

STAFF REPORT

TO: Board of Aldermen

DATE: October 20th, 2015

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.

The Board of Aldermen extended the permit for an additional year at their November 21st, 2014 meeting with an expiration date of November 21st, 2015.

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.

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 two years 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 two years 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: *Yes, it is true that the permit has not expired. As previously mentioned, the permit would expire on November 21st, 2015 should an extension not be granted.*

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 expressions of interest in the property as permitted but no one has made a firm offer as of yet for this 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 recommends that the Board of Aldermen adopt the attached resolution approving the permit extension request. The new expiration date for the permit would be October 20th, 2017.