the Henderson County Subdivision Ordinance, and the applicant applied for approval of a nonstandard subdivision under the Subdivision Ordinance. This approval was granted by the Henderson County Planning Board, subject to certain pre-conditions, one of which was the grant by the Board of Commissioners of this special use permit.

25. The applicant, through land planner Luther E. Smith and Associates, submitted revised Master and Preliminary Development Plans for this project to the Henderson County Planning Department on 7 October 2004. These revised plans are a part of the application, and are included in attachment 8 to the Memorandum of Karen C. Smith referred to in finding 9., above.

26. Under §200-56 of the ordinance, certain general site standards apply to all uses requiring a special use permit.

27. The general site standards referred to in 26., above, are all satisfied in this development as proposed (with revisions to the application as found herein), except as otherwise found in paragraph 34., below.

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28. Under §200-33A of the ordinance, certain land development standards apply for all planned unit developments.

29. The land development standards referred to in 28., above, are all satisfied in this development as proposed (with revisions to the application as found herein), except as otherwise found in paragraph 34., below.

30. The conveyance of open space, recreational areas and communally owned facilities in a PUD are mandated as follows in §200-33D of the Ordinance:

1. Common open space, recreational areas and communally owned facilities shall be guaranteed by a restrictive covenant describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of residents of the planned unit development or adjoining property owners or both.

2. The applicant must submit to the Board of Commissioners the legal documents which will produce the aforesaid guaranties and, in particular, will provide for restricting the use of common areas and facilities for the designated purposes.

31. The provisions on the conveyance of open space listed in 30., above, are all satisfied in this development as proposed (with revisions to the application as found herein), except as found in paragraph 34., below.

32. Pursuant to the Ordinance, a PUD shall be approved subject to the submission of an instrument or instruments setting forth a plan for permanent care and maintenance of permanent open spaces, recreational areas, easements, rights-of-way and communally owned facilities which would be legally enforceable. The developer shall create a homeowners' association and submit bylaws and rules and regulations governing the association. The developer shall be required to include in every deed the developer makes that membership be mandatory for each home buyer.

1. The provisions shall include, but not be limited to, the following:

- i. The homeowners' association must be set up before the homes are sold.
- ii. The open space restrictions must be permanent not just for a period of years.
- iii. The association must be responsible for liability insurance, local taxes and the maintenance of recreational and other designated facilities.
- iv. Homeowners must pay their pro rata share of the cost; the assessment levied by the association can become a lien on the property.
- v. The association must be able to adjust the assessment to meet changed needs.

2. No such instrument shall be acceptable until approved by the County Attorney as to legal form and effect and the Board of Commissioners as to suitability for the proposed uses.

33. The provisions on the maintenance of the PUD listed in 32., above, are all satisfied in this development as proposed (with revisions to the application as found herein), except as found in paragraph 34., below.

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34. The application (as revised) does not satisfy at present the Board of Commissioners as to meeting the general site standards, land development standards applicable to this PUD, the conveyance of open space, recreational areas and communally owned facilities, and maintenance, in the following:

a. The restrictive covenants proposed for the subject property do not provide sufficient lawful provisions to insure the permanence of dedicated open spaces, and the maintenance of roads and septic system (including a provision regarding the assessment of lien on lots in the PUD and the collection of the same to allow for homeowners' association payment of the costs of repairs, improvements, and any common area property taxes).

b. No articles of incorporation or by-laws of a homeowners' association for the PUD has been provided.

c. There is currently no provision as to when the common area is to be conveyed to the homeowners' association.

d. There is no provision as to the location of the sales and construction office to be located on the subject property, nor which entrance is to be considered the primary entrance or construction entrance to the subject property. (At the hearing of this matter, the applicant committed to taking all actions possible to insure that the South Lakeside Drive entrance was the "main entrance" for the project, with the sales office located there, and all literature and signs indicating that the entrance off South Lakeside Drive is the "main entrance", and to insure that the same is also the construction entrance for the project and all workers, materials providers and contractors under the applicant's control.)

e. This special use permit granted should be conditioned on the applicant receiving all approvals required by the Henderson County Subdivision Ordinance, and on the applicant remaining in compliance with the Subdivision Ordinance.

f. All structures (counting two structures utilizing a zero lot line as one structure) may not be closer than 10 feet from one another, all construction of adjacent walls should conform with the North Carolina Building Codes, and that area between buildings must be and remain open and unobstructed.

g. The Applicant must submit to the Henderson County Planning Department plans and other documentation to ensure that the water system has been designed by a professional engineer and that such system has been approved by appropriate local and state agencies, and must construct the system as designed.

h. The Applicant must submit to the Henderson County Planning Department plans and other documentation to ensure that the sewer systems have been designed by a professional engineer and that such systems have been approved by appropriate local and state agencies, and must construct the system as designed.

i. The Applicant must submit to the Henderson County Planning Department documentation of approval of the sedimentation and erosion control plan for the project prior to beginning any construction.

j. The Applicant must submit to the Henderson County Planning Department documentation from Henderson County Emergency Medical Services (EMS) Department and the Fire Chief of Valley Hill Fire & Rescue Department regarding the adequacy of the proposed facilities for emergency medical and fire services prior to beginning construction.

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k. The Applicant must in documentation submitted to the Henderson County Planning Department indicate what, if any, fencing, screening or other materials/techniques will be used around the perimeter of the development.

l. Setbacks within the project must be established as follows:

Front: 44 feet, 6 inches from the centerline of rights-of-way, for all lots

Rear: 10 feet, for "villa" lots

Rear: 15 feet, for "cottage" lots

Side: 10 feet (for the non-zero lot line side), 0 feet (for the zero lot line side), for "villa" lots

Side: 7 feet, 6 inches for "cottage" lots

35. The items listed in finding 34., 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. Sections 200-7B, 200-33 and 200-56 of the Henderson County Code govern the grant or denial by the Board of Commissioners of a special use permit for a planned unit development.

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

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

5. The application meets all the standards of the Ordinance, subject to the conditions set forth below, and the application 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-04-01 is hereby granted, subject to the following conditions:

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

2. The restrictive covenants for the subject property shall be made legally sufficient, in the opinion of the Henderson County Attorney, to lawfully insure:

a. The permanence of dedicated open spaces.

b. The perpetual maintenance of roads and septic system (including a provision regarding the mandatory assessment of a lien on lots in the development on a prorated basis, and the mandatory collection of the same to allow for homeowners' association payment of the costs of repairs, improvements, and any common area property taxes).

3. Articles of incorporation and by-laws of a homeowners' association for the PUD (or other documents lawfully and irrevocably establishing the same) shall be made legally sufficient and, in the opinion of the Henderson County Attorney, and lawfully made of record under North Carolina law.



In the Matter of the Application of Leoni and Camp Riley, Inc.  
Order Granting Application for Special Use Permit  
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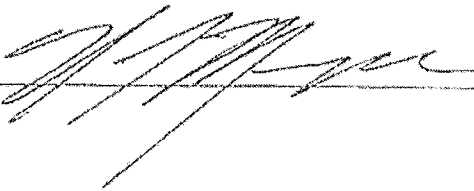
4. All property designated as common area, open space, roads or the like shall be irrevocably conveyed to the homeowners' association established for the PUD prior to sale of any lots in the PUD.
5. The sales and construction office to be located on the subject property, shall be located adjacent to the intersection of the private road proposed on the subject property and South Lakeside Drive, and shall be present on the property only for such period, as a temporary use, as is allowed to be of a size and for a duration as allowed by the Henderson County Zoning Board of Adjustment.
6. The applicant shall designate the entrance to the private road on the subject property from South Lakeside Drive as the primary entrance and the construction entrance for the PUD. All sales and other literature, signs or advertisements prepared or distributed by the applicant shall indicate such entrance as the primary entrance of the PUD.
7. The applicant shall take all reasonable steps to insure that the entrance to the private road on the subject property from South Lakeside Drive shall be the sole entrance and exit to and from the subject property by all workers, materials or services providers and contractors under the applicant's direction or control, during the development of the subject property or any construction occurring thereon.
8. No structure (as defined in finding of fact 34.f., above may be closer to another than 10 feet, all construction of adjacent walls conforms with the North Carolina Building Codes, and that area between buildings must be and remain open and unobstructed.
9. The Applicant must submit to the Henderson County Planning Department plans and other documentation to ensure that the water system has been designed by a professional engineer and that such system has been approved by appropriate local and state agencies, and must construct the system as designed.
10. The Applicant must submit to the Henderson County Planning Department plans and other documentation to ensure that the sewer systems have been designed by a professional engineer and that such systems have been approved by appropriate local and state agencies, and must construct the system as designed.
11. The Applicant must submit to the Henderson County Planning Department documentation of approval of the sedimentation and erosion control plan for the project prior to beginning any construction.
12. The Applicant must submit to the Henderson County Planning Department documentation from Henderson County Emergency Medical Services (EMS) Department and the Fire Chief of Valley Hill Fire & Rescue Department regarding the adequacy of the proposed facilities for emergency medical and fire services prior to beginning construction.
13. The Applicant must in documentation submitted to the Henderson County Planning Department what, if any, fencing, screening or other materials/techniques will be used around the perimeter of the development.
14. **Setbacks:** Setbacks within the project must be established as follows:
  - Front: 44 feet, 6 inches from the centerline of rights-of-way, for all lots
  - Rear: 10 feet, for "villa" lots
  - Rear: 15 feet, for "cottage" lots
  - Side: 10 feet (for the non-zero lot line side), 0 feet (for the zero lot line side), for "villa" lots
  - Side: 7 feet, 6 inches for "cottage" lots

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15. The Order granted this permit is expressly conditioned on the applicant receiving all approvals required under the Henderson County Subdivision Ordinance, and upon the applicant remaining in compliance with the Subdivision Ordinance.

This the 6<sup>th</sup> day of December, 2004.

THE HENDERSON COUNTY BOARD OF COMMISSIONERS

By:  \_\_\_\_\_

Attest:

  
Elizabeth W. Corn, Clerk to the Board of Commissioners

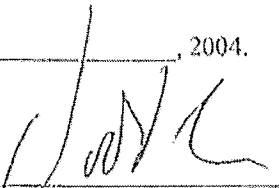
In the Matter of the Application of Leoni and Camp Riley, Inc.  
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ACCEPTANCE BY THE APPLICANT

I, Todd Leoni, president of Camp Riley, Inc., do hereby on behalf of Camp Riley, Inc., acknowledge:

- (1) the receipt of this order on behalf of Camp Riley, Inc., 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 Camp Riley, Inc., and its successors in interest.

This the \_\_\_\_\_ day of \_\_\_\_\_, 2004.

  
 \_\_\_\_\_  
 TODD LEONI, President, on behalf of  
 CAMP RILEY, INC.

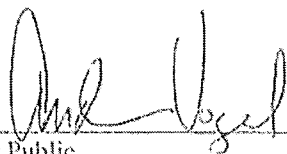
STATE OF ~~NORTH CAROLINA~~ Florida  
COUNTY OF ~~HENDERSON~~ Dade

I, Andrew Vogel, Notary Public for said County and State, certify that Todd Leoni, president of Camp Riley, Inc., personally came before me this day and acknowledged the due execution of foregoing instrument on behalf of Camp Riley, Inc.

THIS the 16 day of December, 2004.



Andrew Vogel  
Commission # DD270205  
Expires: Nov. 25, 2007  
Aaron Notary  
1-800-350-5161

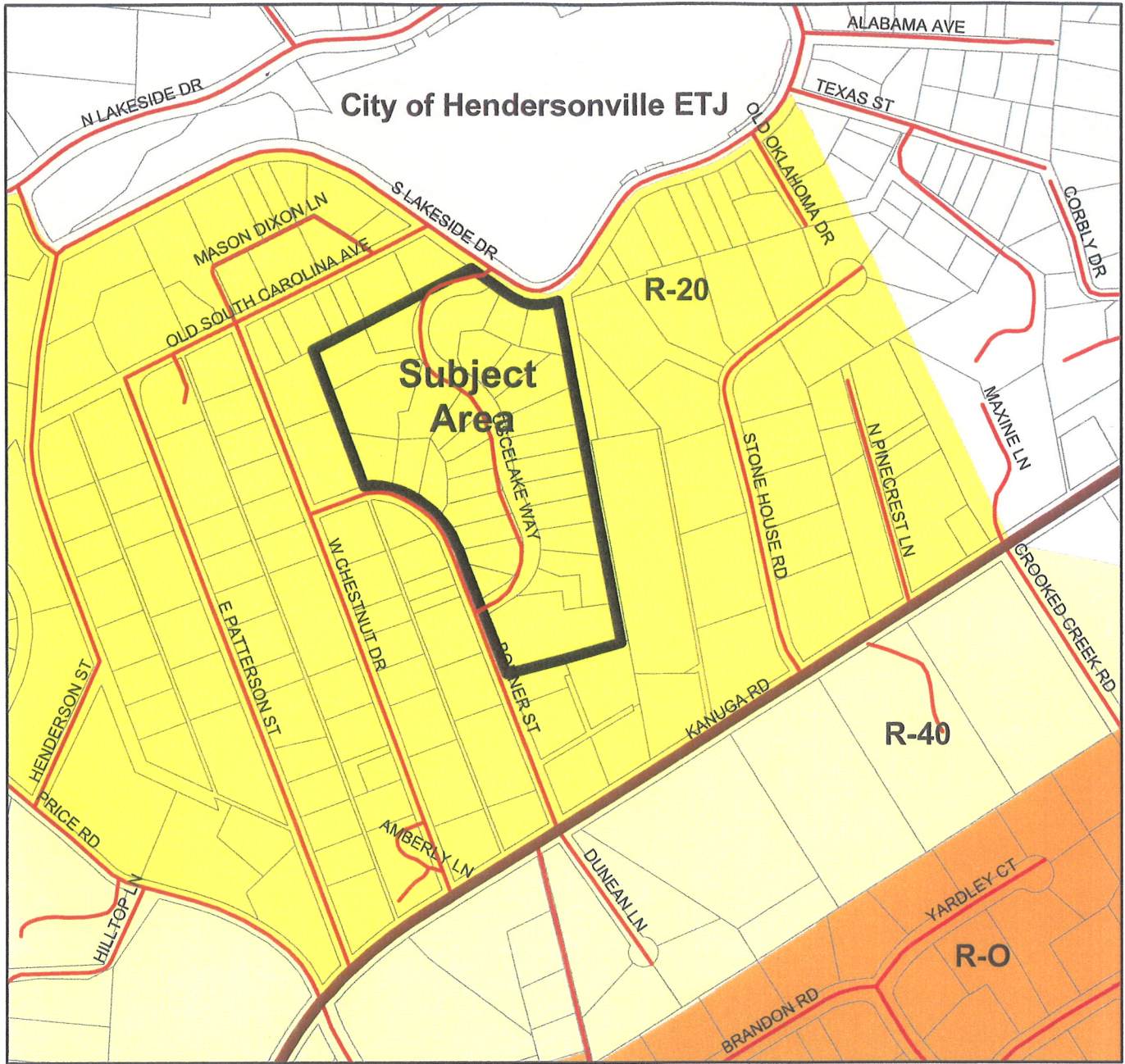
  
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 Notary Public

My Commission Expires:



Andrew Vogel  
Commission # DD270205  
Expires: Nov. 25, 2007  
Aaron Notary  
1-800-350-5161

# Site / Current Zoning Map







- Major Roads
- Streets
- Subject Area
- Parcels



Special Use Permit Amendment Application  
SP-04-01-A1  
Mr. Todd Leoni, agent and owner of  
Camp Riley, Inc., Applicant





	Major Roads
	Streets
	Subject Area
	Parcels

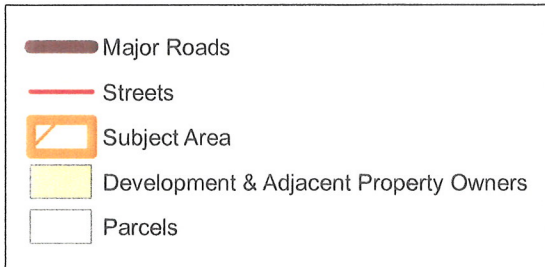
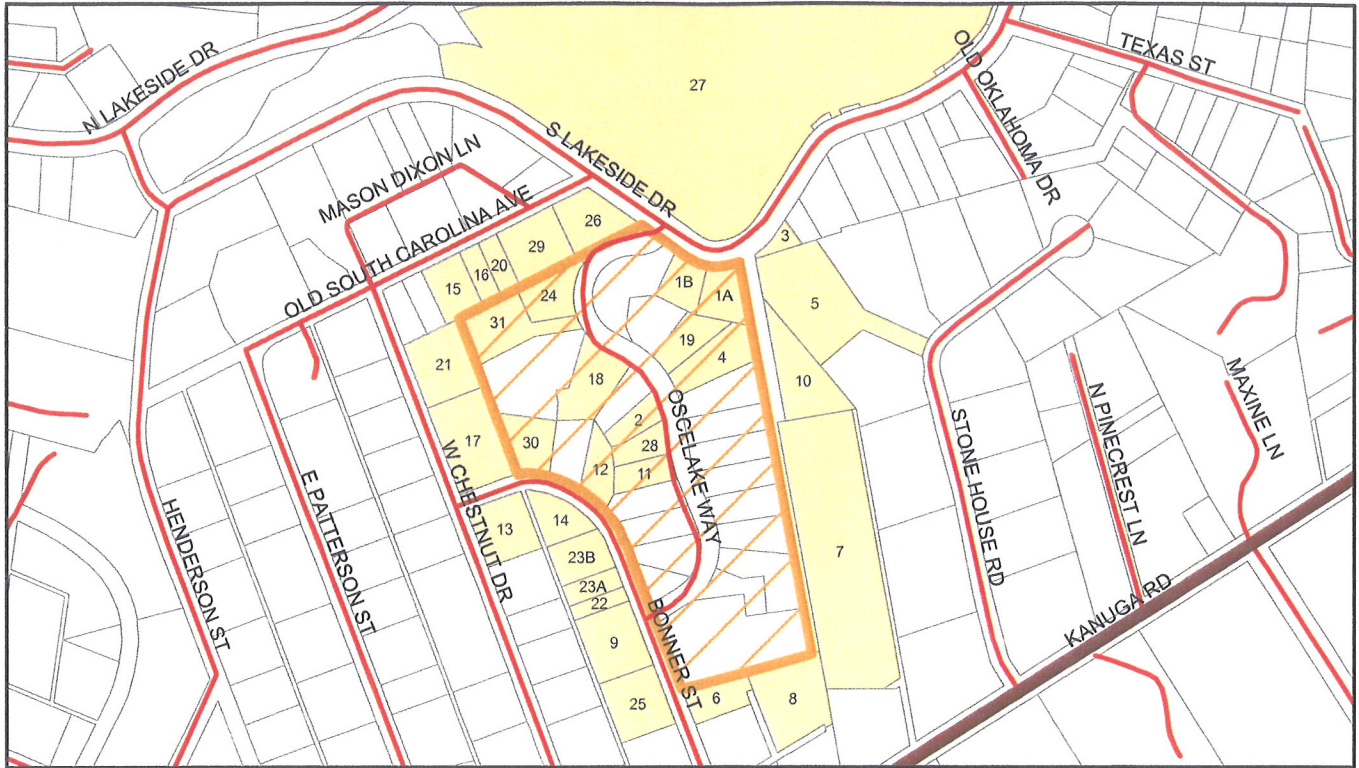


**Special Use Permit Amendment Application  
SP-04-01-A1**

**Mr. Todd Leoni, agent and owner of  
Camp Riley, Inc., Applicant**



# Development and Adjacent Property Owners Map Attachment 4



**Special Use Permit Amendment Application  
SP-04-01-A1  
Mr. Todd Leoni, agent and owner of  
Camp Riley, Inc., Applicant**

Property Owner	Property
Bendayan, Salomon & June E	1A & 1B
Berlowitz, Michele T & Jeffrey S	2
Coates, Brenda B	3
Failla, Geraldine L	4
Garland, Donald M & Patricia M	5
Green, Dianna C	6
Hefner, James E & Wife	7
Hefner, R G	8
Holmes, Laurence H & Georgina B	9
Keeling, Sheala Edney	10
Kern, Brad Alan	11
Leight, Deborah; Mousally, Max	12
Lockaby, A P ET AL (Michael Edwin Lockaby)	13
Morgan, Bertie E & John Henry	14
Morris, Joyce C	15
Patterson, Reba W	16
Perry, Ruth Marie	17
Petit, Christophe & Robin Petit-Leoni	18
Pollack, David W	19
Pressley, James R & Doris B	20
Pressley, Sharon Beddingfield	21
Reese, Mabel June & Russell G	22
Reese, Russell G & Wife	23A & 23B
Rinalducci, Teresa M	24
Sloan, Judith Ann	25
Sternfeld, Cris	26
T & A Carolina Corp (Todd Leoni, President)	27
Tessler, Louis	28
Vant Hoff, Theodorus	29
Vimach LLC a Florida LL Company	30
Vogel, Andrew T	31

**Henderson County Board of Commissioners Required Findings  
For Special Use Permit Application for Planned Unit Development**

Required Finding	Zoning Ordinance Citation	Y	N
1) <b>Ownership control:</b> the land in the development is in single ownership or management by the applicant before final approval and/or construction	200-33A.(1)		
2) <b>Density requirements:</b> proposed overall density conforms to underlying zoning district(s) in which the property is located. <i>“The density (dwelling units per acre) of any proposed planned unit development shall be determined by dividing the total number of square feet in the property by the minimum lot size requirement of a single-family dwelling in the district in which the development is proposed.”</i> If in more than one district “the number of allowable dwelling units must be separately calculated for each portion of the planned unit development that is in a separate district and must then be combined to determine the number of dwelling units allowable in the entire planned unit development.” There must be “satisfactory provision” as to “buildings and structures with reference to location, size and use.”	200-33A.(2)  200-33A.(9)  200-70A.(6)(f)		
3) <b>Frontage:</b> the development shall have a minimum of 200 feet frontage on a paved, public, state-maintained road or highway	200-33A.(3)		
4) <b>Minimum size of development:</b> 1½ acres	200-33A.(4)		
5) <b>Building type:</b> Buildings in the development are of the type usually allowed in the zoning district(s), plus “single-family detached homes, townhouses and garden apartments” owned as “condominium, cooperative, individual, municipal or any other type of ownership”.	200-33A.(5)		
6) The “ <b>spirit and intent</b> ” of the ordinance must be met.	200-33A.(6)		
7) <b>Height limit</b> on all buildings of 35 feet	200-33A.(6)(a)[1]		
8) <b>Building separation:</b> (1) at least 20 feet for buildings less than 20 feet in height located end to end, plus one foot in separation for each foot greater than 20 feet in height (to a maximum separation of 30 feet); (2) at least 30 feet for buildings less than 30 feet in height located side to side, plus one foot in separation for each foot greater than 30 feet in height (to a maximum separation of 40 feet); and (3) “the Planning Board may permit the minimum building separation for single-family detached units to be reduced below the minimums stated above, provided that the construction of adjacent walls conforms with the North Carolina Building Codes, but in no case shall buildings be closer than 10 feet. When the minimum separation is reduced, the area between buildings shall remain open and unobstructed.”	200-33A.(6)(a)[2]		
9) <b>Access to common area:</b> Direct access to common area for each dwelling by public street, walkway or other area dedicated to common use. There must be “satisfactory provision” as to “playgrounds, open spaces, yards, accessways and pedestrian ways with reference to location, size and suitability.”	200-33A.(6)(b)  200-70A.(6)(e)		
10) <b>Location of structures:</b> “The location of structures, shown on the development plan, shall be so arranged as not to be detrimental to existing or other proposed structures or to the development of the neighborhood.”	200-33A.(6)(c)		

## Required Finding

Zoning Ordinance  
Citation

Y N

11) <b>Privacy</b> (visual and acoustical) for all dwelling units: "Fences, insulation, walls, barriers, and landscaping shall be used as appropriate for the protection and aesthetic enhancement of property and the privacy of its occupants, screening of objectionable views or uses, and reduction of noise."	200-33A.(7)		
12) <b>Perimeter privacy and screening:</b> " <i>If topographical or other barriers within 200 feet of the perimeter of the development do not provide reasonable privacy for existing uses adjacent to the development, the Board of Commissioners may impose any of the following requirements: (a) Structures located on the perimeter of the development must be set back from property lines and rights-of-way of abutting streets in accordance with the provision of this chapter controlling the district within which the property is situated; (b) Structures other than single-family detached units located on the perimeter of the development may require screening in a manner which is approved by the Board of Commissioners; or, (c) The location of the structures on the perimeter of the development, as shown on the development plan, shall be so arranged as not to be detrimental to existing structures or to the adjacent neighborhood.</i> " There must be "satisfactory arrangement" as to "buffering with reference to type, location and dimension."	200-33A.(8)  200-70A(6)(d)		
13) <b>Water and Sewer plans</b> must be (1) designed by professional engineer, and (2) documentation showing the plans "have been approved by the appropriate local and state agencies, shall be submitted as a part of the application." All utilities must be found in compliance "with reference to locations, availability and capability."	200-33A.(10)  200-70A.(6)(c)		
14) <b>Parking plans</b> must include two spaces per dwelling unit, plus 1 per 200 gross square feet of clubhouse. The layout of parking areas, service areas, entrances, exits, yards, signs, landscaping and other "potentially adverse influences" protect the "residential character" of the PUD and the area surrounding.	200-33A.(11) 200-40 200-33A(13) 200-70A.(6)(b)		
15) <b>Pedestrian ways/bikeways</b> , if any, must be reasonably insulated from motor traffic.	200-33A.(12)		
16) <b>Common and open space:</b> "(1) Common open space, recreational areas and communally owned facilities shall be guaranteed by a restrictive covenant describing the areas and facilities and their maintenance and improvement, running with the land for the benefit of residents of the planned unit development or adjoining property owners or both; and (2) The applicant must submit to the Board of Commissioners the legal documents which will produce the aforesaid guaranties and, in particular, will provide for restricting the use of common areas and facilities for the designated purposes."	200-33D.		
17) <b>Maintenance:</b> Plan for homeowners association and for maintenance must be legally enforceable, with membership required of every property owner. Must be submitted to County Attorney and to the Board of Commissioners.	200-33E.		
18) <b>Planning Board Recommendation</b> must be received by Board of Commissioners prior to grant of permit.	200-33F.		
19) <b>Additional information:</b> The Board of Commissioners may request additional information required "to evaluate the impact of the proposed planned unit development."	200-33F.(4)(c)		



Required Finding	Zoning Ordinance Citation	Y	N
20) <b>Waiver</b> (NOT A REQUIREMENT): <i>“The Board of Commissioners may waive a particular requirement if, in its opinion, the inclusion is not essential to a proper decision on the project.”</i>	200-33F.(4)(c)		
21) <b>Notice</b> : must be published once a week for two consecutive weeks in an approved newspaper at least 15 days and not more than 25 days prior to the hearing. Notice must be mailed by registered mail to abutting property owners, and the property must be posted.	200-56B. 200-70A.(1)(b) 200-56C.		
22) <b>General site standards – health, safety, welfare</b> : the permit if granted must not have an adverse affect on the health or safety of people residing or working in the neighborhood of the development; it must not be detrimental to public welfare; it must not be injurious to property or public improvements.	200-56D.(1)(a)		
23) <b>General site standards – noise/odor</b> : the property “shall be located or developed in such a manner as to minimize the effects of noise, glare, dust, solar access and odor on those persons residing or working in the neighborhood of the proposed use and the property and public improvements in the neighborhood.”	200-56D.(1)(b)		
24) <b>General site standards – traffic safety</b> : must be developed so as not to adversely affect traffic or safety. There must be satisfactory ingress and egress.	200-56D.(1)(c)  200-70A.(6)(a)		
25) <b>General site standards – comprehensive plan</b> : the development must be “consistent with the goals and objectives” in the County’s Comprehensive Plan.	200-56D.(1)(e)		
26) <b>General site standards – complies with Federal and State law.</b>	200-56D.(1)(d)		
27) <b>General site standards – environmental/historical impact</b> . The development must be sited and developed in such a manner “as to minimize the environmental impacts on the neighborhood including the following: groundwater, surface water, wetlands, endangered and threatened species, archeological sites, historical preservation sites and unique natural areas.”	200-56D.(1)(f)		
22) through 27) <b>Modifications imposed by Board of Commissioners</b> : <i>“In the event that the Board of County Commissioners determines that a proposed use is contrary to one or more of the general site standards, then the Board of Commissioners may impose a condition on the issuance of the special use permit when such condition will avoid a violation of the general site standards. The condition imposed may be an increase in any minimum specific site standards stated for the regulated use. The imposition of a condition may only be based on evidence presented at the hearing that the general site standards would not be met without the imposition of such condition. The Board must make specific findings of fact based upon the evidence presented prior to the imposition of such condition.”</i>	200-56(d)(2)		

**NOTICE OF PUBLIC HEARING  
ON SPECIAL USE PERMIT AMENDMENT APPLICATION #SP-04-01-A1  
FOR THE PLANNED UNIT DEVELOPMENT  
KNOWN AS LEONI'S MOUNTAIN LAKE HOMES**

Notice is hereby given, as required by Sections 200-56 and 200-70 of the Zoning Ordinance of Henderson County, North Carolina, that the Henderson County Board of Commissioners has scheduled a public hearing on special use permit amendment application #SP-04-01-A1 to be allowed to amend the existing Special Use Permit (SP-04-01) for the planned unit development (PUD) known as Leoni's Mountain Lake Homes. The PUD is located along South Lakeside Drive, with the intersection of South Lakeside Drive and Old South Carolina Avenue to the north. The PUD is located in an R-20 (Low-Density Residential) zoning district. Mr. Todd Leoni, agent and owner of Camp Riley, Inc., property owner and applicant, submitted an application to amend the special use permit for the PUD, to change group septic systems to public sewer service.

The hearing will be held on Monday, December 4, 2006, at 7:00 P.M., in the Board of Commissioners meeting room in the Henderson County Administration Building, 100 North King Street, Hendersonville, NC. The hearing will be conducted as a quasi-judicial proceeding. Parties demonstrating standing regarding the application may participate in the hearing. All persons are strongly encouraged not to contact members of the Board of Commissioners prior to the hearing due to its quasi-judicial nature.

Information about the application, the Henderson County Zoning Ordinance as well as the rules of procedure for quasi-judicial proceedings may be obtained at the Henderson County Planning Department, 101 East Allen Street, Hendersonville, NC, between 8:00 A.M. and 4:30 P.M., Monday through Friday, or by calling the Planning Department at (828) 697-4819 [TDD (828) 697-4580].

Elizabeth W. Corn, Clerk to the Board  
Henderson County Board of Commissioners

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