

MINUTES

**STATE OF NORTH CAROLINA
COUNTY OF HENDERSON**

**BOARD OF COMMISSIONERS
JUNE 7, 2007**

The Henderson County Board of Commissioners met for a special called meeting at 7:00 p.m. in the Commissioners' Conference Room of the Henderson County Office Building.

Those present were: Chairman Bill Moyer, Vice-Chairman Charlie Messer, Commissioner Larry Young, Commissioner Chuck McGrady, Commissioner Mark Williams, Assistant County Manager Selena Coffey, County Attorney Russell Burrell, and Clerk to the Board Elizabeth W. Corn.

Also present were: Deputy Clerk to the Board Terry Wilson, Associate County Attorney Sarah Zambon, and Planners Matt Card, Parker Sloan, and Alexis Baker as well as Planning Director Anthony Starr.

CALL TO ORDER/WELCOME

Chairman Moyer called the meeting to order and welcomed all in attendance, explaining that the purpose of this meeting was a Vested Rights Hearing.

VESTED RIGHTS HEARING #VR-2007-04 for a Proposed Mini-Storage Facility on US Hwy #64 East Mr. Matthew Cooke and Mr. William Beckford, Applicant and Mr. Walter Carpenter, Agent to the Applicant

Commissioner Messer made the motion for the Board to go into public hearing. All voted in favor and the motion carried.

Chairman Moyer explained that the petitioners are seeking vested rights under Chapter 189 of the Henderson County Code, which allows a landowner to establish a vested right for a development project through the approval of a site-specific development plan.

A vested rights proceeding is a special hearing where the petitioner's application is determined under specific rules of procedure adopted by this Board. A vested rights proceeding is one where an applicant seeks to lock in rights which they presently possess to develop certain land. This Board cannot grant the applicant rights greater than they have to presently develop land. However, the Board can, if it sees fit, and upon certain conditions set by the Board, grant the applicant the right to develop land under the zoning and subdivision rules as they exist today, based upon what the law calls a "site specific development plan". If the Board grants such rights, the "site specific development plan" cannot be modified without the approval of this Board, but the applicant can move forward with the development even if zoning or subdivision laws change.

Under the Henderson County procedures for hearings on vested rights, persons who can demonstrate that they have a substantial interest in the outcome of the Proceeding or may be adversely affected by the decision rendered may become parties to this action. All persons who are allowed to speak and participate in this hearing, including all witnesses that will be called, must be placed under oath.

Chairman Moyer explained what the order of the proceeding would be.

The Clerk to the Board swore in the following:

Matthew Cooke, one of the applicants

DATE APPROVED _____

Matt Card, Henderson County Planner
Anthony Starr, Henderson County Planning Director

Staff Overview

Matt Card entered the following exhibits into evidence:

- Exhibit A, request for Board Action and all of it's attachments
- Exhibit B, staff's memorandum and it's attachments
- Exhibit C, a summary of staff's recommended conditions
- Exhibit D, the supplemental requirements found in the land development code for these types of uses- self storage, mini warehouses

Matt Card explained that Mr. Matthew Cooke and Mr. William Beckford are the applicants and Mr. Walter Carpenter is the agent to the applicants. He stated that in exhibit B there is a site specific development plan that outlines what the applicant would like to do. It consists of twelve mini storage warehouse buildings and an office building. The property is located off US Hwy #64 East, Chimney Rock Road and the 100 year flood plain is located to the south of the project along Henderson Creek. The CCP shows that the project is located in the rural urban transition area. There is a small portion of the southern boundary that is identified as conservation area because of the 100 year flood plain. The LDC identifies this area as being in the local commercial zoning district, draft 9 of the zoning map for the LDC. Located to the south of the subject property is Camp Judea which is classified by the County Tax Office as a recreational use. There is a commercial use located to the north and an old industrial use located to the west, Mr. Wayne Morgan's property. There is one single family residence and that is Alan Kunce bordering the north and east portion of the project. The remaining land and adjacent land is actually classified by the County Tax Office as vacant at this time.

Petitioner's Evidence

Walter Carpenter stated that the property immediately to the west shows a building on it, the next parcel to the left of that is the Rusty Bucket which is a flea market. The property to the east of this property is where the Family Dollar Store is now. There's another area that's set aside with a sign indicating it is for sale for another commercial building and parking. Right behind that is where Mr. Kunce's house is located. You can see this house from the road. The 45-foot right of way is part of the parking lot and drive going to the Kunce house. "It does not benefit my client's property, they don't have the right to use that 45-foot right of way."

His client's proposal is to build twelve buildings. His plan is to build these units over a period of several years. He asked that they be given the five years. Building permits have already been issued for the first three buildings. He plans to build the office building and three of the storage buildings initially. The fence would be put up in that first phase also. He invited his client, Mr. Matthew Cooke to come forward and answer any questions the Board might have. Mr. Beckford was not present.

Matthew Cooke explained that he wanted the occupancy to build up to determine what the next building should be as far as unit mix, climate control, etc. Mr. Cooke plans to keep the buildings out of the flood plain. A good bit of discussion followed concerning the flood plain and the flood fringe and the new versus the old flood maps.

Walter Carpenter stated that they would agree to have no buildings in the flood plain area.

Anthony Starr addressed a question about storing campers and motor homes, stating that in the land development code it would fall under outdoor storage. There are two categories: one is less than 5,000 square feet and the only requirement is that it not be in the front yard of the use and it have a screen class I or II and it is specific about what those are in terms of plantings. Second is over 5,000 square feet and it can't be in the front yard or any yard abutting a road and it requires a little more intensive screening requirements, a class III or IV which involves either a six foot or eight foot fence along with some vegetation plantings. What staff recommended is less than what those screen requirements are in the land development code. If the Board feels that is a concern, they could reflect in the order what is in the land development code or they could stay with the screen requirements generally mentioned in the staff report. Mr. Starr stated that outdoor storage is an accessory use so it would fall under any accessory use.

Mr. Cooke plans to use an eight foot tall chain-link fence that is dipped black (around the perimeter of the project) and a three foot area of mulch and shrubbery, something to grow dense enough. He will use shrubbery that will grow 6 or 8 foot tall. He wants to have the top-shelf nicest storage units. Their facility will close at 9:00 p.m.

Staff Recommendations

Matt Card stated that if the Board of Commissioners grants the development vested rights, Staff recommends that this approval be subject to the conditions listed below, in addition to any other conditions that have been discussed during the hearing and any conditions that the Board of Commissioners may impose.

Staff's Recommended Conditions:

- A. *Significant Topographical/Other Natural Features of the Site.* The applicant shall not be allowed to place any structures inside the floodplain as indicated by the addendum and on the site specific development plan.
- B. *Lighting.* Adequate lighting shall be placed in areas used for vehicular/pedestrian access including but not limited to any stairs, sidewalks, crosswalks, intersections. The applicant should also be required to mitigate the impact of outdoor lighting fixtures in order to protect neighboring properties and roads from direct glare or hazardous interference of any kind. Exterior lighting should be installed so as not to exceed 10 feet in height.
- C. *Screening.* The applicant shall be required to provide plants that will mature to a height of at least 8 feet. Said plants should be of an appropriate species and spaced at a distance to provide adequate screening along adjacent property lines. The applicant should provide a site plan to the Planning Department for approval, showing the arrangement and type of planting material used for screening. The proposed chain link fence shall be located on the inside of the planting material.
- D. *Adjacent Land Uses.* The Board may find that a greater buffer or screening is needed along Mr. Kunc's property line to mitigate the impacts of this development on the existing residence.
- E. *Street Trees.* The applicant shall provide street trees in accordance with Section 200A-122 (Plant Material) of the LDC. Section 200A-122 says that one (1) large deciduous tree shall be required per 50 linear feet of property abutting a road.

Public Input

There was none.

Chairman Moyer asked if there was anyone who was not a party in attendance that would like to speak. There were none.

Petitioner's Comment on Staff Recommendations

Commissioner McGrady asked if the Board could hear the petitioner's comments on the staff recommendations.

Walter Carpenter commented that the petitioner was fine with "A, B, and E". On recommendation "C" there was some discussion regarding having the fence on the inside and the plantings on the outside and being able to maintain and water the plantings. The petitioner had envisioned having the plantings on the inside of the fence. If there is some good reason to have the fence on the inside and the plantings on the outside, Mr. Carpenter said that they would consider it but they felt it would be difficult to maintain.

Staff stated that the reasoning was to provide screening for adjacent properties. They are flexible with that provision so on the inside or the outside is fine with staff.

Walter Carpenter then commented on "D" – the adjacent land uses. The petitioner and Mr. Carpenter believe that what they have provided for is adequate and will be good for the neighbors. Mr. Carpenter stated that his client had talked with Mr. Kunce and it appears that Mr. Kunce is fine with it.

Mr. Kunce was called upon but stated he was fine with it.

There was some discussion regarding lighting. Mr. Cooke stated that the lights would be incorporated into the sides of the buildings and would be 8' 4" high and the lights would be pointed down toward the asphalt.

Closing Comments

Walter Carpenter stated he had none. He did say that they would like to have vested rights for five years.

Chairman Moyer asked Mr. Carpenter to state once again, for the record, why they need five years. Mr. Carpenter stated that the timing of this project, in terms of building twelve different buildings. The client will begin with about three buildings that he already has permits for. The building size is set but how big the unit is inside it is not and whether they're climate controlled or not. He felt that what the applicants would like to do is get their feet wet, figure out what the market desires and build the remaining buildings accordingly. That will likely take several years. He's not sure that it would take five years but is sure that it would take more than two years.

Mr. Cooke explained that financially they might not be able to build all twelve buildings in two years. It is his plan to do the project in three phases. He will plan on the revenue for building additional buildings.

There were no closing remarks by staff.

Close the Public Hearing

Commissioner McGrady made the motion to close the public hearing at 7:44 p.m. All voted in favor and the motion carried.

Action

Commissioner McGrady made the motion to grant the vested rights application (for five years) and incorporating an order with the appropriate findings and including staff recommendations A, B, C but without the chain link fence located on the inside of the planting materials, and E. He didn't believe that there was a need to worry about additional screening in regards to D.

Following discussion, Chairman Moyer and Commissioner McGrady restated the motion – to direct staff to draw up the order consistent with the comments incorporating those portions of the staff recommendations identified. All voted in favor and the motion carried.

Adjourn

Commissioner McGrady made the motion to adjourn the meeting at 7:47 p.m. All voted in favor and the motion carried.

Attest

Elizabeth W. Corn, Clerk to the Board

William L. Moyer, Chairman