

VARIANCE OR APPEAL APPLICATION



TOWN OF CHAPEL HILL
Planning Department
405 Martin Luther King Jr. Blvd.
phone (919) 969-5040 fax (919) 969-2014
www.townofchapelhill.org

Parcel Identifier Number (PIN): N/A Date: October 2, 2019

Section A: Project Information

Project Name: N/A
Property Address: N/A Zip Code: N/A
Existing Zoning District: N/A
Description of Request: N/A

Section B: Applicant, Owner, and/or Contract Purchaser Information

Applicant Information (to whom correspondence will be mailed):

Name: Joseph Patterson c/o Luke J. Farley, Sr., Esq., Ellis & Winters LLP
Address: P.O. Box 33550
City: Raleigh State: NC Zip Code: 27636
Phone: 919-865-7036 Email: luke.farley@elliswinters.com

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature: _____ Date: October 2, 2019

Owner/Contract Purchaser Information:

☐ Owner

☐ Contract Purchaser

Name: N/A
Address: N/A
City: N/A State: N/A Zip Code: N/A
Phone: N/A Email: N/A

The undersigned applicant hereby certifies that, to the best of their knowledge and belief, all information supplied with this application is true and accurate.

Signature: _____ Date: _____



**VARIANCE OR APPEAL APPLICATION
SUBMITTAL REQUIREMENTS**
TOWN OF CHAPEL HILL
Planning & Development Services

Variances and Appeals may be granted by the Board of Adjustment for dimensional regulations, water and sewer regulations, steep slope regulations, house size limitations, Resource Conservation District regulations, Jordan Buffer regulations, and Watershed Protection District regulations. The following must accompany your application. Failure to do so will result in your application being considered incomplete.

X	Application fee (refer to fee schedule)	Amount Paid \$	630
N/A	Digital Files – provide digital files of all plans and documents		
N/A	Mailing list of owners of property within 1,000 foot perimeter of subject property (see GIS notification tool)		
N/A	Mailing fee for above mailing list	Amount Paid \$	N/A
X	Written Narrative describing the proposal		
X	Statement of Justification – Respond to subsection 4.12.2(a)(1-4) of the Land Use Management Ordinance.		
N/A	Recorded Plat or Deed of Property		
N/A	Stream Determination – necessary for all submittals		
N/A	Jurisdictional Wetland Determination – if applicable		
N/A	Reduced Site Plan Set (reduced to 8.5" x 11")		

Type of Variance or Appeal (Choose one of the following):

- ☐ Dimensional Variance ☐ Water and Sewer Variance ☐ Steep Slope Variance
- ☐ House Size Variance
- ☐ Resource Conservation District Variance
- ☐ Jordan Watershed Riparian Buffer Variance
- ☐ Watershed Protection District Variance
- ☒ Appeal

Standing: Explain to the Board how the applicant is an aggrieved party (NC General Statute Sec. 160A-388(b1)(1))
Statement of Justification: Provide justification for decision that is being appealed.



**VARIANCE OR APPEAL APPLICATION
SUBMITTAL REQUIREMENTS
TOWN OF CHAPEL HILL
Planning & Development Services**

Plan Sets (2 copies to be submitted no larger than 24" x 36")

Plans should be legible and clearly drawn. All plan set sheets should include the following:

- Project Name
- Legend
- Labels
- North Arrow (North oriented toward top of page)
- Property Boundaries with bearing and distances
- Scale (Engineering), denoted graphically and numerically
- Setbacks
- Streams, RCD Boundary, Jordan Riparian Buffer Boundary, Floodplain, and Wetlands Boundary, where applicable

N/A

Area Map

- a) Overlay Districts
- b) 1,000 foot notification boundary

N/A

Detailed Site Plan

APPEAL OF JOSEPH PATTERSON

Joseph Patterson appeals the September 3, 2019, determination by Town of Chapel Hill staff that the town is time barred from enforcing the conditions of special use permit nos. 81-B-14 and 83-A-5 (together, the “SUP”). Mr. Patterson seeks a determination from the board of adjustment that this decision was in error and that the town retains the authority to enforce the conditions of the SUP in order to abate a safety hazard. Mr. Patterson brings this appeal pursuant to G.S. 160A-388(b1) and § 4.10 of the Chapel Hill Land Use Management Ordinance (“LUMO”).

Background

Mr. Patterson lives at 7 Cobb Terrace in the Town of Chapel Hill. Cobb Terrace is a small, narrow street a few blocks north of Franklin Street. Even though Cobb Terrace lacks sidewalks, it has become a thoroughfare for pedestrians walking from the University Apartments, Lark Apartments, and other points north towards the downtown area and the UNC-CH campus. Often times, pedestrians walking down Cobb Terrace are unaware of their surroundings, either because they are wearing headphones or because they are engrossed in their mobile devices. The foot traffic along the narrow road has increased dramatically since the Lark Apartments were built. The increased foot traffic is a safety hazard for both pedestrians and drivers. In addition, it has resulted in increased noise, especially at night as people return to their apartments from socializing on Franklin Street. The Cobb Terrace neighborhood has also been vandalized by late night revelers. These problems will only get worse when a new student housing development, the 850-bed Grove Park project, is built nearby.

The SUP at issue in this appeal was granted for the parcel bearing PIN 9788395200 which is north of Cobb Terrace. The parcel contains a stairway through the woods which connects the apartment complexes with north end of Cobb Terrace. Cobb Terrace in turn connects to Henderson Street which leads directly to Franklin Street. The stairway funnels pedestrians into the street. But the stairway, which encourages pedestrians to walk in the middle of the road, violates the conditions of the SUP and should not be there. In fact, the Town of Chapel Hill has already determined once before that the stairs violate the SUP because they were not shown on the approved site plan.

Around June 2018, Mr. Patterson requested that the town enforce the conditions of the SUP and require that the stairs be removed as a means of reducing the flow of foot traffic on Cobb Terrace and thereby improving public safety. In an email dated September 3, 2019, the town responded to Mr. Patterson and made a final determination that it could not enforce the conditions of the permit due to legal technicalities: the statutes of limitation and repose set forth in sections 1-49 and 1-51 of the North Carolina General Statutes. This determination was erroneous and should be reversed by the board of adjustment.

Standing

Mr. Patterson has standing to bring this appeal under G.S. 160A-388(b1)(1) and G.S. 160A-393(d)(2) as a person who has suffered special damages resulting from the violation of the conditions of the SUP and the failure of the Town of Chapel Hill to enforce the conditions. The special damages incurred by Mr. Patterson include, among other things, increased traffic, noise, and vandalism, as well as a resultant decrease in property value.

Statement of Justification

Mr. Patterson appeals a final determination that the Town of Chapel Hill is barred from enforcing the conditions of the SUP by the statute of repose in G.S. 1-49 and the statute of limitations in G.S. 1-51. These statutes bar “an **action** against an owner of an interest in real property ... for a violation of a land-use ... permit.” The determination that the town cannot enforce the conditions of the SUP due to these time bars is incorrect for two reasons.

First, because the town may enforce the conditions of the SUP **without** filing an “action,” the town is not time barred. Under G.S. 1-2, an “action” is defined as “an ordinary proceeding **in a court of justice**.” In other words, an “action” is a lawsuit filed in civil court. But the town need not file a lawsuit in this instance because it has other means at its disposal to ensure compliance with the SUP. For example, under LUMO § 4.5.5(f), the town can revoke a special use permit “if any conditions of a special use permit ... are violated.” Revoking an SUP is an administrative process which does not require the filing of an “action” as the term is defined in G.S. 1-2 and as it is used in G.S. 1-49 and G.S. 1-51. The town also has a variety of other remedies under G.S. 160A-365 and G.S. 160A-389 which do not require filing an action.

The town can continue to pursue revocation and other remedies because the conditions on a special use permit do not expire. Under LUMO § 4.5.5(a)(1), a special use permit “shall run with the land covered by the permit.” If the permit runs with the land, then the land must **always** comply with the permit, including any conditions. This, in turn, means the town can always enforce the conditions. Given the variety of options for enforcing conditions of special use permits, it was an error to determine that the town could not take any steps to enforce the conditions of the SUP just because a civil lawsuit **might** be time barred under G.S. 1-49 and G.S. 1-51.

Second, even if enforcement of the conditions of the SUP required the filing of a lawsuit, the time bars are subject to a major public safety exception, which allows the town to file an action when the violations “are actually injurious or dangerous to the public health or safety.” In other words, when public safety is at risk, the law does **not** prevent a municipality from enforcing the conditions of a special use permit even by means of a civil lawsuit. This makes sense, of course, because the primary purpose of zoning rules is to protect the public health, safety, and welfare. *Wally v. City of Kannapolis*, 365 N.C. 449, 452, 722 S.E.2d 481, 483 (2012). Foot traffic on a narrow road which lacks sidewalks is a matter of public safety which would allow the town to file an action beyond the typical limitation and repose periods. Therefore, even if enforcement of the SUP conditions required filing a lawsuit, the action would not be time barred under G.S. 1-49 or G.S. 1-51.

The Town of Chapel Hill is not prevented from enforcing the conditions of the SUP. The town can either pursue other remedies that do not require a civil action, such as revocation of the SUP, or the town can file a civil action to abate the danger posed by pedestrians walking down the middle of a narrow street. Regardless, there is no absolute prohibition on the ability of the town to act. The board of adjustment should reverse the determination that enforcement is time barred and require town staff to pursue appropriate remedies for the violation of the SUP.

From: Syd Alexander <sydalexander@alexandermillerandschupp.com>
Subject: FW: Cobb Terrace Steps
Date: September 3, 2019 at 4:21 PM
To: Joe Patterson <joepatterson@me.com>

SA

Joe Pat;

FYI
Best
syd

Sydenham B. Alexander, Jr.
Alexander, Miller, Schupp & Hamilton, P.L.L.C
1526 East Franklin Street, Suite 202
Chapel Hill, NC 27514
(919) 929-1984 Phone
(919) 929-1990 Fax

sydalexander@ams-lawyer.com

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From: Ralph Karpinos <rkarpinos@townofchapelhill.org>
Sent: Tuesday, September 03, 2019 3:47 PM
To: Syd Alexander <sydalexander@alexandermillerandschupp.com>
Cc: Judy Johnson <jjohnson@townofchapelhill.org>; Jim Huegerich <jhuegerich@townofchapelhill.org>
Subject: RE: Cobb Terrace Steps

Syd,

Regarding the issue of the Cobb Terrace Steps and Joe Patterson's message today, September 3 (copied below):

Apparently, the Town may have neglected to provide a further response after Jim Huegerich's message on June 27 in response to Joe's June 25 email. We apologize for failing to follow up.

I am resending the information that was sent to Joe in April (attached above). On April 17, Jim sent Joe a message which read:

Joe,

PATTERSON-001

Based on the history and law, the Town is not in a position where it can either require the steps to be maintained or repaired or require the steps to be removed. The Town does not maintain the steps. The Town cannot require or prevent the continuation of the steps as a publicly-used access. The private parties who have an interest in either maintaining them or removing them may wish to confer amongst themselves and determine what obligations they may have to each other or to the public to continue this access way.

jim

The position of the Town Staff is as reflected above and in the attached documents.

Ralph

From: Joe Patterson [<mailto:joepatterson@me.com>]
Sent: Tuesday, September 03, 2019 1:49 PM
To: Jim Huegerich <jhuegerich@townofchapelhill.org>
Cc: Judy Johnson <jjohnson@townofchapelhill.org>; Ralph Karpinos <rkarpinos@townofchapelhill.org>
Subject: Re: Cobb Terrace Steps

External email: Don't click links or attachments from unknown senders. To check or report forward to reportspam@townofchapelhill.org

Jim,

It has now been over two months since I asked for a clear ruling on the issue shown below. Given the staff's response time on questions relating to this issue in the past, I realize that you might consider this follow up to be premature, but I am hopeful that I can raise the issue with the BoA before I die. I am 70, by the way. Please let me know if this is a reasonable expectation.

Joe

On Jun 27, 2019, at 11:38 AM, Jim Huegerich <jhuegerich@townofchapelhill.org> wrote:

Joe – Ralph, Judy and I are meeting tomorrow to coordinate response to your questions/concerns. I will get back with following that meeting

Jim Huegerich
Town of Chapel Hill Ombuds Office
200 W. Rosemary Street, Suite 202

PATTERSON-002

300 W. Rosemary Street, Suite 202
Chapel Hill, NC 27514
Phone: 919.265.0806
Cell: 919.538.5483

jhuegerich@townofchapelhill.org

<http://www.townofchapelhill.org/ombuds>

"When you don't know where to turn, the Ombuds Office may assist you".

The Town of Chapel Hill's **OMBUDS** Office is an independent, neutral, confidential and informal resource. It does not accept formal complaints or notice for the Town of Chapel Hill or any of its departments. If a visitor wishes to make a record or put the town "on notice," that is, to make the Town of Chapel Hill formally aware of a particular problem, we can provide information on how to proceed.

Please remember that email is not appropriate for confidential communications.

From: Joe Patterson [<mailto:joepatterson@me.com>]
Sent: Tuesday, June 25, 2019 3:27 PM
To: Jim Huegerich <jhuegerich@townofchapelhill.org>
Cc: Ralph Karpinos <rkarpinos@townofchapelhill.org>; Judy Johnson <jjohnson@townofchapelhill.org>
Subject: Re: Cobb Terrace Steps

External email: Don't click links or attachments from unknown senders. To check or report forward to reportspam@townofchapelhill.org

Jim,

I was preparing to appeal the staff's ruling to the BoA when I re-read your finding and realized that it does not address the the specific issue on which I asked to Town to act while it does address extraneous issues I never raised. In order to have the BoA have a clear finding on which to rule, the following is **sole issue I have asked for action on**, and for which I believe the law is clear is as follows:

"The Town commenced action against Mr. Birgel in the letter to Birgel dated 7/13/87 (see copy below, para 3), in which the Staff and Town found that the steps at the north end of CT were not shown on the approved site plan for the SUP and, as required under the law, demanded that Birgel either file a formal application for a modification to the SUP or remove the steps. No such application has ever been made, nor was the demand ever appealed by Birgel, nor was the demand from the town rescinded. Neither LUMO or the

PATTERSON-003

Development Ordinance give the staff authority to approve the necessary modification to the SUP site plan. No law exists that prevents the enforcement of the action commenced in that 7/13/87 letter. I have demanded that the Town complete its enforcement action which is to require Birgel to either make a formal application to modify the SUP or remove the stairs.”

I have never asked the town to do anything else (not maintenance, repair, or the continuation of public access) in relation to the stairs or the property.

Please provide me with a staff finding on that request that I can appeal.

Thanks,

Joe



History of
Northa...a.docx



Athority to
Act.docx

Attached is the document titled "History of Northampton Plaza/Cobb Terrace Step," chronicling all Town documents and communications since the original December 13, 1965 SUP approval, addressing a pedestrian connection between Northampton Plaza and Northampton Terrace, including a trail to the intersection of Henderson and North Streets for pedestrian access to downtown Chapel Hill and UNC campus.

Over the past 53 years there have been several formal interactions and communications involving pedestrian access from these apartment sites to downtown Chapel Hill and UNC campus. Some of these created conflict points with earlier ones; two such conflict points occurred in:

- The April 25, 1977 SUP approved modification revision to delete 12,960 sf for conveyance to the Preservation Society of property that contained the original continuation of the path from the Birgel property (Northampton Plaza) and the relocation of the historic Huskey House blocked pathway access to Henderson and North Streets, making continuation of the path from the Birgel property to Henderson and North Streets impossible. Further, sewer installation several years earlier destroyed portions of the existing path.
- The March 3, 1987 and July 13, 1987 letters sent by the Town directing Northampton Plaza Apartments to remove Cobb Terrace steps and directing that the existing pedestrian path needs to be maintained as shown on the original 1965 site plan and directing removal of the Cobb Terrace Steps, respectively, ignored the reality that the April 25, 1977 SUP approval modification deleting 12,960 sf for conveyance to the Preservation Society of property that contained the original continuation of the path from the Birgel property (Northampton Plaza) and the relocation of the historic Huskey House blocking pathway access to Henderson and North Streets made this directive impossible to adhere to.

You asked about the Town's authority to force Northampton Plaza Apt. to remove the Cobb Terrace steps that were built without Town approval. What was discovered is that a local government's authority is limited to action within five or seven years as noted below. The only exception pertains to "the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety."

Article 5.

Limitations, Other than Real Property.

§ 1-46. Periods prescribed.

The periods prescribed for the commencement of actions, other than for the recovery of real property, are as set forth in this Article.

§ 1-49. Seven years.

Within seven years an action -

- (3) *Against the owner of an interest in real property by a unit of local government for a violation of a land-use statute, ordinance, or permit or any other official action concerning land use carrying the effect of law.*

This subdivision does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety but does prescribe an outside limitation of seven years from the earlier of the occurrence of any of the following:

- a. The violation is apparent from a public right-of-way.*
- b. The violation is in plain view from a place to which the public is invited.*

§ 1-51. Five years.

Within five years -

- (5) Against the owner of an interest in real property by a unit of local government for a violation of a land-use statute, ordinance, or permit or any other official action concerning land use carrying the effect of law. This subdivision does not limit the remedy of injunction for conditions that are actually injurious or dangerous to the public health or safety. The claim for relief accrues upon the occurrence of the earlier of any of the following:*
 - a. The facts constituting the violation are known to the governing body, an agent, or an employee of the unit of local government.*

[This new language became law in May, 2017 and became effective Oct. 1, 2018].

This reference to exemption is also noted in a UNC SOG article by Alan Lovelady: “As noted earlier, regardless of the statute of limitations, a local government may seek a court-ordered injunction to prevent ‘conditions that are actually injurious or dangerous to the public health or safety.’”

Unless the Town can show that the Cobb Terrace steps present “conditions that are actually injurious or dangerous to the public health or safety” it is not in a position to pursue an alleged violation this old.

History of Northampton Plaza/Cobb Terrace Steps

December 13, 1965

Special Use Permit approved for the Northampton Plaza and Northampton Terrace Unified Housing Developments, including 4 buildings, 202 dwelling units and 303 parking spaces. The approved site plan also vehicular and pedestrian connections between Northampton Plaza and Northampton Terrace including a trail to the intersection of Henderson and North Streets. The Northampton was under single ownership.

October 9, 1967

Northampton SUP Modification approved with additional stipulations including increased dwelling units and parking, to 229 and 344 respectively. The approved site plan also indicates vehicular and pedestrian connections between Northampton Plaza and Terrace Apartments including a trail to the intersection of Henderson and North Streets.

April 25, 1977

SUP modification revised to delete 12,960 sf for conveyance of property to Preservation Society and the relocation of the historic Huskey House on said location, [Note: the relocation of the historic Huskey House on said location blocked access to Henderson Street for continuation of the sidewalk/trail/path from the Birgel property (Northampton Plaza). Further, sewer installation several years earlier destroyed portions of the existing sidewalk/trail/path]

November 14, 1977

SUP Modifications to convert Northampton Plaza to senior housing approved by Council

December 1, 1979

November 14, 1977 SUP Modifications to convert Northampton Plaza to senior housing was invalidated due to inactivity

November 4, 1981

Application for SUP Modification submitted to separate Northampton Place and Terrace apartments into separate complexes and convert Northampton Plaza into condominiums

December 16, 1981

Application for SUP Modification submitted to separate Northampton Place and Terrace apartments into separate complexes and convert Northampton Plaza into condominiums was withdrawn

March 12, 1984

Adjacent Northampton Plaza and Northampton Terrace properties, jointly encumbered by a SUP, transferred from single ownership to separate ownership

October 22, 1984

SUP revoked as work had never begun on proposed changes.

March 3, 1987

Letter from Town directing Northampton Plaza Apartments to remove Cobb Terrace steps and directing that the existing pedestrian path needs to be maintained as shown on the original 1965 site plan.

July 13, 1987

Letter from Town directing Northampton Apts. to remove steps. *"Non-maintenance of the pathway through the open space constitutes a violation of the Special Use Permit. As such, the Permit could be revoked by the Council. I urge you to take appropriate action to correct this violation. Please notify me by no later than July 31, 1987 as to how you are going to proceed to correct this violation."*

January 27, 2003

Adoption of the Chapel Hill Land Use Management Ordinance (LUMO) potentially creating some non-conforming features; non-conforming features may be continued subject to the following limitations:

- No action shall be taken which increases the degree or extent of the non-conforming feature. Any enlargement, extension or structural alteration shall conform to all current requirements of the ordinance:
- For development existing (or for which a vested right had been established) prior to the effective date of current regulations, non-conforming feature created by a change in regulations may continue to exist, and structures with such non-conforming feature may be reconstructed if demolished or destroyed

May 10, 2011

Letter from Town to Richard Birgel pertaining to his request for zoning information related to the property

November 16, 2011

Concept Plan application submitted by Trinitas Ventures, reviewed by Community Design Commission

February 20, 2012

Concept Plan application submitted by Trinitas Ventures, reviewed by Council

June 15, 2012

Zoning Atlas Amendment and SUP applications, including a request for partial revocation of the existing SPU, submitted by Trinitas Ventures

July 23, 2012

Letter from William J. Thompson of 3 Cobb Terrace to Council requesting his letter be read at the July 25, 2012 Council meeting: *"...the proposers (Trinitas Ventures for Bicycle Apts.) suggest that pedestrians may simply walk across University Apartments parking lot, climb some steep steps to the northwest corner of Cobb Terrace, then stroll to Franklin Street. Here the proposal has two main flaws. First, there is no certainty that the owners of University Apartments will allow such access. After all, Trinitas blocked off access across their property from Town House when they became the owners of the subject property. Second, Cobb Terrace is a narrow one-way street with parking on one side and no sidewalk or any realistic way to make one. Walking on Cobb Terrace mingled with cars is already a risky business. The much increased pedestrian traffic that would be expected if this proposal were approved would make it much more dangerous"*

January 21, 2013

Letter from Chris Ringwalt, resident of 8 Cobb Terrace to Town Council and Planning staff: *"I am a resident of Cobb Terrace who would be directly affected by the potential for increased pedestrian traffic should a SUP be granted to develop Bicycle Apartments. I would like to bring to your attention as alternative pedestrian rout that would be required by the SUP and would effectively remove the current steps up the hill to Cobb Terrace and reroute pedestrian traffic to the ravine to the west of us. As you will see form the memo dated July of 1987 that constitutes the final attachment to this message, I strongly encourage the town to work with the owners of Northampton Enterprises to fulfill its obligations to move the path as specified.*

February 13, 2013

Bicycle Apartment SUP

February 20, 2013

Memorandum from Greenways Commission Vice Chair, David Tuttle to Mayor and Council:

2. Add a provision for a future pedestrian crosswalk across the property's access road to Martin Luther King Jr. Blvd., at the point where a future path would be located in a greenway pedestrian easement on the adjoining Residences at Grove Park to the north
3. Include a stipulation that would require improvement of the stairs to Cobb Terrace or some alternative route of reaching the downtown area, if the property owner agrees. We suggest that the language in the first sentence of the draft "Cobb Terrace Stairway - Improvements: stipulation be changed to read: "That the applicant enter into an agreement, where possible, to fund and construct off-site improvements to the stairway, or other alternative route, leading to Cobb Terrace, including light, stairway, and railing improvements

for the purpose of enhancing public safety on one of the principal routes from the development site to Downtown and the UNC campus”

February 27, 2013

Owners of Bicycle Apts. (later changed to LUX, then to LARK) obtained approval for “partial revocation” of existing SUP covering two partials of property. One of the conditions of the SUP “partial revocation” is that the existing walkway across the University Apartments (formerly Northampton Plaza) parcel which leads to Cobb Terrace continue to be available to residents of Bicycle Apts.

Partial Revocation Request of Existing Special Use Permit (110-111)

The applicant for The Bicycle Apartments at Central Park is requesting a partial revocation of the existing SUP (approved in 1965 and modified in 1967 and 1977) that encumbers the proposed redevelopment site and the adjacent University Apartments. The two projects are under separate ownership but encumbered by a single SUP for the Northampton Place and Terrace. Granting this request would reduce the SUP boundary to encumber only University Apartments by releasing the Bicycle Apartments site for redevelopment and consideration of the propose new SUP application.

We believe that a partial revocation of the existing SUP is appropriate and necessary to accommodate the propose redevelopment for student housing. The near-downtown and campus location is well suited to take advantage of the existing transit corridor, as well as walking and cycling. We recommend the requested partial revocation of the existing SUP pertaining t the proposed Bicycle Apartments at Central park site from the University Apartments site, formerly known as Northampton Plaza and Terrace Apartments.

Continued vehicular and pedestrian access between the two sites, the proposed Bicycle Apartments and adjacent University Apartments, which have been jointly encumbered by a SUP, is noted in the Discussion Section under Access to South / Cobb Terrace Stairway.

We note that the partial revocation has a unique impact in this situation given that the original Northampton SUP has much more density on the University Apartment portion of the SUP than the Central park portion of the property. The partial revocation will result in a fairly dense development on the University Apartments portion of the site where previously that density had been mitigated by the lower density of the Central park development. It the partial revocation request is approved, the resultant University Apartments will not comply with the density assigned to that Zoning district and will likely have nonconforming features, some of which exist now as part of the larger development.

Staff Response to Greenways Commission Recommendations February 27, 2013:

3. Include a stipulation that would require improvement of the stairs to Cobb Terrace or some alternative route of reaching the downtown area, if the property owner agrees. We suggest that the language in the first sentence of the draft "Cobb Terrace Stairway – Improvements" stipulation be changed to read: "That the applicant enter into an agreement, where possible, to fund and construct off-site improvements to the stairway, or other alternative route, leading to Cobb Terrace, including light, stairway, and railing improvements for the purpose of enhancing public safety on one of the principal routes from the development site to Downtown and the UNC campus"

Staff Response: This adjustment could be easily made in Revised Resolution A, if desired. The Cobb Terrace stairway has been in use for approximately 35 years and we recommend that it be improved for continued use, if possible

Letter from Residents of Cobb Terrace to Council (p190):

When the Special Use Permit for Northampton Plaza (now called the University Apartments) was approved in 1967, the site plan required that the applicant install a paved pathway from the parking lot of Northampton Plaza to the south end of Cobb Terrace ("CT") at the intersection with Henderson Street (see attached graphic). This path was specifically designed to channel pedestrian traffic from the development through a wooded RCD area and around CT, a twenty foot wide one lane street without sidewalks in the Historic District.

This path was, in fact, built and used until sometime in the 70s when erosion undercut the path in some places and part of the parcel was transferred to the Preservation Society. The majority of it still exists (see attached photos). Rather than repairing the path as required by the SUP, the owner chose to install a new path from the parking lot of Northampton Plaza to the north end of CT. This was done without approval from the town of Chapel Hill.

As a result, the residents of CT, particularly those on the western side, have been forced to endure a parade of pedestrian, mainly student, traffic, some of which is often very boisterous late at night. This has negatively affected their quality of life and the value of their properties. This situation is likely to be exacerbated by any increase in development to the north.

CT Residents have repeatedly asked the Town to rectify this situation. In response, on July 13, 1987, the Town Staff ruled that Northampton Plaza was not in compliance with the SUP and advised the owner in writing (copy of letter attached) that the SUP for the property required that the original path to the south end of CT be repaired and maintained, and that the path to the north end of CT be removed. The Staff advised the owner that failure to comply could result in the

revocation of the SUP. It does not appear that any subsequent action was ever taken by the Staff.

The residents of Cobb Terrace hereby petition the Town Council to direct the Staff to take whatever action is necessary to enforce its finding of 7/13/87 and require the owner of Northampton Plaza to comply with the SUP for the property.

We would also suggest that this might be a wonderful opportunity for the Town to work with the owner to create a comprehensive, state of the art, pedestrian and bike pathway thorough the RCD which would provide connectivity to app properties to the north.

The Residents of Cobb Terrace

Staff Report on Bicycle Apartments Application for Development:

3. Site Access / Cobb Terrace Stairway (p105): A Council member inquired about possible limitations, such as ownership, that could restrict access to the Cobb Terrace stairway.

Applicant Response: "Trinitas is committed to providing cross-access easements as identified in the plans and in the conditions to which it has agreed."

Staff Response: The Cobb Terrace stairway is owned by the University Apartments property owner. We think that vehicular and pedestrian access between the two sites (proposed Bicycle Apartments and the adjacent University Apartments) is important. The two properties have been jointly encumbered, by a SUP since 1965 and subsequent modifications in 1967 and 1977. This Cobb Terrace stairway connection has been in use by tenants of both properties since the mid-1960s.

A partial revocation of the existing SPU must occur prior to approval of the proposed SUP for the Bicycle Apartments. A recommended condition of the partial revocation of the existing SUP and proposed SUP is that vehicular and pedestrian access between the sites, including the walkway to Cobb Terrace, shall remain in full force. There is an additional stipulation in the Bicycle Apartments SUP Revised Resolution A that the applicant reach agreement, where possible, with the owner of the University Apartments to improve access to downtown and campus by reconstructing the Cobb Terrace staircase, railing, and lighting. The applicant has agreed to provide these improvements on the adjacent property if authorized by the owner.

4. Cobb Terrace Access Petition (p106): Prior to the Public Hearing for the Bicycle Apartments, the Town received a petition (attached) from Chris Ringwald and 8 (residents of) Cobb Terrace requesting that the Town require the owner of University Apartments to reconstruct a trail from University Apartments to Henderson Street to reduce the impacts of pedestrian traffic from the Cobb Terrace stairway.

Applicant Response: “We are committed to work with our neighbors to provide quality access to the long established public access to downtown and campus. The staff recommended stipulations are an appropriate mechanism for fulfilling this commitment.”

Staff Response: Our review of the file for the property indicates that the trail was in use from the mid-1960’s to the late-1970’s and was indicated on the original approved 1965 site plan for Northampton Plaza and Terrace Apartments and shown again in 1977 on plans for a SUP modification. In addition, a 1977 adjustment to the boundary of the SUP authorized the placement of a house at the termination of the old trail on Cobb Terrace.

The old trail consisted of a concrete sidewalk lacking retaining walls, railings, and light, or consideration of the steep slopes around the Mill Race Creek branch. Erosion made the trail unusable in the late 1970’s and it was replaced around that time by the property owner with the Cobb Terrace stairway connection. The Cobb Terrace stairway connection has functioned as the de facto access corridor for the Northampton development for roughly the past 35 years. Unusable remnants of the old trail remain, located in the Resource Conservation District and Jordan Riparian Buffer corridor. Given that the trail corridor was replaced with the Cobb Terrace stairway, we believe the terms of the original SUP requiring a connection have been met.

Note that the Greenways Commission has recently recommended that the Mill Race Branch stream be included in the Greenways Master Plan, to potentially provide an additional non-vehicular link from Bolin Creek to Downtown. This recommended corridor may include the segment where the former trail connected near Henderson and North Streets. The property that would provide this connection is on the property owned by University Apartments and is not party to the rezoning and SUP applications.

We recommend that the Bicycle Apartments developer offer the Northampton Terrace owner to reconstruct / improve the Cobb Terrace stairway. We think the stairs should be wider with proper lighting and railings and the developer has agreed to do this, if the

current property owner will authorized the improvements. We have added a condition to the Resolution for partial revocation of the SUP (that) will ensure cross-access, and the long-term free flow of pedestrian and vehicular traffic between the two sites.

27. Cobb Terrace Stairway – Improvements (p130): That the applicant enter into an agreement, where possible, to fund and construct off-site improvements to the stairway leading to Cobb Terrace, including lighting, stairway, and railing improvements for the purpose of enhancing public safety on one of the principal routes from the development site to Downtown and the UNC Campus. If the applicant is successful, the applicant shall enter into an agreement with the neighboring property owner, including a schedule of improvements, to be approved by the Town manager prior to the issuance of the final Certificate of Occupancy

Access

6. Public Cross-Access Easements (p142): Prior to the issuance of a Zoning Compliance permit, the applicant shall record a public pedestrian, bicycle and motorized vehicle cross-access easements across the proposed Bicycle Apartments development site, providing access to pedestrians crossing the site from the Cobb Terrace stairway to the southeast, the University Apartments to the west, and at two points to the Townhouse apartments to the north, to improve connectivity. The applicant shall provide appropriate easement width to accommodate a drive aisle with sidewalks on either side, plus a separate pedestrian access. Notes to this effect shall be placed on final plans Details to be approved by the Town Manager prior to issuance of a Zoning Compliance Permit

26. Cobb Terrace Stairway – Improvements (p145): That the applicant enter into an agreement, where possible, to fund and construct off-site improvements to the stairway leading to Cobb Terrace, including lighting, stairway and railing improvements for the purpose of enhancing public safety on one of the principal routes from the development site to Downtown and the UNC Campus. If the applicant is successful, the applicant shall enter into an agreement with the neighboring property owner, including a schedule of improvements, to be approved by the Town Manager prior to the issuance of the final Certificate of Occupancy

Council Resolution:

“... Council partially revokes the Special Use Permit, and modifications thereof, for Northampton Plaza and Terrace Apartments, currently known as University Apartments and Central park Apartments, as it pertains to the eastern 9.1-acre parcel, for which the Bicycle Apartments at Central park Special Use Permit is currently proposed. The partial revocation of the SUP and Modifications would be

such that the subject parcel for the Bicycle Apartments at Central Park Special Use Permit (PIN 9788-49-1242), would no longer be encumbered by the Northampton Plaza and Terrace Apartments SUP, subject to the following conditions:

1. That the existing walkway/connection leading to Cobb Terrace shall remain available to residents of the Bicycle Apartments at Central park developments;"

May 1, 2013

Letter from Morningstar Law Group representing University Apartments (formerly Northampton Plaza) clarifying that Bicycle Apartments SUP requires only that "a walkway be built along the edge of the University Apartments parcel to Cobb Terrace, and does not establish any obligation that the walkway be maintained in perpetuity, and does not establish a right in anyone in particular to use the walkway"

January 13, 2014

Agreement between CREI-Chapel Hill, LLC and NC-UNC Holding LLC: "NOW THEREFORE, in consideration of the Path Improvements (as defined herein), the Maintenance Costs (as defined here), and the mutual promises and covenants herein and other good and valuable consideration, the parties agree as follows:

1. Path Improvements.
 - (a) NC-UNC shall make the following improvements to the Path: (i) installation of light along the :Pat at a height to provide adequate lighting to the stairway located on the Path, (ii) installation of a handrail or the repair of the existing handrail on the stairway along both sides of the stairway with installation of handrail only in areas where the grade adjacent to the stair may require protection to prevent slips and falls ... and (iv) installation or repair of such other improvements as may be agreed upon by the Parties (collectively, the "Path Improvements")
 - (b) NC-UNC shall complete the Path Improvements (i) in compliance with plans and specifications submitted by NC-UNC to CREI and which, along with the costs of the Pat Improvements, are subject to CREI's prior review and written approval, (ii) in compliance with all applicable rules, ordinances, laws and regulations, (iii) in a good and workmanlike manner, and (iv) during the period commencing May 15, 2014 and terminating August 15, 2014. Upon completion of the Path Improvements, title to the Path Improvements shall vest in CREI and shall remain on the CREI Property upon expiration or earlier termination of this Agreement
2. Maintenance Costs. ...CREI shall be responsible for maintenance of the Path Improvements ...