

STAFF REPORT

TO: Board of Aldermen

DATE: June 5th, 2018

PROJECT: Conditional Use Permit Extension Request for The Matthew's Family Building at 609 Highway 54 West

APPLICANT: Bud Matthews
205 Severin Street
Chapel Hill, NC 27516

OWNER: W3M, LLC
205 Severin Street
Chapel Hill, NC 27516

PURPOSE: Request for an extension for the Conditional Use Permit of The Matthew's Family Building project. This CUP permit expired on October 20th, 2017, but based on circumstances and equities the extension request is considered to have been submitted on time.

EXISTING ZONING: B-5- Watershed Commercial

TAX MAP NUMBER: 7.113.B.22

LOCATION: 609 Highway 54 West

TRACT SIZE: 2.08 acres/90,797 square feet

EXISTING LAND USE: Vacant- existing masonry building on-site

PROPOSED LAND USE: Use# 3.120, 2.120, 2.130, 2.220, 2.230 & 3.220

SURROUNDING LAND USES: North: Street Right-of-Way
South: WR- Single Family Residence
East: B5- Vacant
West: WR- Single Family Residence

ZONING HISTORY: B5, since 1983

RELEVANT**ORDINANCE SECTIONS:** Section 15-62 Expiration of Permits**BACKGROUND**

The property owner, Mr. Bud Matthews, has requested that the date on which a previously issued Conditional Use Permit (CUP) that expired on October 20th, 2017 be re-established to an expiration date of October 20th, 2019.

The Board of Aldermen originally granted the Conditional Use Permit on September 25th, 2007. The CUP allowed the renovation of the existing 3,200 square foot building and the construction of metal type prefabricated building that is approximately 3,000 square feet in size.

The Board of Aldermen extended the CUP once before and set the new expiration on September 25th, 2010 and then State Bill 831 extended the expiration of this CUP until November 21st, 2013.

The Board of Aldermen extended the CUP for an additional year at with an expiration date of November 21st, 2015 and this CUP was extended once again till October 20th, 2017.

The applicant consulted with Town staff and intended to extend the CUP prior to the expiration date. However, there was an oversight by town staff at that time stating the incorrect expiration date of the CUP. Upon staff and the applicant realizing this, the applicant immediately submitted the application requesting an extension. Based on the circumstances and equities, the Town Attorney has advised that the application should be considered to have been submitted on time and the extension is therefore approvable. In a letter submitted to staff regarding this matter, Mr. Matthews 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.

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. Specifically, please note that Section 15-62(a) of the LUO dictates that the CUP would expire on October 20th, 2017 in this case (i.e.- two years after the date of the last extension) because less than ten percent (10%) of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on the development authorized by the permit has

been completed on the site. As previously mentioned, Mr. Matthews has been trying to obtain financing, 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: *The applicant intended to extend the CUP prior to the expiration date, but there was an inadvertent oversight by town staff stating the incorrect expiration date of the CUP. Upon staff and the applicant realizing this, the applicant immediately submitted the application requesting an extension. Based on the circumstances and equities, the Town Attorney has advised that the application should be considered to have been submitted on time and the extension is therefore approvable.*

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

COMPLIANCE: *Yes, the permit recipient has proceeded with due diligence and in good faith. Mr. Matthews has actively been trying to obtain financing for the project as explained in his letter. Mr. Matthews has been unable to obtain the appropriate financing for 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

The 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, 2019.