

STAFF REPORT

TO: Board of Aldermen

DATE: February 18th, 2014

PROJECT: Conditional Use Permit Extension Request for The Shoppes at Jones Ferry at 405 Jones Ferry Road

APPLICANT/OWNERS: Calvin & Nora Mellot
PO Box 537
Carrboro, NC 27510

PURPOSE: Request for an extension of date when Conditional Use Permit would otherwise expire for The Shoppes at Jones Ferry project.

EXISTING ZONING: M1- Light Manufacturing

PIN: 9778-64-1957 & 9778-54-9917

LOCATION: 405 Jones Ferry Road

TRACT SIZE: 7.771 acres/335,858 square feet

EXISTING LAND USE: Construction Yard- Permissible Use # 3.220

PROPOSED LAND USE: Use 2.110- High-Volume Traffic Generation Sales

SURROUNDING LAND USES: North: M1- OWASA/Jones Ferry Road
South: R-7.5- University Lake Apartments
East: R-7.5- Single-family residence/Barnes Street
West: R-7.5- Collins Crossings Apartments

ZONING HISTORY: M1, since 1980

RELEVANT ORDINANCE SECTIONS: Section 15-62 Expiration of Permits

BACKGROUND

The property owner, Calvin Mellot, has requested an extension of the date on which a previously issued Conditional Use Permit (CUP) would otherwise expire. The Board of Aldermen originally granted the Conditional Use Permit on September 25th, 2007.

The original developer objected to one or more conditions placed on the CUP by the Board of Aldermen and appealed those impositions to Superior Court, which ruled in favor of the Board of Aldermen. The developer appealed this decision to the Court of Appeals which determined that the Board of Aldermen had failed to include adequate findings of fact in its order approving the permit with the conditions in question and remanded that case back to the Superior Court with the instructions to the Superior Court to remand the case to the Board of Aldermen to make findings of fact to support its decision to impose the conditions. Afterwards, the permit remained inactive but still valid until at least November 21, 2013, as described in the Abstract for this agenda item.

Subsequently, Mr. Calvin Mellott made payment for the extension of the permit on November 21st. 2013. In a letter submitted to staff regarding this matter, David Rooks, representing Mr. Mellott, cited market conditions and economic factors as reasons why he has not moved forward expeditiously with construction of the project.

Choices regarding options the Board has regarding making a decision are contained in this agenda item's abstract and are repeated below in the recommendation section. Should the Board choose to grant the permit extension request, please note that construction plans must still be reviewed and approved, and a pre-construction meeting must be held before construction may begin. Following is a description of the applicable LUO sections regarding this application, along with staff's determinations with compliance for each one.

APPLICABLE LUO PROVISIONS

Extensions to the date on which a permit would otherwise expire must be granted in accordance with Section 15-62 (Expiration of Permits) of the LUO, which is included below, section-by-section. As previously mentioned, Mr. Mellott has been trying to obtain interest from potential grocery stores, but no work (0%) has been completed on the site to date.

Section 15-62(c) gives the permit-issuing authority (Board of Aldermen) the authority to grant an extension to the date on which the permit would otherwise expire. Section 15-62(c) reads as follows:

“(c) The permit-issuing authority may extend for a period up to one year the date when a permit would otherwise expire pursuant to subsections (a) and (b) if it concludes that (i) the permit has not yet expired, (ii) the permit recipient has proceeded with due diligence and in good faith, and (iii) conditions have not changed so substantially as to warrant a new

application. Successive extensions may be granted for periods up to one year upon the same findings. All such extensions may be granted without resort to the formal processes and fees required for a new permit.”

Staff offers the following information related to the conditions outlined in Section 15-62(c):

1. The permit has not yet expired.

COMPLIANCE: *In this case, the permit-issuing authority must determine whether the permit has expired. As previously mentioned, Mr. Mellott provided payment for the extension of this permit on its expiration date of November 21st, 2013. Staff determined that payment gave Mr. Mellott standing to bring this matter forward to the Board of Aldermen. The Board therefore may agree to extend the expiration date, or may determine that payment alone on the date which the permit was set to expire is not sufficient grounds on which to determine that the permit has not yet expired.*

2. The permit recipient has proceeded with due diligence and in good faith.

COMPLIANCE: *Yes, according to a letter provided by David Rooks, Mr. Mellott has proceeded with due diligence and in good faith and has received inquiries from two different grocery chains that may be interested in the project.*

3. Conditions have not changed so substantially as to warrant a new application.

COMPLIANCE: *Yes, it is true that conditions have not changed so substantially as to warrant a new application. No changes to the property have taken place since the permit was originally approved.*

RECOMMENDATION

Town Staff requests that the Board of Aldermen review the information, consider the request, and decide whether to extend the date on which the CUP otherwise would or did expire to November 21, 2014. The Board may choose one of the three following options:

- 1) Extend the CUP for an additional year, with a resulting new expiration date of November 21st, 2014;
or
- 2) Choose to deny the extension of the CUP for an additional year by determining that Mr. Mellott did not submit payment and associated information in a timely enough manner for the Board of Aldermen to reasonably consider the application prior to the date on which the permit otherwise would expire;
- 3) Deny the extension of the CUP for an additional year due for some other reason.