

REQUEST FOR BOARD ACTION
HENDERSON COUNTY
BOARD OF COMMISSIONERS

MEETING DATE: 4 September 2007

SUBJECT: Modification to Vested Rights Order for Fox Glen

ATTACHMENT(S): Text Amendment to Vested Rights order for Fox Glen

SUMMARY OF REQUEST:

The Board is requested to approve a text change to the Fox Glen Vested Rights Order. Agents for Fox Glen contacted the Planning Department and Legal Department because the Developer would like to install condominium units instead of apartment buildings. The Vested Rights Order specifies apartments. There will be 80 condominium units instead of the vested 100 apartment units. The number of condominium buildings is the same as that of apartments. The placement of the buildings is the same or substantially similar to the location vested on the 10/7/04 site plan referred to in the original order.

Because the use and the density are the same or less intensive than was originally requested, both the Planning and Legal Departments find this to be a minor text amendment and not a substantive change to the Order itself or the rights vested therein.

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

BOARD ACTION REQUESTED:

Adoption of the proposed clarifying amendment.

SUGGESTED MOTION:

I move to adopt the proposed Text Amendment to the Fox Glen Vested Rights Order.

**AMENDMENT TO
THE ORDINANCE GRANTING A DEVELOPMENT VESTED RIGHTS
GLADE LAND FUND, LLC, GRANTEE
TO DEVELOP A PLANNED RESIDENTIAL COMMUNITY KNOWN AS FOX GLEN
ADOPTED SEPTEMBER 4, 2007**

Upon motion duly made and seconded, the Henderson County Board of Commissioners adopted the following modification to the Ordinance granting vested rights to the planned residential community known as "Fox Glen" at a regularly scheduled meeting. The modifications are as follows:

MODIFICATION TO THE TEXT: Modifications shown with deleted language with ~~strikes~~ and additional language highlighted and underlined.

SECTION 1. FINDINGS OF THE BOARD: The Board of Commissioners makes the following findings:

- H. The planned residential community proposed by the Application is Fox Glen. Fox Glen will be developed on the Subject Property and will consist of 198 housing units, consisting of ~~100 apartments~~ 80 condominiums, 24 Town-homes, 34 single family Villa lots, and 40 single family Cottage lots, resulting in a gross density for the project of 4.2 units per acre. Additionally, Fox Glen will include a community recreation center and pool, open space and play grounds areas, and sidewalk connections from all neighborhoods to Howard Gap Road and Fletcher Elementary School. A small community store (without gas pumps) and management office with laundry and community room will be located adjacent to the Howard Gap Road entrance. The proposed locations of the ~~apartments~~ condominiums, town homes, Villa homes, Cottage homes, community recreation center and pool, and community store and management office are shown on the 10/7/04 Site Plan.
- I. The 10/7/04 Site Plan delineates three phases of Fox Glen: Phase I to consist of the ~~apartments~~ condominiums, the villa lots, the community recreation areas, and the community commercial area; Phase II to consist of the Cottage lots, and Phase III to consist of the Town-home lots.
- O. Access into Fox Glen will be provided from both Howard Gap Road and Pattys Chapel Roads. Patty's Chapel Road will provide access to the lower density Cottage neighborhood while Howard Gap Road will provide access to the ~~apartments~~ condominiums, the Town-homes and the Villa lots. No lots will have direct access onto Howard Gap Road or Pattys Chapel Road. Proposed design and construction parameters proposed for the entrances from both Howard Gap Road and Pattys Chapel Road are shown on the 10/7/04 Site Plan.
- P. Grantee has proposed that each housing unit within the Cottages, Villas and Town-home areas will have a minimum of 2 parking spaces per unit including garages. Guest parking within the Town-home areas will be adjacent to the access driveway. No on street parking will be provided in the Cottage or Villa home areas except at park areas. Parking within the ~~apartment~~ condominium area will be adjacent to the access drive. Grantee has proposed a minimum of one and one half spaces for each ~~apartment~~ condominium unit. Parking for commercial and recreational facilities will be based, at a minimum, on one space per 200 square feet for commercial uses and one space per 400 square feet for recreational uses.
- T. Common areas within Fox Glen are proposed to be owned, maintained and managed by a master property owners association or subordinate associations. Areas associated with the ~~apartments~~ condominiums proposed will be maintained and managed by a ~~private owner~~ condominium homeowners association.
- V. The heights of the structures proposed by Grantee are as follows. The height of the recreational structures, Cottages, Villa homes and town homes will not exceed 35 feet as measured from the average ground

elevation to midway between the roof eave and peak. The height of the ~~apartment~~ **condominium** buildings will not exceed 50 feet as measured in the same manner.

SECTION 3. TERMS AND CONDITIONS GOVERNING THE DEVELOPMENT VESTED RIGHT GRANTED BY THIS ORDINANCE

Grantee shall be allowed to develop the Subject Property as shown in the 10/7/04 Site and 10/5/04 Project Summary, provided the following terms and conditions are complied with:

A. Public Health, Safety and Welfare. In order to protect the public health, safety, and welfare, Grantee shall be required to comply with the following terms and conditions:

1. Site Development. Development of the Subject Property shall conform in all respects with the Site Specific Development Plan as approved in Section 2 above, except as allowed by the terms of this Ordinance. Where the terms of this Ordinance, in particular this Section 3, conflict with the Site Specific Development Plan, the terms of this Section 3 shall control.
2. Location of all structures within Fox Glen shall conform to the standards set forth in table attached as Exhibit C, said Exhibit C being incorporated by reference as if fully set forth herein.
3. The location, arrangement and size of structures shall be as generally indicated on the 10/7/04 Site Plan but may be shifted on the lot provided there is no encroachment within the setbacks and is in conformance with the standards established in the attached Exhibit C, or on detailed Development Plans as approved under the Henderson County Subdivision Ordinance (HCSO).
4. Project density shall not exceed a total of 198 residential units in the categories (~~apartments~~ **condominiums**, Town-homes, Cottages, Villas) and 1 commercial structure as indicated on the Master Plan. Actual unit number for any development area may be adjusted, except the ~~apartment~~ **condominium** area which shall not exceed ~~100~~ **80** units, so long as the total number of units approved does not exceed 198.

G. Non-substantive changes. Proposed changes to this Vested Rights Order by the Developer which are determined by the Director of the Planning Department to be non-substantive may be handled administratively at the discretion of the Planning Department. Any proposed substantive changes, especially those which increase the density or intensify the use, must be amended by the procedures established by Section 189-6 of the Henderson County Code.

Signed this the ____ day of September, 2007.

HENDERSON COUNTY BOARD OF COMMISSIONERS

BY: _____
William L. Moyer, Chairman

ATTESTED BY:

Elizabeth W. Corn, Clerk to the Board

[COUNTY SEAL]

ACCEPTANCE BY THE APPLICANT

I, Gaston Campano, Managing Member for Glade Holdings, L.L.C., do hereby on behalf of Glade Holdings, L.L.C. Glade Holdings, L.L.C., acknowledge:

- (1) the receipt of this text amendment on behalf of Glade Holdings, L.L.C., L.L.C., the owner of the property which is the subject of this Order;
- (2) that nothing may be done pursuant to the Vested Rights Order as amended except in accordance with all of its conditions and requirements; and,
- (3) that this restriction is and shall remain binding on Glade Holdings, L.L.C., and its successors in interest.

This the ____ day of _____, 2007.

Gaston Campano, Managing Member, on behalf of
Glade Holdings, L.L.C.

STATE OF NORTH CAROLINA
COUNTY OF HENDERSON

I, _____, Notary Public for said County and State, certify that Gaston Campano, General Manager for Glade Holdings, L.L.C., personally came before me this day and acknowledged the due execution of foregoing instrument on behalf of Glade Holdings, L.L.C.

THIS the ____ day of _____, 2007.

Notary Public

My Commission Expires: _____