



## Legislation Text

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**File #:** 15-0240, **Version:** 1

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### **TITLE:**

Continuation-3 of Public Hearing on the Conditional Use District Rezoning and Conditional Use Permit for 501 South Greensboro Street

**PURPOSE:** Third Continuation meeting of the public hearing opened on April 28, 2015 regarding applications for an M-3-conditional use rezoning (M-3-CU) and a conditional use permit (CUP) to allow for the construction of a three- to four- building commercial development on property located at 501 South Greensboro Street, also known as the former Rogers-Triem site. This is the third continuation of the original meeting. The other meetings were held on May 5 and May 26.

**DEPARTMENT:** Planning

**CONTACT INFORMATION:** Christina Moon - 919-918-7325, Jeff Kleaveland - 919-918-7332; Marty Roupe - 919-918-7333, Patricia McGuire - 919-918-7327, Mike Brough - 919-929-3905.

**INFORMATION:** At the May 26, 2015 Board of Aldermen meeting, the Board continued the public hearing on the request for a conditional use rezoning/conditional use permit for property located at 501 South Greensboro Street, specifically to rezone the property M-3-CU, a newly established conditional use district. The Board voted to continue the public hearing to June 2.

During the May 26<sup>th</sup> meeting the combined staff, advisory board and citizen conditions, as prepared by the staff, were discussed. The conditions as presented are attached ((See *Continuation-2, Staff Advisory Boards Summary Sheet -updated*)). These conditions represent those agreed upon by the applicant.

Following this, six citizens, sworn in at the original meeting, gave additional spoken comments expressing concerns regarding the proposed conditions relating primarily to potential nuisance noise and the hours that certain activities, such as truck deliveries, or loud music, might be expected at the site.

The applicant spoke in response to these and other concerns and to explain the reasoning behind the wording in some of the proposed conditions.

The Board in reviewing these comments and discussing the subject of nuisance noise requested the following actions by staff and the Town Attorney:

- That an attorney memo from Bob Hornik be provided to the Roberson Place residents before Friday (5/28) to explain and interpret the noise ordinance and how it applies to commercial property.
- To address the specificity of the Town's noise ordinance within the next year.
- That a representative from the Carrboro Police Department be in attendance on the June 2 continuation hearing to report on noise issues around town. In particular, to discuss any patterns regarding commercial complaints and enforcement.

- That the Town Attorney or Manager to be part of applicant's roundabout discussions with the effected project neighbor.

The memo from the Town Attorney was distributed to the Board of Aldermen and the residents on Thursday, May 28 (See *Continuation-3, Town Attorney Memo Re Noise Ordinance*).

Additionally, Alderman Seils requested that staff provide examples of other permit conditions that regulate noise at other properties in Town. Staff had two immediate examples that came to mind during the meeting. These permit conditions/agreements are provided below:

- ☐ 601 W. Main St (currently Looking Glass Café (this building also includes an adjacent office space.) - CUP Conditions:
  - That no amplified music will be played on the property other than during the six special events.
  - The hours be limited to 11:00pm on weeknights and 12:00am on the weekends.
- ☐ 901 W. Main (currently Johnny's Gone Fishing café and country store) - Zoning permit with Neighborhood Agreement stipulation (selected sections, for complete agreement See: *Continuation-3, Neighborhood agreement re: Johnny's cafe*):
  - Reasonable hours: not later than 10 pm;
  - Reasonable outside noise: to follow town noise ordinance guidelines;
  - Up to 3 outside seasonal events per year: only non-amplified acoustic music & notification to nearby neighbors;
  - Up to 3 indoor promotional events per week;
    - only inside non-amplified acoustic music;
    - acoustic indoor music to be limited to 5 acoustic musicians.

In response to concerns related to amplified music voiced by the neighbors, the applicant has offered to modify condition 44 as follows (see underlined below):

44. Outdoor music is allowed only between the hours of 10 am and 11:00 pm and that no significantly loud amplified music will be allowed with the exception of that permitted by a Town sponsored event.

In response to concerns related to other nuisance noise voiced by the neighbors, the applicant has offered to modify condition 46 as follows (see underlined below):

46. That the owner and/or property manager will make every reasonable effort to mitigate the nuisance impacts associated with all prospective South Green tenants. Nuisance impacts include but are not limited to, truck deliveries, leaf blowing and mowing, and the emptying of trash and recycling containers. Mitigation efforts shall be tailored to fit each particular business as needed and will include, but not be limited to, controlling the location and hours of delivery. Deliveries, leaf blowing and mowing shall occur between 9 am and 5 pm to the extent possible. Deliveries occurring outside of these hours shall load and unload internal to the site whenever possible. To the extent practical, refuse disposal outside of enclosed buildings shall occur between 7:30 am and 10:00 pm. Furthermore, the property owner is required to present a written report to the Town biannually for the first two years of operation and annually for the following three years thereafter. Furthermore, after one year of operation, the owner will poll neighbors within 1000' of the property to receive their comments regarding the development whereupon the applicant will provide a written report of the results to the Town.

Again, please note that the request by neighbors (and the recommendation by the TAB) to allow the emergency-only access to Purple Leaf Place (via Rand Road) to remain, is a matter the Board needs to address separately from this agenda item as it pertains to controls placed upon a public right-of-way and as such should not be encumbered by a permit on a private property. The project as designed will remove the existing bollards and connect the streets as shown in the plans. Reinstalling similar emergency-only bollards can be authorized if the Board adopts a separate resolution for the action. A resolution to this effect has been attached should the Board wish to act. Note also, another separate resolution is also attached incorporating a request by the TAB that the Town investigate with NCDOT the possibility of reduction the speed limit for a portion of S. Greensboro St and for the roundabout (See: *Continuation-2, Resolutions regarding bollards and speed limits*).

#### Process

Section 15-141.3 of the Land Use Ordinance, Conditional Use Zoning Districts, describes the procedure for the Board to consider the rezoning and conditional use permit concurrently, with the specific steps outlined in subsection 15-141.3(e). The Board shall simultaneously conduct a public hearing on the rezoning and conditional use permits in accordance with the procedures applicable to conditional use permits. Consideration of a CUP follows a quasi-judicial procedure. As usual this agenda item includes comments and information provided by citizens ahead of the hearing, but the Board should base their decision only on acceptable information and evidence entered into the record during the hearing itself. Questions about what constitutes acceptable information and evidence should be directed to the Town Attorney.

**FISCAL & STAFF IMPACT:** The petitioner has submitted fees and materials for reviewing and processing this request, which includes public hearing notice and advisory board evaluation. Staff time necessary for public notice and public hearing agenda preparation, included sending mailed notice twice to ensure that property owners were aware of the joint review meetings at the beginning of April and public hearing proposed for April 28<sup>th</sup> and continued to May 5<sup>th</sup>, May 26<sup>th</sup> and June 2.

**RECOMMENDATION:** Part I. M-3-Conditional Use Zoning: Town staff recommends that the Board of Aldermen receive public comment and consider if the proposed rezoning is consistent with Town plans and policies as well as the advancement of the public health, safety and welfare of the Town. Approval would be subject to the conditions specified in association with the conditional use permit application for development of three to four buildings for commercial uses, including restaurants.

Part II. Conditional Use Permit Application: If the rezoning is found to be appropriate, Town staff recommends

that the Board of Aldermen review the Conditional Use allow the removal of the existing buildings and the construction of three or four buildings.

Town staff recommends that the Board of Aldermen complete the CUP Worksheet (Attachment R) and approve the Conditional Use Permit subject to the following revised conditions:

1. That prior to approval of the construction plans authorizing installation of the project's infrastructure internal to the site, if all necessary additional street right-of-way needed for the construction of the roundabout is not obtained by the developer and recorded in a final plat, that the location of the roundabout be shifted as needed so as to not require this additional property. Should the roundabout location be shifted, the construction plans will be re-reviewed as necessary to assure they remain in compliance with the permit. If the shift causes substantial changes to the plans it will require approval by the Board of Aldermen.
2. That prior to approval of the construction plans authorizing installation of the project's infrastructure internal to the site, the applicant pursue relocating the Purple Leaf Place sidewalk extension onto the eastern side of the road instead of the western side as shown in the CUP plans and that this revised connection will include the corresponding revisions to the crosswalks and HC ramps on the plans in the vicinity of these changes.
3. That prior to construction plan approval for grading and soil work, all necessary encroachment agreements be obtained to allow work within the existing Rand Road public right-of-way. Further, that the existing Rand Road right-of-way shall be formally abandoned per Town procedure prior to issuance of a certificate of occupancy.
4. That, regardless of the status of the right-of-way abandonment or dedication, the applicant will provide emergency access (meeting Town Fire Department standards) through the property to Purple Leaf Place throughout the construction process.
5. That prior to approval of the construction plans authorizing installation of the project's infrastructure internal to the site, the applicant receive a driveway permit from NCDOT in accordance with any conditions imposed by such agency including but not limited to encroachment/maintenance agreements for lighting and sidewalks.
6. That an appropriately sized public easement be provided for the sections of the proposed 10' bicycle path/greenway facility that are not located within the public street R/W.
7. That, in the construction plans the multi-use path be designed to meet or exceed the specifications identified in the AASHTO Guide for the Development of Bicycle Facilities and the applicable design recommendations in the Town of Carrboro Comprehensive Bicycle Plan.
8. That at least one accessible parking space be provided in close proximity to the main entrance of Building 3 in the option A site plan proposal.
9. That the applicant must obtain approval from the Town (either at a staff or Board level as determined by the LUO), if changes to the allocation of uses in the commercial buildings or the hours of operation of the businesses result in parking requirements that exceed the parking amount approved by the permit.
10. That the Board of Aldermen hereby finds that parking spaces shown on Option A (180 spaces) and Option B (179 spaces) are sufficient to serve the proposed development based on the applicant's justification statement regarding joint use of the proposed parking spaces and the site's proximity to residential neighborhoods, bus lines, bicycle lanes and existing pedestrian facilities. This justification also includes the accommodation for allowing the parking area behind Building 2 to be used for outdoor inventory storage. Should the use of these spaces for storage contribute to a parking problem for the development, the storage shall be removed sufficiently to restore the needed parking spaces for use.
11. Should the installation of HC spaces to serve Building 3 in the Option A site plan be required, that these parking total numbers be allowed to be reduced by one or two spaces if necessary to allow the installation

of the HC spaces.

12. That the Board of Aldermen hereby finds that that the loading and unloading areas shown on the plans are sufficient to accommodate delivery operations in a safe and convenient manner based on information provided by the applicant.
13. That the construction plans demonstrate compliance with the tree canopy coverage standards of Section 15-319 prior to construction plan approval.
14. That the proposed NCDOT drainage improvements for S. Greensboro Street be coordinated and installed in advance-of or concurrent-with the installation of the South Green drainage improvements.
15. That the applicant shall provide to the Zoning Division, prior to the recordation of the final plat for the project or before the release of a bond if some features are not yet in place at the time of the recording of the final plat, Mylar and digital as-builts for the stormwater features of the project. Digital as-builts shall be in DXF format and shall include a base map of the whole project and all separate plan sheets. As-built DXF files shall include all layers or tables containing storm drainage features. Storm drainage features will be clearly delineated in a data table. The data will be tied to horizontal controls.
16. Per Section 15-263.1, that the developer shall include a detailed stormwater system maintenance plan, specifying responsible entity and schedule. The plan shall include scheduled maintenance activities for each stormwater BMP in the development, performance evaluation protocol, and frequency of self-reporting requirements (including a proposed self-reporting form) on maintenance and performance. The plan and supporting documentation shall be submitted to Town engineer and Environmental Planner for approval prior to construction plan approval.
17. That, prior to issuance of a CO, a final plat, or the certification of a stormwater BMP, the Town may require a performance security to be posted for a period of two years per the provisions of Section 15-263 (i).
18. That any necessary temporary or permanent easements be obtained prior to the approval of construction plans for each stage of the development. Easements shall also be shown on the final plat when it is recorded.
19. That the developer provide a written statement from the electrical utility stating that electric service can be provided to all locations shown on the construction plans prior to the approval of the construction plans.
20. Prior to construction plan approval, all proposed lighting within public rights-of-way must satisfy the Public Works street lighting policy.
21. That fire flow calculations and building-sprinkler design (as required) must be submitted and approved by the Town Engineer and Town Fire Department prior to construction plan approval.
22. That the Board of Aldermen hereby finds acceptable the deviations from the architectural requirements of Section 15-178 of the LUO per the elevations and information presented at the public hearing.
23. That prior to construction plan approval, the applicant submit materials to satisfy the Construction Management Plan provisions of Section 15-49(c1).
24. (New condition, reworded) That prior to issuance of a certificate of occupancy, a final plat will be recorded including the three new lots and the newly established Rand Road public right-of-way. This plat will show all necessary easements.

The following conditions are appended, as directed by the Board, to the original staff conditions above:

25. The applicant shall include striped crosswalks on all four sides of the roundabout subject to NCDOT approval.
26. The applicant shall paint sharrows in the roundabout subject to NCDOT approval.
27. The applicant shall show sharrows on the construction plan along Rand Road.
28. That, if allowed under the related provisions of the American's with Disability Act, the construction plans shall show the multi-use path splitting into two paths so as to serve both sidewalk ramps on the

southeast quadrant of the roundabout.

29. That the construction plans shall show painted crosswalks at all sidewalk and multiuse path crossings.
30. That the construction plans show raised crosswalks or an alternative crosswalk treatment wherever practicable particularly where the multiuse path crosses the entrance to the parking lot for Building 2.
31. That the construction plans shall install stop signs where all of the driveways enter Rand Road subject to Public Works approval.
32. That the construction plans shall include adequate lighting along the multiuse path behind Buildings 3, 4 & 5.
33. That the construction management plan include wayfinding signs for re-routing cyclists during construction.
34. That the construction plans shall not include any plants recognized as invasive plants by North Carolina Invasive Plant Council in the piedmont of North Carolina and that the applicant's Landscape Architect shall provide written justification for the use of non-native species.
35. That the construction plans shall include LEDs lights for all of the outdoor parking area light poles and provide for the option of LED lighting, indoors.
36. That the applicant consider establishment of terracing of the steep slope to allow for uses as an alternative to a steep, continuous vegetated slope.
37. That the applicant consider other cost effective energy efficiency measures such as heat recovery units and geothermal systems to the extent feasible.
38. That the owner shall to strive to abide by Fair Trade standards as defined by the Local Living Economy Task Force Recommendation number 6 and seek to recruit locally owned businesses.

For this condition, the Board may choose one of the following two options:

39. Option A: That the Board hereby concludes, based on the information from the applicant contained in Attachment O, that the development is making a substantial enough investment in one or more of the M-3-CU performance measures to satisfy the standard in 15-141.3((c-1)-1) and thereby is granted 40% restaurant use for the property, or;
39. Option B: That the Board hereby concludes, based on the information from the applicant contained in Attachment O, that the development satisfies nine of the M-3-CU performance measures as identified below and therefore is granted 40% restaurant use for the property:
  - a. Flooding mitigation (satisfies performance measure 1);
  - b. Permeable paving (satisfies performance measures 2 & 3) construction of the roundabout (satisfies performance measures 4 & 5);
  - c. LED parking lot lights (satisfies performance measure 13);
  - d. Use of devices that shade at least 30% of the south and west facing building elevations (satisfies performance measure 9);
  - e. Use of Low Emissivity (low-e2) windows along south and west facing building elevations (satisfies performance measure 10);
  - f. Installation of attic insulation that exceeds the current building code R-value rating by 35% or greater (satisfies performance measure 11).
40. That electrical service conduit is provided within the buildings for the purpose of facilitating convenient future installation of rooftop solar photovoltaic arrays.
41. That the developer include the possibility of Commercial Organic Waste Collection in their solid waste management plan. Said service shall be operated insofar that it does not create an odor nuisance to the surrounding community and shall be subject to the additional condition regarding solid waste.
42. That an offer be made by the applicant to the owner(s) of the property located at 436 S. Greensboro St

(PIN 9778834808) to mitigate the impacts of the installation of the roundabout through the provision of additional landscaping and site work.

43. That an offer be made by the applicant to the owner(s) of the property located at 212 Purple Leaf Place (PIN 9778848092) to mitigate the visual impacts of the project in their vicinity through the provision of additional landscaping and site work. Plantings may occur within the street right-of-way and/or the HOA common space if circumstances allow and the correct permissions are obtained.
44. (Reworded) Outdoor music is allowed only between the hours of 10 am and 11:00 pm and that no significantly loud amplified music will be allowed with the exception of that permitted by a Town sponsored event.
45. That solid waste and recycling pickup occur between the hours of 7:30 am and 5:00 pm Monday through Saturday.
46. (Reworded) That the owner and/or property manager will make every reasonable effort to mitigate the nuisance impacts associated with all prospective South Green tenants. Nuisance impacts include but are not limited to, truck deliveries, leaf blowing and mowing, and the emptying of trash and recycling containers. Mitigation efforts shall be tailored to fit each particular business as needed and will include, but not be limited to, controlling the location and hours of delivery. Deliveries, leaf blowing and mowing shall occur between 9 am and 5 pm to the extent possible. Deliveries occurring outside of these hours shall load and unload internal to the site whenever possible. To the extent practical, refuse disposal outside of enclosed buildings shall occur between 7:30 am and 10:00 pm. Furthermore, the property owner is required to present a written report to the Town biannually for the first two years of operation and annually for the following three years thereafter. Furthermore, after one year of operation, the owner will poll neighbors within 1000' of the property to receive their comments regarding the development whereupon the applicant will provide a written report of the results to the Town.