

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 17 September 2008

SUBJECT: Approval of Draft Order for Biltmore Farm VR-2007-03-A1

ATTACHMENT(S): VR-2007-03-A1 Order

SUMMARY OF REQUEST:

At this Board's August 26, 2008 public hearing, the Board approved the amendment to the vested rights order, titled VR-2007-03-A1. This amendment was requested by the Applicant to allow them greater flexibility in housing composition and to make some minor changes to the site plan. Attached is an order reflecting the outcome of the hearing and the conditions this Board placed on the development in the amendment. At present the draft order has been reviewed by the Planning Department and has been sent to the Applicant's attorney for her review.

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

BOARD ACTION REQUESTED:

Approval of the Order or direct staff to make changes.

If the Board is so inclined, the following motion is suggested:

I move this Board approve the amendment to the Biltmore Farm Vested Right Order VR-2007-03-A1 as submitted by staff.

IT IS HEREBY ORDAINED AND ORDERED BY THE BOARD OF COUNTY COMMISSIONERS OF HENDERSON COUNTY, NORTH CAROLINA as follows:

STATE OF NORTH CAROLINA

COUNTY OF HENDERSON

AMENDMENT TO VR-2007-03 VESTED RIGHTS ORDER

THIS AMENDMENT, Henderson County VR-2007-03-A1, came on to be heard before the Henderson County Board of Commissioners on 26 August 2008. After hearing and deliberations, the Board makes the following findings and conclusions, and enters the following Order.

Findings

1. The Henderson County Board of Commissioners (“the Board”) accepted the application from Biltmore Farms, LLC (made through Thomas A. Williamson, Vice President), for amendment to Vested Rights Order VR-2007-03 pursuant to Chapter 189 of the Henderson County Code, on June 13, 2008. A public hearing, pursuant to Chapter 189 of the Henderson County Code, and pursuant to the Rules adopted by the Board for hearings under Chapter 189, was scheduled for 26 August 08.

2. Notice of the public hearing was published in *The Times-News* newspaper on 13 August 2008, 16 August 2008, 20 August 2008 and 23 August 2008. On 13 August 2008, personnel from the Henderson County Planning Department posted notice at the project site advertising the public hearing. Notices of the public hearing were sent to the applicant and to the owners of real property adjacent to the site of the development proposed by the Applicant on 13 August 2008.

3. All members of the Board were present for the hearing on 26 August 2008.

4. At the commencement of this hearing, the Board inquired as the persons or entities who believed they should be parties to this proceeding, in addition to the Applicant and the Henderson County Planning Department. The following persons, all adjacent property owners, requested to become parties to this hearing, which request was granted, without objection by the remaining parties, by the Board:

Edward R. Doyle, Jr.
331 Old Orr Road
Etowah, North Carolina 28729

5. After discussion by the Board and waiver from the Applicant and Party Doyle, the Board of Commissioners held the amendment hearing as a public hearing not a quasi-judicial hearing.

6. All parties to the proceeding, and all other witnesses, gave oath for their testimony. The Board received Exhibit A with attachments from Henderson County Planning Staff, plus Exhibits from the Applicant and from Edward R. Doyle, Jr.

7. The Applicant proposes a residential development to be located on property identified by Henderson County parcel identification numbers 9529-76-7505, 9529-83-8232, 9539-03-7259, 9529-91-6743 and located on McKinney Road (SR 1203) (“the subject property”).

8. The subject property fronts McKinney Road, at the intersection of McKinney Road and Brickyard Road (SR 1323). The subject property is approximately 469.96 acres in size, and does not include a 50 acre tract to be retained by the current property owners.

9. On 24 May 2007, the Board of Commissioners issued a Vested Rights Order for the Applicant, VR-2007-03. The term of this Vested Rights Order is five years.

10. On 13 June 2008 the Applicant requested an amendment to the Vested Rights Order. The Applicant asked for changes to the Vested Rights Order to change the composition of housing structures; decrease the open space; change the lot sizes; increase the total length of pedestrian system and modify the road connections to reduce stream impact. As part of this application, the Applicant submitted a modified master plan dated June 13, 2008.

11. The development was previously to include a total of not more than 653 residences including 234 single-family dwellings, 42 duplexes, 49 triplexes, and 47 quadraplexes. The single-family dwellings were not to be less than 1/3 acre in size.

12. The Applicant is now asking for an amendment to allow a total of not more than 635 residences with 330 single-family dwellings, 11 duplexes, 57 triplexes, and 28 quadraplexes. Single-family residences and triplexes increased while the number of duplexes and quadraplexes decreased and there was an overall decrease in the number of residences.

13. Because of the increase in lots for the single-family residences, the Applicant is requesting a 3 acre decrease in the amount of open space, from 240 acres in the original order to 237 acres in the amendment. The project maintains over 50 percent open space (50.4%).

14. The Applicant is also requesting an amendment to the lot size from no lots smaller than 1/3 an acre to an average parcel size of 0.74 acres with some parcel sizes below 1/3 acre. The average density shall be 1.35 units per acre which is permissible under the current R1 zoning for the property.

15. The Applicant requested a modification to combine the length of the sidewalks and trails into one calculation instead of setting requirement for both separately as is done in the original order. The Applicant proposes an increase in the pedestrian system from 8.89 miles in the original order to 9.73 miles in the amended plan.

16. The Applicant requested an elimination of a road connection between phases 5 and 7 as was proposed in the original plan so as to reduce blue line stream impact. In addition they propose eliminating the steep slope portion of the road loop in phase 7.

17. In addition the applicant is proposing a roundabout at the principal entrance of the development to replace the existing Brickyard Road (SR 1323) and McKinney Road (SR 1203) intersection. These changes have been supported by the project's traffic impact study and by the North Carolina Department of Transportation.

18. Ed Doyle submitted evidence to the Board regarding water quality and the environmental impact of the project. Several other speakers presented similar testimony.

19. The Applicant testified the amendments were requested to better meet market demands and to allow a better mix of housing options in the project.

From the foregoing, the Board concludes as follows:

1. That the Board has the authority to vest development rights in the Applicant pursuant to N.C. Gen. Stat. §153A-344.1, and pursuant to Chapter 189 of the Henderson County Code.

2. That the Board should permit the amendment to the Applicant's vested rights order pursuant to the revised site specific development plan submitted by the Applicant, subject to the conditions stated below.

3. That the conditions stated below are appropriate and necessary to protect the public health, safety and welfare.

WHEREFORE, IT IS ORDERED as follows:

1. That the rights vested are for a total of not more than 330 single-family units on individual lots and not more than 305 town-home units of which no more than 112 units may be in quadraplex buildings. This replaces condition 2.d. of Vested Rights order VR-2007-03.

- a. There shall be no more 28 quadraplex buildings housing 112 units and no more than 67 triplex structures housing 201 units.
- b. The Applicant shall have the ability to modify composition of multifamily units as follows:
 - i. The Applicant may transfer a quadraplex structure into a triplex building.
 - ii. The Applicant may make a triplex building into a duplex structure.
 - iii. The Applicant may not make any multifamily unit into a single-family residence.
 - iv. No unit may be made into a structure of a higher density such as a single-family being turned into a duplex or a duplex turned into a triplex.
 - v. The total number of units may not be greater than 635.

2. The Applicant shall be vested to an average density of no more than 1.35 units per acre with an average lot size of no fewer than 0.74 acres per unit. This replaces condition 2.e of Vested Rights order VR-2007-03 in conjunction with provision 3 below.

3. The Applicant shall be vested to an ability to sell single-family lots as lots or as land/home packages and not vested to land/home packages only. This modifies Finding 31 and condition 2.w. of Vested Rights Order VR-2007-03.

4. There shall be a minimum of 237 acres of open space within the subject property as developed. "Open space" means "an area that is intended to provide light and air, and is designed for either environmental, scenic or recreational purposes and shall not include roads, any areas dedicated or reserved for roads, land within setbacks or separation areas, internal or external roads, rights-of-way, driveways, parking spaces, sale or model homes, and areas needed for aboveground utility facilities including water supply or sewage disposal systems. This replaces condition 2.n. of Vested Rights order VR-2007-03.

5. A minimum of 9.73 miles of pedestrian trails and sidewalks must be provided. As part of this total length, the Applicant must provide sidewalks on at least one side of a road in the areas of multifamily units. This replaces condition 2.o. and 2.p. of Vested Rights order VR-2007-03.

6. The Applicant shall be vested to the master plan submitted to the Planning Department on June 13, 2008.

7. All provisions and conditions in the original order VR-2007-03 that have not been amended by this order remain intact and the Applicant shall be liable to comply with those provisions.

8. The timeframe for vested rights shall not change from the original order and continues to run.

As ordered by the Board upon motion duly made and seconded and unanimously adopted, this the ____ day of September, 2008.

HENDERSON COUNTY BOARD OF COMMISSIONERS

By: _____
WILLIAM MOYER, Chairman

Attest:

ELIZABETH CORN, Secretary to the Board