

BEFORE THE CHAPEL HILL BOARD OF ADJUSTMENT

In Re: Appeal of Joseph Patterson from September 3, 2019 Town Staff Message

RECORD ON APPEAL

Pursuant to N.C. G.S. 160A-388(b1)(5),¹ the attached materials are submitted as the documents and exhibits constituting the record upon which the action appealed from is taken.

This the 11th day of November, 2019.



Ralph D. Karpinos
Town Attorney, Town of Chapel Hill
rkarpinos@townofchapelhill.org

Copy: **Appellant:**

Joseph Patterson
c/o Luke J. Farley, Attorney at Law Luke.Farley@elliswinters.com

Owner of Property Subject of the Appeal:

Birgel Family Partnership
1452 Old Lystra Road
Chapel Hill NC 27517

¹ That Statute subsection reads as follows:

(b1) Appeals. -

-
- (5) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

BEFORE THE CHAPEL HILL BOARD OF ADJUSTMENT

In Re: Appeal of Joseph Patterson from September 3, 2019 Town Staff Message

LIST OF DOCUMENTS INCLUDED IN RECORD

(The first five sets in this list are identified with a number at the center top of the first page.)

1. Appeal Application of Joseph Patterson
2. Email Exchange
3. Attachments Referenced in Huegerich Email
4. 2013 Special Use Permit
5. Coats' Cannon Blog on Zoning Enforcement
6. Excerpt 1 from Council Agenda materials 2/27/2013.
(See pp. 84-85, 105-106.)
7. Excerpt 2 from Council Agenda materials 2/27/2013
(See pp. 189-195, 210)

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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

RECEIVED 10/02/19
9:10 A.M. *SABRINA M. OLIVER*
Town Clerk

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: *Joe Patterson* Date: 10/1/19



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.

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.

2

Ralph Karpinos

From: Ralph Karpinos
Sent: Tuesday, September 03, 2019 3:47 PM
To: 'Syd Alexander'
Cc: Judy Johnson; Jim Huegerich
Subject: RE: Cobb Terrace Steps
Attachments: History of Northampton Plaza.docx; Athority to Act.docx

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,

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
308 W. Rosemary Street, Suite 202
Chapel Hill, NC 27514
Phone: 919.265.0306
Cell: 919.538.5483

jhuegerich@townofchapelhill.org

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

"When you do it's 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:joe@joe@patterson.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 report@tam@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 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

Ralph Karpinos

From: Jim Huegerich
Sent: Tuesday, September 03, 2019 2:55 PM
To: Ralph Karpinos
Subject: FW: Cobb Terrace Steps
Attachments: History of Northampton Plaza.docx; Athority to Act.docx

Ralph – here is the foundational email I sent Joe on 4.11.19, preceding the summary one on 4.17.19

Jim Huegerich
Town of Chapel Hill Ombuds Office
308 W. Rosemary Street, Suite 202
Chapel Hill, NC 27514
Phone: 919.265.0306
Cell: 919.538.5433

jhuegerich@townofchapelhill.org

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

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

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Please remember that email is not appropriate for confidential communications.

From: Jim Huegerich
Sent: Thursday, April 11, 2019 9:49 AM
To: 'Joe Patterson' <joepatterson@me.com>
Cc: Ralph Karpinos <rkarpinos@townofchapelhill.org>; Judy Johnson <jjohnson@townofchapelhill.org>
Subject: FW: Cobb Terrace Steps

Joe,
Apologies for the communication breakdown; I thought this had been sent to you in early March.

Jim

Jim Huegerich
Town of Chapel Hill Ombuds Office
308 W. Rosemary Street, Suite 202
Chapel Hill, NC 27514
Phone: 919.265.0306
Cell: 919.538.5433

jhuegerich@townofchapelhill.org

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

What you do with the information is up to you. I am not involved.

The Town of Chapel Hills OMBUDS Office is an independent, neutral, confidential and informal resource. It is not a part of the Town of Chapel Hills or any of its departments. In a worst case scenario, if a visitor wishes to make a record of the copy "on notice" thanks, 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 or sensitive issues.

From: Joe Patterson [<mailto:joepatterson@me.com>]

Sent: Wednesday, April 10, 2019 3:30 PM

To: Jim Huegerich <jhuegerich@townofchapelhill.org>

Subject: Re: Cobb Terrace Steps

Jim,

It has been six weeks since your last message. No one has followed up from the meeting you mentioned. Still no substantive response to my initial inquiry almost TEN months ago. Do I need to hire an attorney, which I will reluctantly do, in order to get a response. This is precisely the situation I feared when I copied you on my original correspondence.

I'd appreciate your thoughts.

Thanks,

Joe

On Feb 28, 2019, at 11:15 AM, Jim Huegerich <jhuegerich@townofchapelhill.org> wrote:

Joe, Thank you for sharing the attached. I want to assure you that town staff recognize that the CT steps and LARK noise concerns are two very separate issues necessitating very different strategies and players. Staff are meeting next week and will be in touch with you.

Jim

From: Joe Patterson [<mailto:joepatterson@me.com>]

Sent: Wednesday, February 27, 2019 4:16 PM

To: Judy Johnson <jjohnson@townofchapelhill.org>; Jim Huegerich <jhuegerich@townofchapelhill.org>

Cc: Ralph Karpinos <rkarpinos@townofchapelhill.org>

Subject: Cobb Terrace Steps

Greetings All,

I do want to pass along a few thoughts that have come to mind since I last received feedback from Jim in December last year.

1 - Based on Jim's message, it appears to me that the staff has lumped consideration of the CT steps issue together with consideration of the Lark noise problem. I strongly object to this. They have absolutely nothing in common other than the fact that I am involved in both. Required action on either is wholly independent of, and completely different from, the other. Joint consideration dilutes the staff's focus and progress on both. Action and resolution of both will be significantly delayed if these issues are not pursued independently.

2 - An article I read made me wonder if possible prescriptive easements over the steps might be an issue in your minds. I would like to make the following points in that regard;

a- In general terms, this should not affect your determination in regards to the steps legality. That is strictly between the town and Birgel. Any claim of a prescriptive easement would need to be made by some other party, and would be between Birgel and that party. The town would not be included.

b- The Lark and the Birgel properties were originally owned by the same entity when the SUP was issued. Title to the Lark property was transferred to Annie Cone Birgel as part of her divorce settlement from Birgel. As part of their divorce agreement she and Birgel agreed that she would have permission to use the stairs, and she granted him a first right of refusal if she sold. Given this agreement, no adverse use was established. She sold the property to NTI, LLC, in 2005 or 2006 which had an oral agreement with Birgel to use the steps. This NTI resold the property to the Lux developers around 2012. The Lux developers entered into an agreement with the lessees of Birgel's property, CREI, (copy attached) on 1/13/14 which gave them a right to use the stairs and expressly stating that no easement was created. The bottom line is, in relation to the Lark property, given the permissions, the required period for adverse use was never established.

c- In relation to the possibility that the owners of Townhouse property (which does not abut the Birgel property) might have the basis for claiming the existence of a prescriptive easement, they would have a hard time countering an argument that any claim they might have had was abandoned 4 years ago when they erected a six foot high fence along their southern property line with the Lark property, blocking any pedestrian access from their property to the steps. In addition, no one has lived on the Townhouse property for over two years, i.e. no use of the steps even if the fence did not exist.

d- The attached agreement between Lux and CREI specifically gives CREI the right to terminate Lark's access to the steps at any time, and specifically addresses and accepts the possibility that the Town would declare them illegal. (see paragraphs 3, 5 and 8)

3- I have still yet to receive any information on concrete or specific steps the staff has taken in the last six months on this issue and would appreciate the simple courtesy of a detailed update on what has happened, what you plan to do, and when you plan to do it.

Thank you,

Joe Patterson

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 route 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 from 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. If 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 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 ...

4



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FILED Deborah B. Brooks
Register of Deeds Orange Co. NC
Recording Fee \$25.00
NC Real Estate TX: \$ 00

JB

Prepared by: Phil Mason, Chapel Hill Planning Department

Return to: W.C. Cross



TOWN OF CHAPEL HILL
405 MARTIN LUTHER KING JR BLVD
CHAPEL HILL, NC 27514
(919) 968-2728

ORANGE COUNTY

2/a

NORTH CAROLINA

SPECIAL USE PERMIT

KNOW ALL MEN BY THESE PRESENTS that the undersigned property owner, Northampton Terrace Investors LLC, having applied to the Town of Chapel Hill for a Special Use Permit, was granted by the Town of Chapel Hill on February 27, 2013, the terms of which are as follows:

NAME OF PROJECT: Bicycle Apartments at Central Park

NAME OF DEVELOPER: Trinitas Development LLC

DESCRIPTION OF PREMISE

LOCATION: 602 Martin Luther King Jr. Blvd.

ORANGE COUNTY PARCEL

IDENTIFIER NUMBER: 9788-49-1242 *gmc*

DESCRIPTION OF DEVELOPMENT

GROSS LAND AREA: 9.13 acres (397,616 s.f.)

MAXIMUM FLOOR AREA: 294,512 s.f.

DWELLING UNITS: 194

PARKING SPACES: 241 Vehicular parking spaces

SPECIAL TERMS AND CONDITIONS

Development according to the Site Plan dated December 13, 2012 (on file in the Chapel Hill Planning Department), with the following modification of regulations:

- Modification of Subsection 5.9.7 of the Land Use Management Ordinance to reduce the minimum vehicular parking standards, requiring a 330 parking space minimum, by providing 89 fewer parking spaces for a total of 241 parking spaces.
- Modification of Section 3.8, Table 3.8-1 of the Land Use Management Ordinance to exceed the maximum 60-foot secondary building height by 5.4 feet for a maximum of 65.4 feet for the proposed building.
- Modification of Subsection 3.6.3 of the Land Use Management Ordinance to exceed the maximum 61,410 square-foot disturbed land area allowed in the Resource Conservation District (RCD), including stream side (5,220 sf.), managed use (22,585 s.f.), and upland zones (29,507 s.f.) by 57,285 square feet for a total proposed RCD land disturbance of 118,695 square feet. This modification includes a fence in the streamside zone.
- Modification of Subsection 3.6.3 of the Land Use Management Ordinance to exceed the maximum 30,705 square-foot



impervious surface allowed in the Resource Conservation District (RCD), including managed use (2,365 s.f.), and upland zones (20,181 s.f.) by 17,659 square feet for a total proposed RCD impervious surface of 43,364 square feet.

- Modification of Section 5.3, Table 5.3-1 of the Land Use Management Ordinance to exceed the maximum 25% (25,924 square feet) disturbed land area allowed on the steep slope portion of the site (25% or more grade), by 34,576 s.f. for a total land disturbance of 65,500 s.f.
- Modification of Section 9.9.6(a) of the Land Use Management Ordinance to provide a variable-width, 1 to 15-foot wide parking lot landscaping screening strip that does not meet the 5-foot minimum width in every location.

Development according to the Site Plan dated December 13, 2012 (on file in the Chapel Hill Planning Department), conditioned on the following:

Stipulations Specific to the Development

1. Construction Deadline: That construction begin by February 27, 2015 to be completed by February 27, 2017.
2. Recordation of Partial Revocation of Existing Special Use Permit: Prior to the issuance of a Zoning Compliance Permit, the applicant shall record the Partial Revocation of the existing Northampton Plaza and Terraces Special Use Permit, (approved in 1965, Book 279/Page 1682 and modified in 1967, Book 279/Page 1684 and 1977, Book 279/Page 1686) thereby releasing the proposed Bicycle Apartments redevelopment site from its conditions.

That this partial revocation applies to the property described as The Bicycle Apartments at Central Park only. The Special Use Permit recorded on December 13, 1965 (Book 279, Page 1682) and modified on October 9, 1967 (Book 279, Page 1684) as further modified to reflect pedestrian and vehicular cross access, to remain in full force and effect as to University Apartments, formerly Northampton Plaza, including the provision of a walkway and access to Cobb Terrace.

3. Alternative Plan: The proposed intensity in this resolution is based on the alternative illustrative plan, dated December 13, 2012, shown to Council at the February 27, 2013, with the building footprint shifted to the southwest.
4. Land Use Intensity: This Special Use Permit authorizes the following:

Use: Multi-Family Residential	
Gross Land Area	397,616 s.f.
Floor Area	294,512
Dwelling Units	194
Bedrooms	A total bedroom count of no more than 608, comprised of one, two, three, and four bedroom apartments.
Vehicular Parking Spaces	241
Bicycle Parking Spaces	275 Class I and 49 Class II spaces

Affordable Housing

5. Payment-in-Lieu of Providing Affordable Housing: Prior to the issuance of the first Certificate of Occupancy, the applicant shall provide a \$120,000 payment to the Town's Affordable Housing Fund.
6. Conversion of Residential Rental Units to Ownership Condominium Units: That if the rental development is converted to an ownership condominium development, the current or future developer/owner of the Bicycle Apartments at Central Park shall provide either: 1) 15% of market rate units as for sale affordable housing units; or 2) a payment-in-lieu of 15% market rate units according to the following two options:

Option 1: Permanently Affordable Condominium Units – Affordable units for ownership shall be managed according to Town Inclusionary Zoning Ordinance. An Affordable Housing Plan as required by the Inclusionary Zoning Ordinance shall be approved by the Town Manager prior to recordation of the condominium plat. The number of affordable units shall be determined by the Inclusionary Zoning Ordinance. The required number of affordable units shall be based on a formula that credits the developer/owner for the initial \$120,000 payment-in-lieu.

Option 2: Payment-In-Lieu with Condominium Conversion - If a payment-in-lieu of affordable units for homeownership is proposed, if the applicant provides an initial payment, that payment shall be a credit toward reducing the amount of payment-in-lieu due to the Town at the time of condominium conversion. The additional payment shall be calculated at such time the development converts to condominium ownership. The additional payment-in-lieu shall be provided to the Town's Affordable Housing Fund prior to recordation of the condominium plat. The number of affordable units and the per unit payment amount shall be determined by the Inclusionary Zoning Ordinance. The current payment-in-lieu amount is \$85,000 per unit. The required number of affordable units shall be based on a formula that credits the developer/owner for the initial \$120,000 payment-in-lieu.

7. Workforce Rental: That the property owner shall offer on-site work-force housing to at least 13 employees at a 20% discount of the market rate rent. Documentation of compliance with this provision shall be provided to the Town Manager annually



Access

8. Public Cross-Access Easements: 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.
9. Construction of Vehicular and Pedestrian Access to North: That the applicant shall construct temporary pedestrian access with lighting, stubbed out to the northern property line until such time that permanent access is constructed. That the applicant shall construct a drive aisle with sidewalks on both sides and a separate pedestrian access to the neighboring Townhouse Apartments with appropriate lighting, connecting to the Residences at Grove Park at such time that neighboring development is constructed. Should the Residences at Grove Park, not be constructed 3 years after issuance of the Certificate of Occupancy for the Bicycle Apartments the applicant shall construct permanent stubouts for the vehicular and pedestrian access. Details to be approved by the Town Manager.
10. Greenway Easement: That the applicant shall provide a greenway easement from the property to the north extending southward for connecting to future greenway trails on adjacent properties to the west or south. The easement shall permit access for pedestrians, non-motorized vehicle use, and motorized wheelchairs. Final easement location to be field located and reviewed and approved by the Town Manager and recorded at the Orange County Register of Deeds. Greenway easement to allow public cross access, including construction and trail maintenance by others.
11. Construction Access Easement: Prior to the issuance of a Zoning Compliance Permit, the applicant shall provide a construction access easement, for the purpose of constructing vehicular and pedestrian access between the Residences at Grove Park and the Bicycle Apartments site.
12. University Apartments Cross-Access Easement: That the applicant shall obtain, where possible, a cross-access easement for the University Apartments development for public pedestrian, bicycle and motorized vehicle cross-access. If the applicant is successful, final details shall be approved by the Town Manager prior to the issuance of the final Certificate of Occupancy.
13. Pavement Markings and Signage for Cyclists: Prior to the issuance of a Certificate of Occupancy, the applicant shall provide wider pavement with sharrow markings and signage that indicate that the drive aisle is shared with cyclists (i.e. Share the Road). The wider drive aisle and pavement markings shall be provided on the right side of the outbound land of the drive aisle approaching Martin Luther King Jr. Blvd. One inbound and one outbound sign shall be provided on the main drive aisle. Design to be approved by the Town Manager and NCDOT prior to the issuance of a Zoning Compliance Permit.
14. Off-site Construction Easements: Prior to any land disturbance on abutting properties it will be necessary to provide documentation of approval from the affected property owner(s).
15. Accessibility Requirements: That prior to issuance of a Certificate of Occupancy, the applicant shall provide the minimum required handicapped parking spaces and design all handicapped parking spaces, ramps, and crosswalks, and associated infrastructure according to Americans with Disabilities Act standards, North Carolina Building Code, American National Standards Institute (ANSI) Code, and Town standard.
16. Performance Bond: Prior to commencing construction activity for the improvements in the public right-of-way, a performance bond shall be provided to the Town Manager to insure the construction and installation of the improvements in accordance with the standards and provisions approved by the Town as part of the project.

Transportation

17. Transit Improvements: That the applicant shall provide a \$20,000 payment-in-lieu of transit amenities prior to issuance of the Zoning Compliance Permit for north and southbound transit stops on Martin Luther King Jr. Blvd., to be constructed by the Town. Proposed improvements include a shelter pad and retaining wall for the northbound stop. Southbound improvements include a shelter pad, retaining wall, shelter, solar lighting, and passenger information sign. The Town will refund the payment, at the applicant's request, if the amenities are not constructed three years after issuance of the Final Certificate of Occupancy.
18. Martin Luther King Jr. Blvd Midblock Crosswalk: That the applicant design and construct an unsignalized mid-block crosswalk on Martin Luther King Jr. Blvd. near the driveway entrance to the Bicycle Apartments site, including high visibility thermoplastic features that may include a refuge island, with amenities such as yield bars, signage, lighting, and ADA ramps as needed. Special design considerations should be noted as it pertains to the needs of pedestrians and cyclists. Prior to issuance of Zoning Compliance Permit, the location and design elements of the crosswalk must be reviewed and approved by the Town Manager and N.C. Department of Transportation. Construction of the mid-block crosswalk shall be completed prior to issuance of first Certificate of Occupancy. The Town Manager and N.C. Department of Transportation may exercise the option to accept a payment-in-lieu towards the cost of the crosswalk design and construction, rather than applicant constructed facilities.
19. Traffic Signal Timing Fee: Prior to issuance of a Zoning Compliance Permit the developer shall provide a \$2,000 payment to the Town for retiming traffic signals in proximity to the site.
20. Three-Party Encroachment Agreement – Pedestrian Improvements / NCDOT Right-Of-Way: That prior to issuance of a Zoning Compliance Permit, a three party encroachment agreement between the applicant, NCDOT and Town shall be required for pedestrian improvements in the NCDOT right-of-way.



21. Repairs in Public Right-of-Way: Prior to a Certificate of Occupancy it will be necessary to repair all damage for work in the public right-of-way related to the construction of this project, which may include pavement milling and overlay. The design must be reviewed and approved by the Town Manager prior to a Zoning Compliance Permit.
22. Work Zone Traffic Control Plan: Prior to a Zoning Compliance Permit it will be necessary to provide a Work Zone Traffic Control Plan and a Construction Management Plan for approval by the Town Manager. The Work Zone Traffic Control Plan shall comply with the Manual on Uniform Traffic Control Devices. The Construction Management Plan shall provide staging, construction worker parking, construction vehicle routes, and hours of construction.
23. Heavy Duty Structural Support: Prior to issuance of a Zoning Compliance Permit, the developer shall provide documentation that, if underground stormwater detention is proposed beneath parking areas or drive aisles, the pavement is designed to structurally support the live loads of fire trucks and garbage trucks.
24. Vehicular Parking Restrictions: That the applicant shall include vehicular parking restrictions in the lease terms that give tenants parking options designed to minimize potential vehicular parking impacts on the surrounding neighborhoods. The options shall provide that tenants a choice to 1) lease an onsite parking space, 2) lease an offsite parking space or 3) to not park a car in Orange County. The applicant shall furthermore require that tenants not park their vehicle(s) in any public or private parking space or other property within 500 yards of the Bicycle Apartments property unless it is authorized short-term parking (e.g. a meter or paid parking lot) or resident has a written lease or written permission from the parking space owner to use such space. That the particulars of the lease terms may be revised if the intent of the original terms is maintained, subject to Town Manager approval. Documentation of compliance with this provision shall be provided to the Town Manager annually.
25. Additional Measures to Minimize Parking Demand: That the applicant shall take additional steps to minimize demand for onsite parking as well as off-site impacts, including, but not limited to an aggressive marketing campaign targeting students with a green orientation who wish to live a car free lifestyle.
26. Bicycle Parking: That prior to the issuance of a Zoning Compliance Permit, the applicant shall provide dimensioned details for 49 outdoor and 275 indoor bicycle parking spaces that comply with Town parking standards. The bicycle parking design must comply with the spring 2010 Association of Pedestrian and Bicycle Professionals Guidelines, and the Class I and Class II bicycle parking standards required by the Town Design Manual.
27. Electric Vehicle Charging Stations: Prior to issuance of a Certificate of Occupancy, the applicant shall provide electrical infrastructure for the purpose of installing two electric vehicle charging stations. Prior to the issuance of the Zoning Compliance Permit, the Town Manager shall review and approve the design.
28. Cobb Terrace Stairway - Improvements: 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.

Recreation

29. Recreation Space: That prior to the issuance of a Certificate of Occupancy, the applicant shall provide a combination of active recreation space and a payment-in-lieu thereof, including a minimum of 50% of recreation space requirements onsite and a minimum of 25% payment-in-lieu of recreation space. The active recreation area calculated shall be determined as follows: $(12\% \times \text{Gross Land Area} \times \% \text{ of total floor area classified as residential})$. As proposed, the current design would require approximately 19,881 s.f. of recreation space. The final design, size, type, and changes to proposed active recreation space facilities are subject to Town Manager approval.

Landscaping and Elevations

Location	Required Screening
Northern Property Line	Replace Leland Cypresses With Canopy Trees
Eastern Property Line Adjacent to Historic District	Variable-Width 40 to 65-Foot Wide Landscape Screen*
Southern Property Line Adjacent to Historic District	Variable-Width 20 to 50-Foot Wide Landscape Screen*
South-Western Property Line	Variable-Width Landscape Screen*
Western Property Line (Martin Luther King, Jr. Blvd.)	Supplemental Shrubs

*Existing vegetation and supplemental plantings and fencing

30. Landscape Protection: Prior to issuance of a Zoning Compliance Permit a detailed Landscape Protection Plan shall be approved. The plan shall include which trees will be removed and which will be preserved, critical root zones of all rare and specimen trees, and clearly indicate names and species.
31. Tree Protection Fencing Prior to Construction: Prior to issuance of a Zoning Compliance Permit the applicant shall provide a note on the Final Plans indicating that tree protection fencing will be installed prior to land-disturbing activity on the site. Tree protection fencing shall be provided around construction limits and indicated construction parking and materials staging/storage areas, and Town standard landscaping protection notes, subject to Town Manager approval.
32. Landscape Planting Plan: Prior to issuance of a Zoning Compliance Permit the applicant shall provide a detailed Landscape Planting Plan with a detailed planting list, subject to Town Manager approval. The Plan shall include canopy trees to shade surface parking areas.



33. Canopy Tree Planting Plan: That applicant shall provide replacement canopy tree coverage of 30%. Replacement tree locations, species, size, and spacing shall be provided on a detailed planting plan to be reviewed and approved by the Town Manager prior to issuance of a Zoning Compliance Permit.
34. Landscape Screening and Shading: That the landscaping shall adhere to the standards for Section 5.9.6 (a-d) of the Land Use Management Ordinance.
35. Lighting Plan Approval: Prior to issuance of a Zoning Compliance Permit the Community Design Commission shall approve a lighting plan for this site and shall take additional care during review to ensure that the proposed lighting plan will minimize 1) upward light pollution and 2) offsite spillage of light.

Public Art

36. Public Art: That prior to issuance of a Zoning Compliance Permit the applicant shall obtain approval of a public arts plan from the Town Public Arts Officer.

Environment

37. Energy Management Plan: That prior to issuance of a Zoning Compliance Permit the applicant shall provide an Energy Management Plan (EMP) to be approved by the Town Manager. The plan shall: a) consider utilizing sustainable energy, currently defined as solar, wind, geothermal, biofuels, hydroelectric power; b) consider purchase of carbon offset credits and green power production through coordination with the NC GreenPower program; c) provide for 20 percent more efficiency that also ensures indoor air quality and adequate access to natural lighting, and allows for the proposed utilization of sustainable energy in the project; and (d) that the property owner reports to the Town of Chapel Hill the actual energy performance of the plan, as implemented, during the period ending one year after occupancy.
38. Energy Efficiency: That the final plans shall incorporate a “20 percent more energy efficient” feature relative to the 2004 energy efficiency standard of the American Society of Heating, Refrigeration, and Air Conditioning Engineers (ASHRAE), as amended and in effect at the time of Special Use Permit issuance. Comparable standards generally recognized as applicable to building energy consumption, as amended and in effect at the time of building permit issuance, may be used by the applicant when incorporating the “20 percent more energy efficient” feature into the final plans. The developer’s implementation of energy management techniques shall include the use of high-efficiency HVAC system, and energy management systems and controls.

Stormwater Management

39. Stormwater Management Plan: That prior to the issuance of a Zoning Compliance Permit, the applicant shall submit a Stormwater Management Plan for review and approval by the Town Manager. This project must comply with the stormwater management requirements of the Land Use Management Ordinance to provide for 85 percent total suspended solids removal from the increased impervious area, retention for 2-5 days of the increased volume of stormwater runoff from the 2-year, 24-hour storm, and control of the stormwater runoff rate for the 1-year, 2-year, and 25-year storms, if necessary. No stormwater management structures are permitted in the rights-of-way or building setbacks. This includes the outlet structure and stabilization, any underdrains, and the downgradient toe of french drains. Further, the discharge must be in a sheet flow condition, unless otherwise approved to discharge to the town's stormwater system.

That all redevelopment sites disturbing one-half acre or more, shall comply with Jordan Nutrient Loading requirements to reduce nitrogen and phosphorus loads in one of the following two ways:

- a) In the Upper New Hope Arm drainage basin the loading rates shall not exceed 2.2 pounds per acre per year and 0.82 pounds per acre per year for nitrogen and phosphorus, respectively. Additionally, the post-development peak flow shall not exceed the pre-development peak flow for the one-year, 24-hour storm event; or
 - b) Meet a loading rate that achieves nutrient loads compared to the existing development, loading rates of 35 percent and 5 percent reduction for nitrogen and phosphorus respectively.
40. Stormwater Facilities, Easements, and Operations and Maintenance Plans: If necessary, all stormwater detention, treatment and conveyance facilities located on and below the ground shall be wholly contained within an easement entitled: "Reserved Stormwater Facility Easement Hereby Dedicated" and shall be reserved from any development which would obstruct or constrict the effective management, control, and conveyance of stormwater from or across the property, other than the approved design and operation functions. A copy of the final plat or easement exhibit, signed and sealed by a North Carolina-registered Land Surveyor and recorded by the County Register of Deeds, and containing the following notes shall be submitted prior to issuance of the Certificate of Occupancy.
- A suitable maintenance access (minimum 20' wide) to accommodate heavy equipment from the nearest public right-of-way to the Reserved Stormwater Facility Easement must be provided and shown on the plans.
 - The "Reserved Stormwater Facility Easement(s)" and the facilities it/they protect are considered to be private, with the sole responsibility of the owner to provide for all required maintenance and operations as approved by the Town Manager.
 - The Reserved Stormwater Facility Easement and the Operations and Maintenance Plan are binding on the owner, heirs, successors, and assigns.
41. Stormwater Operations and Maintenance Plan Recordation: Prior to issuance of a Certificate of Occupancy (C/O), a Stormwater Operations and Maintenance Plan, signed by the owner and recorded by the Orange County Register of Deeds, shall be provided for the proposed stormwater management facilities and submitted to the Stormwater Management Engineer for approval. A



schedule of inspection and maintenance tasks shall be included. The operation and maintenance plan shall require the owner of structural BMP's to perform and maintain a record of annual inspections to be performed by a qualified professional.

42. Jordan Watershed Riparian Buffer: Prior to the issuance of a Zoning Compliance Permit, the applicant shall provide a Jordan Buffer Riparian Buffer Authorization issued by the Town for the proposed 11,024 s.f. of land disturbance in the Jordan Buffer, according to Section 5.13 of the Land Use Management Ordinance. Any proposed changes to increase the authorized land disturbance in the Jordan Buffer shall require a revised application and Town Manager approval.
43. Silt Control: That the applicant takes appropriate measures to prevent and remove the deposit of wet or dry silt on adjacent paved roadways.
44. Erosion Control Bond: If one (1) acre or more is uncovered by land-disturbing activities for this project, then a performance guarantee in accordance with Section 5-97.1 Bonds of the Town Code of Ordinances shall be required prior to final authorization to begin land-disturbing activities. This financial guarantee is intended to cover the costs of restoration of failed or failing soil erosion and sedimentation controls, and/or to remedy damages resulting from land-disturbing activities, should the responsible party or parties fail to provide prompt and effective remedies acceptable to the Town.
45. Erosion Control: Prior to issuance of a Zoning Compliance Permit, the applicant shall provide a copy of the approved erosion and sediment control permit from Orange County Erosion Control Division. During the construction phase, additional erosion and sediment controls may be required if the proposed measures do not contain the sediment. Sediment leaving the property is a violation of the Town's Erosion and Sediment Control Ordinance.
46. Erosion Control Inspections: That, in addition to the requirement during construction for inspection after every rainfall, the applicant shall inspect the erosion and sediment control devices daily, make any necessary repairs or adjustments to the devices, and maintain inspection logs documenting the daily inspections and any necessary repairs.
47. Curb Inlets: The applicant shall provide pre-cast curb inlet hoods and covers stating, "Dump No Waste! Drains to Jordan Lake", in accordance with the specifications of the Town Standard Detail SD-5A, for all new curb inlets for private, Town and State rights-of-way.
48. Phasing Plan: Prior to issuance of a Zoning Compliance Permit, the applicant shall obtain approval of a Phasing Plan that provides details of which improvements are to be constructed during each phase. In addition, the phasing plan shall detail which public improvements and stormwater management structures shall be completed and inspected as part of that phase prior to requesting a Certificate of Occupancy. No construction for any phase shall begin until all public improvements required in previous phases are completed to a point adjacent to the new phase; and that a note to this effect shall be placed on the final plans and plats.
49. On-Site/Adjacent Stormwater Features: Prior to issuance of a Zoning Compliance Permit, existing site conditions and features shall be located on plans, including all on-site and adjacent stormwater drainage features. The final plans must provide proper inlet protection for the stormwater drainage inlets on or adjacent to the site to ensure the stormwater drainage system will not be obstructed with construction debris.
50. P.E. Certification: That prior to the issuance of a Certificate of Occupancy for any phase, the applicant shall provide a certification, signed and sealed by a North Carolina-licensed Professional Engineer, that the stormwater management facilities are constructed in accordance with the approved plans and specifications.
51. Repair/Replacement of Damaged Stormwater Infrastructure: Existing stormwater infrastructure that is damaged as a result the project demolition or construction, must be repaired or replaced, as specified by the Stormwater Management Engineer, prior to requesting a Certificate of Occupancy.

Water, Sewer, and Other Utilities

52. Utility/Lighting Plan Approval: That the final utility/lighting plan shall be approved by Orange Water and Sewer Authority, Duke Energy Company, and other local utility service providers, and the Town Manager before issuance of a Zoning Compliance Permit. The property owner shall be responsible for assuring that these utilities can continue to serve the development. In addition, detailed construction drawings shall be submitted to OWASA for review/approval prior to issuance of a Zoning Compliance Permit.
53. Lighting Plan: That prior to issuance of a Zoning Compliance Permit, the applicant shall submit site plans and other required documents to satisfy the lighting requirements of Section 5.11 of the Land Use Management Ordinance including submission of a lighting plan, demonstrating compliance with Town standards, sealed by a Professional Engineer, for Town Manager approval.
54. Relocation of Overhead Utilities Underground: Prior to a Certificate of Occupancy it will be necessary to provide for the underground installation of all public utilities that are currently located overhead on the site except for 3 phase or greater electric lines.
55. Water/Sewer Line Construction: That all public water and sewer plans be approved by OWASA and constructed according to their standards. Where sewer lines are located beneath drive aisles and parking areas construction methods approved by OWASA shall be employed, to ensure that sewer lines will not be damaged by heavy service vehicles. That prior to issuance of a Zoning Compliance Permit, final plans shall be approved by OWASA and the Town Manager.
56. OWASA Approval: That prior to issuance of a Zoning Compliance Permit, easement plats and documentation as required by OWASA and the Town Manager, shall be recorded.



57. Three-Party Encroachment Agreement – Utility Improvements / NCDOT Right-Of-Way: That prior to issuance of a Zoning Compliance Permit, a three-party encroachment agreement between the applicant, NCDOT and OWASA shall be required for OWASA utility improvements in the NCDOT right-of-way.

Fire Safety

58. Fire Sprinklers: Any required fire sprinklers shall be installed under the NCFC prior to a Certificate of Occupancy. Prior to issuance of a Zoning Compliance Permit, the plans shall show all proposed fire department connections to such systems.
59. Hydrants Active: The applicant shall provide active fire hydrant coverage, acceptable to the Fire Department, for any areas where combustible construction materials will be stored or installed, prior to having such materials delivered to the site. All required fire hydrants must be installed, active, and accessible for the Fire Department use prior to the arrival of combustible materials on site. That fire protection systems shall be installed according to Town Ordinance, the NC Fire Code, and NFPA 13.
60. Fire Hydrant and FDC Locations: That the Final Plans shall indicate the locations of existing and proposed fire hydrants and Fire Department Connections (FDC). Fire Department Connections shall be located on the street side of the building within 100 feet of a hydrant. Hydrant spacing shall comply with the Town Design Manual. Design shall be reviewed and approved by the Town Manager prior to issuance of a Zoning Compliance Permit.
61. Firefighting Access during Construction: That as required by NC Fire Code (Section 1410.1 Required Access), vehicle access for firefighting shall be provided to all construction or demolition sites including vehicle access to within 100 feet of temporary or permanent fire department connections and hydrants. Vehicle access shall be provided by either temporary or permanent roads capable of supporting vehicle loading under all weather conditions.
62. Fire Flow Report: That the Final Plan application shall include a fire flow report sealed by an Engineer registered in the State of North Carolina. An OWASA flow test must be provided with the report. Fire flow shall meet or exceed the requirements set forth in the Town Design Manual. The Fire Flow Report shall be reviewed and approved by the Town Manager prior to issuance of a Zoning Compliance Permit.
63. Heavy-Duty Paving: That prior to issuance of a Certificate of Occupancy the applicant shall provide heavy duty paving designed and built to withstand fire apparatus weighing at least 75,000 pounds.
64. Fire Lane: Prior to issuance of a Certificate of Occupancy, the fire lane must be marked and signed in accordance with Town standards, with the associated plans approved by the Town Manager prior to issuance of a Zoning Compliance Permit.
65. Emergency Communications System: That the developer shall provide building design features which enable public safety responders' radios to penetrate and provide reliable radio transmissions within the building.

Solid Waste Management and Recycling

66. Solid Waste Management Plan: That prior to issuance of a Zoning Compliance Permit a detailed Solid Waste Management Plan, including a recycling plan and a plan for managing and minimizing construction debris, shall be approved by the Town Manager. The plan shall include dimensioned, scaled details of any proposed refuse/recycling collection areas, associated screening, and protective bollards, if applicable. Each bulk waste container shall be labeled as to type of material to be collected. Prior to issuance of a Zoning Compliance Permit, the developer shall provide documentation of an agreement for solid waste collection by a private provider.
67. Construction Waste: By Orange County Ordinance, clean wood waste, scrap metal and corrugated cardboard, all present in construction waste, must be recycled. By Orange County Ordinance, all haulers of construction waste must be properly licensed. The developer shall provide the name of the permitted waste disposal facility to which any land clearing or demolition waste will be delivered.
68. Deconstruction/Demolition: The applicant shall hold a deconstruction assessment meeting with Orange County Solid Waste Management staff (919-968-2300) concerning the buildings to be removed from this site. We also recommend the following note be placed on the final plans: "Prior to any demolition or construction activity on the site the applicant will hold a deconstruction assessment conference with the County's Solid Waste staff concerning buildings to be removed from this site. Prior to issuance of a Demolition Permit, the developer shall provide a demolition waste management plan."

State and Federal Approvals

69. State or Federal Approvals: Prior to issuance of a Zoning Compliance Permit, any required State or federal permits or encroachment agreements (e.g., 401 water quality certification, 404 permit) shall be approved and copies provided to the Town of Chapel Hill.
70. North Carolina Department of Transportation Approvals: Prior to issuance of a Zoning Compliance Permit, plans for any improvements to State-maintained roads or in associated rights-of-way shall be approved by NCDOT prior to issuance of a Zoning Compliance Permit.

Miscellaneous

71. Removal of Balconies: That the applicant shall remove the proposed balconies on the east wing of the building facing the historic district.
72. Property Management: That the applicant shall provide a property management plan that includes policies and procedures to provide a safe environment for residents as well as guidelines to promote good neighbor behavior. The property management plan



shall include provisions for onsite staff and security personnel with availability 24 hours a day, 7 days a week, as well as a facilities maintenance plan.

73. Recordation of Plat: Prior to issuance of a Zoning Compliance Permit, the applicant shall record a plat, with the Orange County Register of Deeds, in conjunction with the recordation of a partial revocation of the parcel identified as Orange County Parcel Identifier Number (PIN 9783-49-1242), for the proposed Bicycle Apartments at Central Park Special Use Permit, for the Northampton Plaza and Terrace Apartments Special Use Permit, modified on October 9, 1967 and October 9, 1967 indicating the corresponding areas encumbered by each Special Use Permit.
74. Schools Adequate Public Facilities Ordinance: That the applicant shall provide the necessary Certificate of Adequacy of Public Schools prior to the issuance of a Zoning Compliance Permit.
75. Temporary Construction Access Agreements: Prior to issuance of a Zoning Compliance Permit the applicant shall provide construction agreements with adjacent property owners, where necessary, subject to Town Manager approval. If the abutting property is to be used a part of construction access, provide documentation of permission from the owner of said property.
76. Construction Management Plan: That a Construction Management Plan, be approved by the Town Manager prior to issuance of a Zoning Compliance Permit. The construction management plan shall: 1) indicate how construction vehicle traffic will be managed, 2) identify parking areas for on-site construction workers including plans to prohibit parking in residential neighborhoods, 3) indicate construction staging and material storage areas, 4) identify construction trailers and other associated temporary construction management structures, and 5) indicate how the project construction will comply with the Town's Noise Ordinance.
77. Traffic and Pedestrian Control Plan: That the applicant shall provide a Work Zone Traffic Control Plan for movement of motorized and non-motorized vehicles on any public street that will be disrupted during construction. The plan must include a pedestrian management plan indicating how pedestrian movements will be safely maintained. The plan must be reviewed and approved by the Town Manager prior to the issuance of a Zoning Compliance Permit. At least 5 working days prior to any proposed lane or street closure the applicant must apply to the Town Manager for a lane or street closure permit.
78. Community Design Commission Approval: That the applicant obtain Community Design Commission approval of building elevations and lighting, landscape screening on the eastern and southern property lines, including the location and screening of all HVAC/Air Handling Units for this project, prior to issuance of a Zoning Compliance Permit. That prior to issuance of a Zoning Compliance Permit the Commission shall approve a lighting plan for this site and shall take additional care during review to ensure that the proposed lighting plan will minimize 1) upward light pollution and 2) offsite spillage of light.
79. Construction Sign Required: That the applicant shall post a construction sign at the development site that lists the property owner's representative and telephone number, the contractor's representative and telephone number, and a telephone number for regulatory information at the time of issuance of a Building Permit, prior to the commencement of any land disturbing activities. The construction sign may have a maximum of 32 square feet of display area and maximum height of 8 feet. (§5.14.3(g) of LUMO). The sign shall be non-illuminated, and shall consist of light letters on a dark background. That prior to the issuance of a Zoning Compliance Permit a detail of the sign shall be reviewed and approved by the Town Manager.
80. Open Burning: That the open burning of trees, limbs, stumps, and construction debris associated with this development is prohibited.
81. Detailed Plans: That prior to the issuance of a Zoning Compliance Permit final detailed site plans, grading plans, utility/lighting plans, stormwater management plans (with hydrologic calculations), landscape plans, and landscape maintenance plans shall be approved by the Town Manager. Such plans shall conform to plans approved by this application and demonstrate compliance with all applicable regulations and the design standards of the Land Use Management Ordinance and the Design Manual.
82. As-Built Plans: That prior to occupancy, the applicant shall provide certified as-built plans for building footprints, parking lots, street improvements, storm drainage systems and stormwater management structures, and all other impervious surfaces. The as-built plans should be in DXF binary format using State plane coordinates and NAVD 83. The applicant shall also contact the Town's Engineering and Design Services Division for address assignment of each unit.
83. Vested Right: This Special Use Permit constitutes a site specific development plan establishing a vested right as provided by N.C.G.S. Section 160A-335.1 and Appendix A of the Chapel Hill Land Use Management Ordinance.
84. Continued Validity: That continued validity and effectiveness of this approval shall be expressly conditioned on the continued compliance with the plans and conditions listed above.
85. Non-Severability: That if any of the above conditions is held to be invalid, approval in its entirety shall be void.

ORANGE COUNTY



NORTH CAROLINA

IN WITNESS WHEREOF, the Town of Chapel Hill has caused this instrument to be executed in its name as evidence of the issuance of said permit, and the undersigned being all of the property owners of the property above described, have executed this instrument in evidence of their acceptance of said Special Use Permit as covenant running with the land.

ATTEST

THE TOWN OF CHAPEL HILL

By: [Signature]
Town Clerk or Assistant Town Clerk

By: [Signature]
Planning Director PM POC

ACCEPTED

NORTHAMPTON TERRACE INVESTORS, LLC

By: DSM Asset Management Inc.,
a North Carolina Corporation, its manager

By: [Signature]
David S. Morris, President



ORANGE COUNTY

NORTH CAROLINA

I, Lynne W. Wade, a Notary Public in and for said County and State do hereby certify that

JB Culpepper, Planning Director of the Town of Chapel Hill, and Sabrina Oliver, Town Clerk,

duly sworn says each for himself that he knows the corporate seal of the Town of Chapel Hill and that the seal affixed to the foregoing instrument is the corporate seal of the Town of Chapel Hill, that JB Culpepper, Planning Director of said Town of

Chapel Hill, and Sabrina Oliver, Town Clerk for the Town of Chapel Hill, subscribed their names to the foregoing instrument, that the corporate seal of the Town of Chapel Hill was affixed thereto, all by virtue of a resolution of the Chapel Hill Council, and that said instrument is the act and deed of the Town of Chapel Hill.

IN WITNESS WHEREOF, I have hereunto set my hand and Notarial Seal this the

16th day of April, 2013.

Lynne W. Wade
Notary Public

My commission expires: 9/14/2013



DURHAM
~~ORANGE~~ COUNTY

NORTH CAROLINA

I, Philip C. Mason, Jr., a Notary Public in and for said State and County do hereby certify that

David S. Morris, authorized representative of Northampton Terrace Investors, LLC, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS my Hand and Notarial Seal, this 17th day of April, 2013

[Signature]
Notary Public

My commission expires: 11.25.2017

Philip C. Mason, Jr.
NOTARY PUBLIC
Durham County, NC



Coates' Canons Blog: Tick Tock! The Clock Is Now Running for Zoning Enforcement

By Adam Lovelady

Article: <https://canons.sog.unc.edu/tick-tock-the-clock-is-now-running-for-zoning-enforcement/>

This entry was posted on September 26, 2017 and is filed under Administration & Enforcement, Constitutional & Statutory Limitations, General Local Government (Miscellaneous), Land Use & Code Enforcement, Zoning

Jimmy lives on a large lot in a residential area of town. Back in January 2013, he started a small auto repair shop in the garage behind his house. You can hardly see the shop from the road because of the house and topography, but Jimmy did post a small sign near his mailbox to direct folks around to "Jimmy's Auto Repair." The town's zoning enforcement officer saw the sign in September 2013. The zoning ordinance prohibits auto repair in residential districts, so the officer sent a letter to seek compliance. Because of limited staff, many other zoning matters, and the lack of complaints about Jimmy's operation, the zoning officer has not pursued enforcement any further. This year a new neighbor moved in next door, saw and heard the auto repair shop, and called the town to complain. Can the town now enforce the zoning ordinance against Jimmy's commercial business in this residential area? The law on this is changing.

A new law sets specific statutes of limitation for land use enforcement litigation. This blog explores the new limitations and practical considerations for moving forward. The new law may spark local governments to initiate additional zoning enforcement actions over the next year (in anticipation of the law's 2018 effective date) and to take a more proactive stance on zoning enforcement generally.

Land Use Enforcement

A land use violation can take many different forms. It could be a business operation in a residential district, a building too close to the property line, or the failure to maintain a vegetative buffer. A zoning violation could take the form of commercial trucks parked at a residence, the disregard of a special use permit condition about hours of operation, or an unpermitted adult business. Some land use violations are quickly and easily resolved, but other violations involve greater cost and permanence. The commercial trucks can be driven elsewhere easily, but moving a building is not so easy. The ease of movement also invites intermittent violation. The owner might move the commercial trucks this month, but bring them back again next month.

Local governments have several options for enforcing land use ordinances. G.S. 160A-365 and 153A-324 authorize cities and counties to use the general ordinance enforcement tools in order to enforce land use ordinances. Those general tools include informal notifications, formal notices of violation, civil penalties, fines, criminal prosecution, court-ordered injunctions and abatement, and court-ordered equitable remedies. A local ordinance may treat each day's continuing violation as a separate and distinct offense. Some communities withhold building permits to ensure compliance with zoning and other development regulations on a property under G.S. 160A-417(e) and 153A-357(f).

Given limited budgets and capacity, many local governments have traditionally enforced land use ordinances on a complaint basis. Some communities, though, have a procedure for routine field inspections for zoning violations.

Prior Time Limits

There are time limits for when an individual may challenge to a zoning decision. An individual has thirty days to appeal a staff decision or a quasi-judicial decision like a variance. If a property owner is challenging the validity of a rezoning, she or he has two months. In order to challenge the validity of the ordinance an individual has one year.

Up to now, however, there has not been a specific time limit on when a local government may bring a zoning action against a violator. There was not a statute of limitations to bar zoning enforcement. Moreover, North Carolina courts have held that the defense of estoppel generally does not protect against zoning enforcement. "A city cannot be estopped to



enforce a zoning ordinance against a violator due to the conduct of a zoning official in encouraging or permitting the violation." City of Winston-Salem v. Hoots Concrete Co., 47 N.C. App. 405, 414, 267 S.E.2d 569, 575 (1980) (citing Helms v. Charlotte, 255 N.C. 647, 122 S.E.2d 817 (1961); Raleigh v. Fisher, 232 N.C. 629, 61 S.E.2d 897 (1950)). The notion has been that zoning is an exercise of the police power of the state, and a citizen cannot "acquire immunity to the law of his country by habitually violating such law with the consent of unfaithful public officials charged with the duty of enforcing it." City of Raleigh v. Fisher, 232 N.C. 629, 635, 61 S.E.2d 897, 902 (1950).

That is not to say there has been no limit to zoning enforcement. Generally, the common law doctrine of laches prevents legal action when so much time has passed that the condition of the property or the relation of the parties has so changed that it would be unjust to allow the action to go forward. North Carolina courts have applied the doctrine of laches to protect a property owner from zoning enforcement when (i) the local government made affirmative assurances about the zoning regulations; (ii) the individual substantially relied upon those assurances (to their detriment); and (iii) there was considerable delay by the local government in bringing an enforcement action after the government learned of the violation. Abernethy v. Town of Boone Bd. of Adjustment, 109 N.C. App. 459, 427 S.E.2d 875 (1993); Town of Cameron v. Woodell, 150 N.C. App. 174, 563 S.E.2d 198 (2002).

Additionally, in 2013 new language was added to G.S. 160A-364.1 and 153A-348 that limits zoning enforcement related to nonconforming uses. Under that statute of limitations, if a use is grandfathered as a nonconforming use and then that grandfather status is terminated for some reason, then the local government must bring zoning enforcement within 10 years of the date of termination of the grandfather status.

New Limits

S.L. 2017-10 (SB 131) amends N.C.G.S. 1-51 and 1-49 to establish specific statutes of limitation for actions "[a]gainst 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." Importantly, the time limit is a deadline for bringing a lawsuit in court, not necessarily a limit on administrative enforcement actions. The limitation is either five years or seven years depending on the facts known by the local government and the visibility of the violation.

The new limits on court-ordered enforcement do not apply when a dangerous condition exists. Under the new statutes, even if the statute of limitations has run, a local government may still seek a court-ordered injunction "for conditions that are actually injurious or dangerous to the public health or safety."

For other violations, though, the clock for enforcement is ticking. If the local government knew—directly through personnel or indirectly through public records—about the violation, the time limit for filing a court action is five years. The clock for legal action starts running on the earlier of the following:

- "The facts constituting the violation are known to the governing body, an agent, or an employee of the unit of local government."
- "The violation can be determined from the public record of the unit of local government."

If the violation is unknown to the local government, but it is visible to the public, then the time limit for filing a court action is seven years. In these cases, the clock for legal action starts running on the earlier of the following:

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

The notion behind these limits is this: If a zoning violation has existed for some time, and the local government has known about it (or should have known about it) but taken no action for years, then the local government should be prevented from enforcing against that violation. This is akin to the doctrine of laches, but notably that common law rule requires some affirmative approval from the local government in addition to the other elements. While the notion of the new limits may be fair, the language of the statutes and practical considerations raise questions about the precise scope and impact of this new law.

Triggers to start the clock



As outlined above, the statute lists four triggers that begin the clock running for zoning enforcement lawsuits. Let's walk through each of those events that can start the clock.

"The facts constituting the violation are known to the governing body, an agent, or an employee of the unit of local government."

This triggers the five-year limit. When the zoning inspector knows about the violation, the clock has started ticking. The clock also starts ticking if other local government staff know of the violation. When a staff member from parks and recreation sees an unpermitted salvage yard, the clock for zoning enforcement starts ticking. This trigger also is phrased to apply when facts "are known to the governing body." It is not clear if that means the entire elected board needs to know or if knowledge by an individual elected official is sufficient. Additionally, the clock begins to run if an agent of the local government has knowledge of the violation. If a municipality contracts for the county inspections office to handle permitting, then the county building inspector likely is acting as an agent of the municipality when he or she goes out for a building code inspection. If the county employee learns about a zoning violation, the clock starts ticking for the municipality to bring an enforcement action. It appears that the clock would not necessarily start if a violation was known by an employee of another government unit that is not acting as an agent. For example, if an employee of a water and sewer authority (a public body independent from the local government) noticed a zoning violation while checking meters, that would not constitute knowledge of a zoning violation by "an agent, or an employee of the unit of local government." Of course, coordination between these interrelated and overlapping public bodies would be beneficial for all.

Do the individuals need to know that the situation is a zoning violation? Apparently not. The statute of limitations is triggered when "the facts constituting the violation are known." Thus, the clock starts running when the parks and recreation staff member sees the unpermitted salvage yard, even if he or she does not know the zoning ordinance or zoning districts. There is no specification about how the individual learns the facts constituting a violation. Those facts, it appears, could be obtained from a complaint from a neighbor, images on social media, or observations by employees when they are not on duty. Of course, for any of these scenarios there will be questions about proving knowledge of the facts. If there is written or photographic documentation of the facts that may be relatively easy, but for some examples proof of knowledge may be illusive.

"The violation can be determined from the public record of the unit of local government."

This triggers the five-year limit. Because this provision uses the term "public record," it raises many questions about scope and applicability. The intent of the language, arguably, is to establish constructive notice for the local government about zoning violations: If the local government has *some record* of the violation and should have known about it, then the statute of limitations begins to run. For example, if the local government has permitting documents, inspection records, or business licenses that evidence a zoning violation, then the local government must act upon that information within five years.

The plain language of the statute, however, uses the term "*public record*," a specific term defined at G.S. 132-1 and subject to an array of exceptions and limitations. The term is not defined differently for the new statute of limitations, so it seems prudent to apply the statutory definition of public record under Chapter 132. My colleagues Frayda Bluestein and David Lawrence have written extensively on what constitutes a public record in North Carolina, in the book *Public Records Law for North Carolina Local Governments* and in many blog posts.

Some records that would be useful for documenting potential zoning violations are not "public records" under the statutory definition. Consider a police investigation into an illegal gambling operation at a retail store. During the course of the investigation, the police photographed online sweepstakes machines, sale of tobacco pipes and vape supplies, and adult entertainment, none of which is permitted in the zoning district. Has the clock now started to enforce the zoning violations? Under G.S. 132-1.4, records of criminal investigations are not public records.

Consider also records about utility hook-ups. If the owner of a single-family home requested and obtained four separate meters for her house, that would be useful information indicating that the owner converted the home to a multi-family residential use. Under G.S. 132-1.1, however, public enterprise billing information is not a public record. There is a carve-out to allow sharing records for law enforcement and public safety, and billing information, arguably, may be disclosed to the public under the unit's policy. The trigger for the new statute of limitations, though, applies to "public records," and



under the statute utility billing information is not a public record. My colleague Kara Millonzi has written about disclosing utility customer information [here](#).

Control of the public record is important to determining if the statute of limitations is triggered. The law specifically references the public record *"of the unit of local government."* Thus, the statute of limitations is not necessarily triggered for a municipal zoning violation if the public record that shows the violation is a county health permit, a county tax record, or a state environmental permit. As noted above, however, coordination among these different units and agencies of government would be prudent.

"The violation is apparent from a public right-of-way."

Starting with the time at which a zoning violation can be seen from the public street or sidewalk, the local government has seven years to bring a court action to enforce the land use regulation. The language for this trigger is straightforward, but the practical application may be challenging given the temporary nature of some violations.

Suppose that starting in January 2012 a homeowner hosted a yard sale on the first Saturday of each month. The local zoning ordinance only allowed two yard sales per year. Given the frequency of sales, the homeowner was operating an unpermitted flea market. It was visible from the right-of-way, but only on those Saturdays. Toward the end of the year, the homeowner stopped hosting the flea market. A couple of years later, in 2014, the homeowner started up again, operated flea markets for a couple of years, and stopped again. In the fall of 2018, the homeowner begins hosting flea markets again on the first Saturday of each month. By January 2019, it has been seven years since the violation was visible from the public right-of-way. Is the property owner now free to host a flea market every month? It is not clear. Perhaps each new flea market is its own violation and may be enforced as such. Or, perhaps the "violation" that is apparent from the right-of-way is the current round of violation starting in fall of 2018. It is inherently challenging to identify the start and stop of an intermittent violation such as this.

"The violation is in plain view from a place to which the public is invited."

This triggers the seven-year limit. This is similar to the public right-of-way trigger, but even more challenging to monitor. A place to which the public is invited would include the seating area of a restaurant, the general merchandise area of a shop or gas station, and the public reception area of an office. The public also is invited to private subdivision streets that are open to the public.

What about websites and social media? What if a private club posts to its website photos of unpermitted activities? What if a property owner makes their property available through a short-term rental website such as AirBnB? That is unclear.

Initiate court action before the clock runs out

Note that the statute of limitations sets a time limit for the local government to bring an "action," or court proceeding. As defined at G.S. 1-2, "[a]n action is an ordinary proceeding in a court of justice, by which a party prosecutes another party for the enforcement or protection of a right, the redress or prevention of a wrong, or the punishment or prevention of a public offense." In other words, the local government must file the lawsuit for court-ordered enforcement before the time limit runs out.

That is important because in a typical zoning enforcement case the court action follows a long enforcement process, including initial inspection, notice of violation, follow-up notice (if no response), negotiations with the landowner of acceptable resolution, re-inspection for compliance, and issuance of fines or civil penalties. Moreover, the property owner would have the right to appeal the staff decision to the board of adjustment. Such a process easily can stretch from months to a year. *The lawsuit against the violating landowner is the action that must be completed within the specified time limit, and all of the initial enforcement steps and administrative appeals must be completed in advance of that.*

A strategic violator may draw out enforcement negotiations—promising compliance soon, asking for an extension, requesting a variance or ordinance amendment, renegotiating terms of compliance—to let the statute of limitations run.

What happens after the clock runs



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."

For other land use violations, however, if the statute of limitations has run, the local government's ability to remedy the violation will be substantially limited. Administrative enforcement may still be available—to an extent. The plain language of the statute applies to court action, not administrative enforcement actions. If an old zoning violation is discovered and the statute of limitations has run, the local government apparently could still issue a notice of violation and charge civil penalties. A local government arguably could still withhold permits from a property that has a zoning violation under G.S. 160A-417(e) and 153A-357(f).

Court action may still be available—to an extent. Statutes of limitation are an affirmative defense to court action. In other words, the violator has to raise the defense and show that the time limit has run. A local government is not barred from filing a court action to enforce the ordinance, but if the violator successfully raises the statute of limitation as a defense, that will prevent the local government from getting court-ordered enforcement.

Next Steps

The new time limits of S.L. 2017-10 become effective October 1, 2018, and it applies to actions commenced on or after that date. In the near term, cities and counties should initiate investigation and enforcement steps now against any old zoning violations so that there is time to file court action, if needed, before October 2018. Communities must follow their own ordinance and procedures for enforcement and administrative appeals, and as discussed above, that may take many months. Given the October 2018 deadline, local governments must start the administrative enforcement process now.

Looking ahead, local governments also may consider new processes for zoning investigation and enforcement. Here are a few:

Adjust the zoning ordinance. While this blog focuses on the technical aspects of enforcement, communities should also carefully consider what they are enforcing. If no one has complained about a zoning violation for five or ten years, maybe that activity should not be a zoning violation. As local governments document zoning infractions, new and old, they should consider adjustments to the use table and limits on various land uses.

Proactive and prioritized investigation and enforcement. Many communities have relied on complaint-based zoning enforcement. The new time limits, however, may necessitate a coordinated and proactive inspection and enforcement process with more time in the field. Communities will benefit from prioritizing certain violations for enforcement actions. Departments may also want to make it easier for citizens to report violations (Here is a blog from Frayda Bluestein on anonymous tips).

Staff and board knowledge. Knowledge of the "governing body, an agent, or an employee" of the local government is enough to trigger the five-year limit. It may be useful for planning and zoning staff to survey board members and local government staff for zoning violations of which they are aware, and to set up systems to make it easy for them to report violations. Additionally, it is prudent for the planning office to provide basic training to inspectors from other departments about the basics of zoning regulation and enforcement. This might include fire and police officers, building inspectors, housing inspectors, public health inspectors, animal control officer, and others.

Public records review. It may be too costly and time-intensive to go back through historic public records for information of zoning violations. Going forward, though, a local government could establish processes so that staff who handle certain public records will flag potential zoning violations. These might include building permits, business licenses, utility hook-ups, and other public records related to land uses and property improvement.

Violation tracking. It is not enough to increase the local government knowledge about violations. The local government also needs a procedure for tracking the time of when the clock for enforcement will run out.



Proactive lawsuits. If a violator knows that the statute of limitations will soon expire, the violator may well drag their feet for compliance. As the deadline for a particular violation approaches, a local government may need to file a lawsuit and then continue negotiating a resolution.

Conclusion

So what about Jimmy? In January 2013, he started an auto repair shop in his back yard, but the zoning ordinance prohibits auto repair in that district. The zoning inspector sent a compliance letter back in September 2013, but has not followed up. In 2017, a new neighbor moved in and started complaining. Can the town enforce the zoning ordinance against Jimmy's shop? If the town acts quickly it can bring initial enforcement actions to remedy the violation. If the town needs to file a lawsuit, though, it must do so before October 1, 2018, when the new statute of limitations on zoning enforcement becomes effective (and more than five years after the zoning inspector learned about the violation). After October 1, 2018, the new statute of limitations will shield Jimmy and property owners in a similar situation from court enforcement actions.

Links

- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-365.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_153A/GS_153A-324.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-417.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_153A/GS_153A-357.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-364.1.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_153A/GS_153A-348.pdf
- www.ncleg.net/Sessions/2017/Bills/Senate/PDF/S131v7.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_1/GS_1-51.pdf
- www.ncleg.net/EnactedLegislation/Statutes/PDF/BySection/Chapter_1/GS_1-49.pdf
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_132/GS_132-1.html
- www.sog.unc.edu/publications/books/public-records-law-north-carolina-local-governments-second-edition

MEMORANDUM

TO: Mayor and Town Council

FROM: Roger L. Stancil, Town Manager

SUBJECT: Public Hearings: Applications for Zoning Atlas Amendment and Special Use Permit – The Bicycle Apartments at Central Park, 602 Martin Luther King Jr. Blvd. (Project Nos. 12-009 and 12-010)

DATE: February 27, 2013

DISCUSSION TOPIC: Continuation of public hearings on redevelopment of the Central Park Apartments site into higher-density student housing from [January 23, 2013](#)¹. The applications before the Council include:

1. Rezoning from the existing Residential-4 (R-4) and Office/Institutional-1 (OI-1) zoning districts to the Residential-Special Standards-Conditional (R-SS-C) zoning district;
2. Partial revocation of the existing Special Use Permit; and
3. Special Use Permit to redevelop the site with 194 dwelling units and 241 parking spaces.

HIGHLIGHTED ISSUES:

- Affordable Housing
- Alternative Site Design
- Site Access
- Trinitas Ventures Tenant Feedback
- Economic Impact

COMMENT: The alternative site design proposed by the applicant moves the proposed building away from the historic district, providing wider buffers and additional parking. The tradeoffs include additional land disturbance and impervious surface in the Resource Conservation District. This design is consistent with suggestions at the Public Hearing. On balance, I think the benefits to the neighborhood offset the environmental impacts.

In response to Council requests, we are developing a means for assessing the economic impact of proposed developments. While we build this system, we have provided an interim chart in the attached Special Use Permit memorandum, which attempts to capture the key elements of impact.

Staff have responded to the Council's inquiries about the remaining highlighted issues in the attached staff reports.

MANAGER'S RECOMMENDATION: Based on the information in the record to date, I think the Council could make the required findings to enact Ordinance A, approving the rezoning,

¹ <http://chapelhillpublic.novusagenda.com/MeetingView.aspx?MeetingID=196&MinutesMeetingID=-1>

adopt the resolution approving the partial revocation of the existing Special Use Permit, and adopt Resolution A, approving a Special Use Permit with conditions. I recommend the following.

- Continue public hearings and receive comment
- Close public hearings
- Take action on the rezoning, partial revocation of the existing Special Use Permit, and the proposed Special Use Permit application

MEMORANDUM

TO: Roger L. Stancil, Town Manager

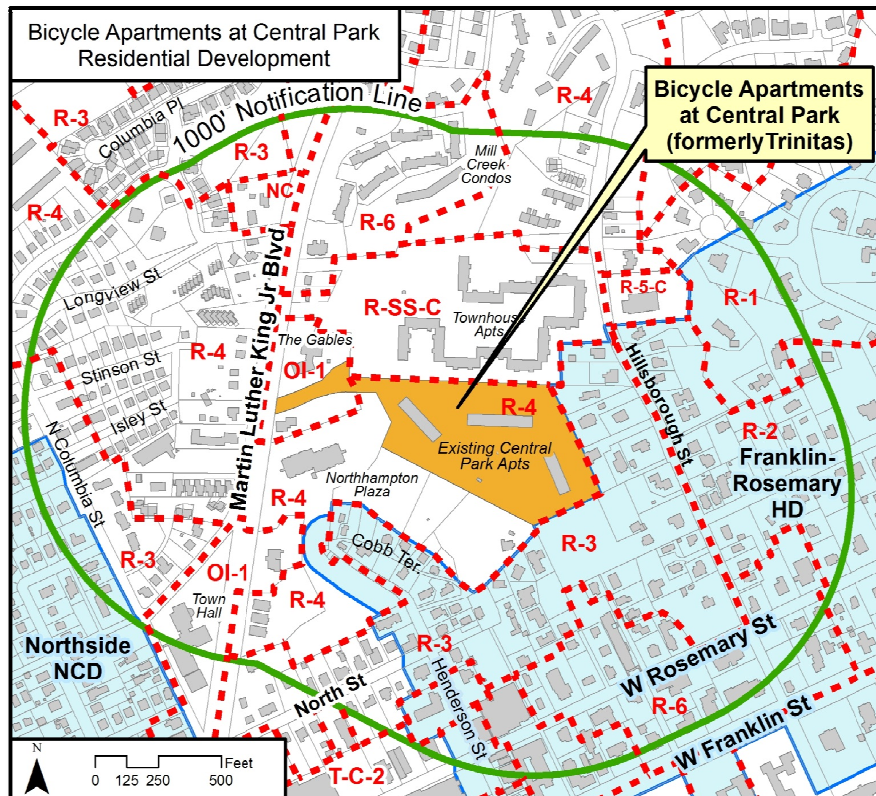
FROM: J. B. Culpepper, Planning Director
Gene Poveromo, Development Manager
Phil Mason, Principal Planner

SUBJECT: Application for Zoning Atlas Amendment – The Bicycle Apartments at Central Park, 602 Martin Luther King Jr. Blvd. (Project No. 12-009)

DATE: February 27, 2013

INTRODUCTION

Tonight the Town Council continues the public hearing from [January 23, 2013](#)¹ for a rezoning request for the 9.1-acre Central Park Apartments site from the existing Residential-4 (R-4) and Office/Institutional-1 (OI-1) zoning districts to the Residential-Special Standards-Conditional (R-SS-C) zoning district.



The property is identified as Orange County Parcel Identifier Number 9788-57-0788.

¹ <http://chapelhillpublic.novusagenda.com/MeetingView.aspx?MeetingID=196&MinutesMeetingID=-1>

The applicant, Trinitas Ventures, has also submitted an accompanying Special Use Permit application. Please refer to the accompanying Special Use Permit memorandum for additional information. Note that Statements of Justification, Advisory Board Summaries of Action, and documents related to both applications are attached to the Special Use Permit memorandum. We recommend that the Council consider the Special Use Permit proposals in conjunction with the rezoning hearing.

HIGHLIGHTS

Responses to Council questions about the following issues, which pertain to the requested rezoning, are discussed in the accompanying Special Use Permit memorandum in the context of the proposed development.

- Economic Impact
- Affordable Housing

RECOMMENDATIONS

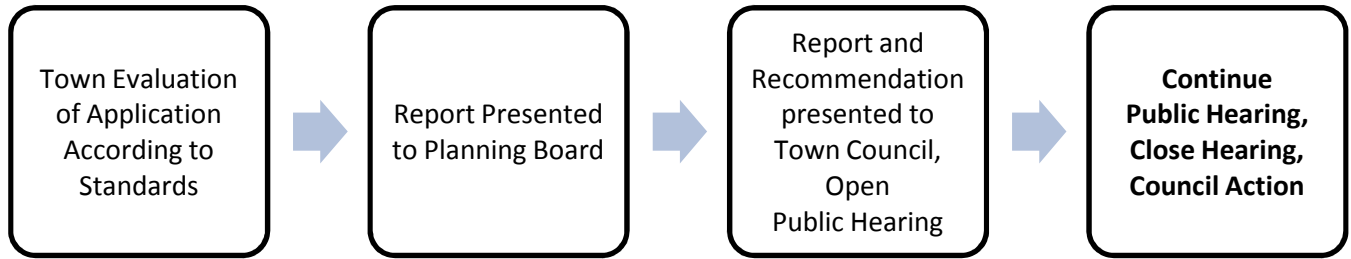
Staff Recommendation: We recommend that the Council approve the Resolution of Rezoning Consistency with the 2020 Comprehensive Plan and enact the Zoning Atlas Amendment Ordinance, to rezone the proposed Bicycle Apartments redevelopment site from the existing Residential-4 (R-4) and Office/Institutional-1 (OI-1) zoning districts to the Residential-Special Standards-Conditional (R-SS-C) zoning district. The attached ordinance would enact a zoning atlas amendment and rezone the site and associated right-of-way to Residential-Special Standards-Conditional (R-SS-C) zoning district.

We believe that the Council could make the finding that the amendment is warranted in order to achieve the purposes of the Comprehensive Plan including:

- Housing for students that is safe, sound, affordable, and accessible;
- A range of neighborhood types that address residential, commercial, social, and cultural needs and uses while building and evolving Chapel Hill's character for residents, visitors, and students Identify areas where there are creative development opportunities;
- Provision of a range of housing opportunities for residents; and
- Promote the vitality of downtown.

PROCESS

Tonight the Council continues the public hearings and considers possible action.



EVALUATION OF THE APPLICATION

The zoning designation of a property determines the range of land uses and development intensities permitted on the property. Article 4.4 of the Land Use Management Ordinance establishes the intent of Zoning Atlas Amendments by stating that, “In order to establish and maintain sound, stable, and desirable development within the planning jurisdiction of the Town it is intended that this chapter shall not be amended except:

- a) to correct a manifest error in the chapter; or
- b) because of changed or changing conditions in a particular area or in the jurisdiction generally; or
- c) to achieve the purposes of the Comprehensive Plan.

We have evaluated the application as a request for rezoning from the existing Residential-4 (R-4) and Office/Institutional-1 (OI-1) zoning districts to the Residential-Special Standards-Conditional (R-SS-C) zoning district for each of the findings.

In the tables below for each finding, arguments in support and in opposition can be found excerpted from the applicant’s Statement of Justification, neighbor’s comments, and the Planning Board Summary of Action (attached to the accompanying Special Use Permit memorandum). We believe the information in the record to date can be summarized as follows:

A) An amendment to the Land Use Management Ordinance (rezoning) is warranted to correct a manifest error in the chapter (zoning atlas).

Argument in Support	The applicant has not offered arguments to support this circumstance. We were unable to identify any arguments in support of a manifest error.
Argument in Opposition	To date no arguments in opposition have been submitted or identified by staff.

B) An amendment to the Land Use Management Ordinance (rezoning) is warranted because of changed or changing conditions in a particular area or in the jurisdiction

generally.

Argument in Support	<ul style="list-style-type: none"> • “Prior to initiating the 2020 plan process, and within the past several years, the Town Council has considered and approved several residential developments in or near the downtown. These include Greenbridge, 140 West, Shortbread Lofts, and The Residences at Grove Park, a high density residential development immediately north of the proposed Bicycle Apartments site and with the same R-SS-C Residential zoning district that the applicant seeks for this proposed development.” <i>[Applicant’s Statement]</i> • “The applicant believes that the new planning initiatives and the Council record of approval of high density residential in and near the downtown demonstrate fully that there are changed and changing economic, social, and transportation conditions that affect the town and in particular this site and its immediate surroundings.” <i>[Applicant’s Statement]</i>
Argument in Opposition	To date no arguments in opposition have been submitted or identified by staff.

Staff Comment: We believe that arguments can be made for a rezoning being warranted based on changed or changing conditions in a particular area or in the jurisdiction generally, including the following:

- Increased interest in living in urban core areas;
- Increased conversion of owner-occupied single-family homes near the UNC campus to student rental housing, with corresponding impacts;
- Changing needs and preferences for higher-density, multi-family housing; and
- Town investment in public transit.

C) An amendment to the Land Use Management Ordinance is warranted to achieve the purposes of the Comprehensive Plan.

Argument in Support	<ul style="list-style-type: none"> • “The Residential-Special Standards-Conditional zoning district includes nine objective statements linked to the Comprehensive Plan. The rezoning could be justified based on Finding C because objectives of the Comprehensive Plan, as noted in the Residential-Special Standards-Conditional zoning district, are being achieved as described below (see applicant’s Statement of Justification).” <i>(Applicant’s Statement)</i>
Argument in Opposition	Arguments opposed to this finding have also been made by the Chapel Hill Planning Board. The Planning Board comments can be found in the Summary of Action (attached to the accompanying Special Use Permit memorandum) and in the <i>Advisory Board Recommendations Section</i> below.

	<ul style="list-style-type: none"> • “The High Density Residential use in the 2000 Land Use Plan has not been renewed in the 2020 plan. According to CH 2020, the rezoning process will happen through Focus Area discussions, which include the residents.” <i>(Neighbor’s Statement)</i> • “Trinitas Ventures keeps referring to the Martin Luther King Jr. Blvd. address as a justification for a Residential-Special Standards-Conditional rezoning, but the building site is not fronting on Martin Luther King Jr. Blvd. In fact, the buildings will be located far from MLK, and much closer to the Franklin-Rosemary and Cobb Terrace properties because of the RCD protecting the creek running along MLK Jr. Boulevard.” <i>(Neighbor’s Statement)</i>
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Staff Comment: The 2020 Land Use Plan has been adopted as a component of the Comprehensive Plan. Additionally, rezoning could occur as an outcome of a focus area process, but not necessarily. However, that does not preclude rezonings from occurring related to development proposals.

The proposed Bicycle Apartments development has frontage on Martin Luther King, Jr. Blvd., however the impact of the development is not only on the site frontage, as with most development. The fact that the existing use is multi-family development and the site’s proximity to downtown and campus are arguments for higher-density development.

We believe that arguments can be made for a rezoning being warranted to achieve the purposes of the Comprehensive Plan, including, the following goals from the plan: provision of a range of housing opportunities for residents (PFE.3); encouraging growth of alternate means of transportation (GA.1); joint Town/University development strategy that aligns initiatives for transportation, housing, environmental protection, and entrepreneurial programs (GPNS.4); a range of neighborhood types that address residential, commercial, social, and cultural needs and uses while building and evolving Chapel Hill’s character for residents, visitors, and students (GPNS.5), housing for students that is safe, sound, affordable, and accessible (TGC.4).

The Residential-Special Standards-Conditional zoning district includes nine objective statements linked to the Comprehensive Plan that must be made to assign the zoning district at a new location. The provision of these nine objectives offers an opportunity for detailed review of the proposed project with important Town objectives. We believe the rezoning could be justified based on Finding C because objectives of the Comprehensive Plan, as noted in the Residential-Special Standards-Conditional zoning district, are being achieved as described below.

1. Promotion of affordable housing on-site and off-site when appropriate, that complies with or exceeds the Council’s current affordable housing policy.

Applicant’s Proposal: The applicant has submitted an affordable housing plan that proposes a \$120,000 payment in lieu of affordable housing as part of the application and justification for rezoning the site to the R-SS-C district.

Staff Comment: With respect to rezoning requests, the Council has an affordable housing policy, adopted on March 6, 2000, for requests with a residential component, which indicates a Council expectation that applicant's will provide 15% affordable dwelling units. Note that this proposal is rental housing and therefore does not have to comply with the Inclusionary Zoning Ordinance. We believe that the applicant's proposal achieves the goal and objective of the R-SS-C district with respect to affordable housing.

2. *Implementation of an energy management and conservation plan that addresses carbon reduction, water conservation and other conservation measures that comply with or exceed the Council's current energy management/ conservation policies.*

Applicant's Proposal: The applicant is proposing to provide 20% more energy efficiency than ASHRAE 90.1 2010 standards as well as utilization of LEED concepts.

Staff Comment: This proposal complies with the Town's current energy management policy and achieves the goal and objective in the R-SS-C district of energy management.

3. *Encouragement of a balanced private and public transportation system that promotes connectivity and safety for vehicles, bicycles, and pedestrians including direct and/or indirect improvements to the community's transportation systems.*

Applicant's Proposal: The proposed residential use in immediate proximity to downtown Chapel Hill and the UNC-CH campus would encourage the use of pedestrian, cycling, and transit facility use. Proposed site sidewalks would and crosswalk on Martin Luther King Jr. Blvd. would connect to town transportation system.

Staff Comment: This proposal has committed to the reduction of on-site vehicular parking and with the location being near downtown and the UNC campus, walking, cycling and transit use are likely benefits We believe it achieves the goal and objective of the R-SS-C district with respect to the community's transportation system.

4. *Support of a healthy downtown district by identifying or providing reasonably accessible pedestrian/bicycle and non-vehicular access to downtown.*

Applicant's Proposal: The Bicycle Apartments would result in a net population increase of about 500 - 525 residents for which the walk to downtown Chapel Hill is about 10 minutes. These new residents would traverse the downtown daily and conveniently on foot, by bicycle, and on bus contributing to the local economy.

Staff Comment: The proposed development is located within an area that includes reasonable pedestrian, bicycle, and transit access to the downtown and therefore achieves this goal and objective of the R-SS-C district with respect to the downtown district non-vehicular access.

5. *Promotion of Art (Private or Public) in private development that is visually accessible to the public and/or providing direct/indirect opportunities for public art.*

Applicant's Proposal: The applicant is proposing to incorporate public art along the public pathway benefiting residents of this development and adjacent apartment communities as they utilize the public path system on the Bicycle Apartments site to access downtown Chapel Hill. The applicant is in the process of working the Town Public Arts Administrator to determine a final design.

Staff Comment: The applicant's proposal complies with the goal and objective of the provision of the R-SS-C district with respect to private or public art. The Town Public Arts Administrator is satisfied with the applicant's proposal.

6. *Protection of adjoining residential uses and neighborhoods with appropriate screening/buffering and/or architectural design elements that is congruous and sensitive to the surrounding residential areas.*

Applicant's Proposal: The Residential-Special Standards-Conditional zoning district does not require specific landscape buffers along property lines, however as noted above appropriate screening and buffering is expected. The applicant has met with the neighbors in the adjacent Franklin-Rosemary Historic District to respond to concerns, including providing exhibits that demonstrate visual screening for some neighbors. The applicant is proposing to retain existing landscaping where the site abuts historic district properties and add supplemental plantings along the eastern and southern property lines. A retaining wall is also proposed on the northern property line adjacent to the Townhouse apartments.

Staff Comment: The applicant is proposing to comply with the goal and objective of the R-SS-C district, with respect to neighborhood protection. We believe the proposal complies with the goal and objective of the R-SS-C district with respect to screening and neighborhood protection.

7. *Protection/restoration of the natural environment by implementing program(s) addressing stream restoration, wildlife habitat, woodland, meadow restoration, steep slope protection, and exotic invasive vegetation management, including programs that encourage private/public partnership to restore and enhance environmental resources.*

Applicant's Proposal: The applicant proposes to remediate the degraded Resource Conservation District portion of the site by removing existing impervious surface and doing stream bank restoration and stabilization along the stream channel that crosses the site.

Staff Comment: The applicant's proposal complies with the goal and objective of the R-SS-C district as it relates to restoration of the natural environment.

8. *Promotion of green and ecologically sound developments.*

Applicant's Proposal: The applicant is proposing to provide 20% more energy efficiency than ASHRAE 90.1 2010 standards as well as utilization of LEED concepts. Additionally,

reduced parking and stream bank restoration and stabilization will improve water quality in the stream channel crossing the site.

Staff Comment: The applicant's proposal to provide an energy efficient development, minimize parking and stream remediation complies with the goal and objective of the R-SS-C district as it related to green and ecological developments.

9. *Encouragement of a community character that promotes economic vitality, environmental protection and social equity.*

Applicant's Proposal: Regarding economic vitality, the applicant proposes to increase the value of the property and the economic activity associated with the near-downtown development. For environmental protection, the applicant proposes to remediate impervious surface in the Resource Conservation District and stream bank stabilization. Regarding social equity, the applicant is proposing an affordable housing payment-in-lieu.

Staff Comment: The applicant's proposal, as described above, complies with the goal and objective of the R-SS-C district as it related to this objective to promote economic vitality, environmental protection and social equity.

Arguments in Opposition: Arguments have been made in opposition to the rezoning based on the consistency with the Comprehensive Plan, the scale and intensity of the associated development proposal, as well as proximity to adjacent Historic District neighborhoods. Some of these arguments were made by the Planning Board, which recommended denial of the resolution of Comprehensive Plan consistency as well as the rezoning resolution. Summaries of Action and written arguments from neighbors are attached to the accompanying Special Use Permit memorandum.

DISCUSSION

The Zoning Atlas Amendment application would effect a change to the current zoning, and thus the permitted types and intensity of land uses. The proposed rezoning to the (R-SS-C) zoning district is necessary to accommodate the proposed development intensity including floor area and density, as follows:

Proposed Development Intensity – Zoning Districts			
		Existing R-4 & OI-1 Zoning Districts	Proposed R-SS-C Zoning District
Floor Area	Maximum Allowed	63,974 s.f.	294,517 s.f.
	Proposed Development	NA	293,816 s.f.
Density	Maximum Allowed	10 DU/Acre (8.1)	NA
	Proposed Development	NA	21.3 DU/Acre
Dwelling Units	Maximum Allowed	91 (74 existing)	NA
	Proposed Development	NA	194 with 608 bedrooms
Primary Height (at property line)	Maximum Allowed	34 ft.	39 ft.
	Proposed Development	NA	39 ft.
Secondary Height	Maximum Allowed	60 ft.	60 ft.
	Proposed Development	NA	65.4 ft.*
*Requesting modification to regulations			

The surrounding uses, zoning districts and overlay zones are as follows:

Surrounding Development Patterns	
General Development Pattern	Medium-density multi-family student housing surrounded by low-density single-family development. The eastern and southern borders are adjacent to a local historic district.
North	Residential-Special Standards-Conditional (R-SS-C) zoning, Townhouse Apartments (approved Residences at Grove Park development), multi-family development.
East	Residential-3 (R-3) zoning, single-family development.
South	Residential-3 (R-3) zoning, Cobb-Terrace Neighborhood, single-family development.
West	Office/Institutional-1 (OI-1) zoning, University Apartments / Northampton Plaza Tower, multi-family development.
Overlay Zoning	Franklin-Rosemary Historic District overlay zone is adjacent to the western, southern and part of the eastern property lines.

Additional Information: The [2020 Land Use Plan²](http://www.townofchapelhill.org/Modules/ShowDocument.aspx?documentid=1215), a component of the [2020 Comprehensive Plan³](http://www.townofchapelhill.org/Modules/ShowDocument.aspx?documentid=15001), identifies this area for high-density residential use. Both the current and proposed zoning districts allow residential multi-family use. Two sides of the proposed redevelopment site are adjacent to low-density residential development. The adjacent zoning is low-density, Residential-3 (R-3) on the western and southern site boundaries. The Franklin-Rosemary Historic District overlay zone is adjacent to the eastern and southern site boundaries.

² <http://www.townofchapelhill.org/Modules/ShowDocument.aspx?documentid=1215>

³ <http://www.townofchapelhill.org/Modules/ShowDocument.aspx?documentid=15001>

Based on our preliminary review, we believe the Council could make the finding that the proposed rezoning is in compliance with the Comprehensive Plan and the Land Use Plan. Relevant goals and objectives in the Comprehensive Plan include, but are not limited to:

- Provision of a range of housing options for current and future residents;
- Foster success of local businesses; and
- Promote a safe, vibrant, and connected community; and
- A transportation system that accommodates transportation needs and demands while mitigating congestion and promoting air quality, sustainability, and energy conservation.
- A vibrant, diverse, pedestrian-friendly, and accessible downtown with opportunities for growing office, retail, residential, and cultural development and activity.
- A range of neighborhood types that addresses residential, commercial, social, and cultural needs and uses while building and evolving Chapel Hill's character for residents, visitors, and students.

CONDITIONAL USE REZONING REQUEST

In Chapel Hill, a rezoning may be requested as either a general use rezoning or a conditional use rezoning request. A general use rezoning would change the zoning to a different zoning district in which any of several kinds of developments and uses are permissible. A conditional use rezoning request is to allow development and uses only with approval of a Special Use Permit or Special Use Permit Modification. The applicant has submitted a Conditional Use Zoning application accompanied with a Special Use Permit application.

With respect to conditional use rezoning requests, the Council has a resolution stating the Council's expectations associated with the accompanying Special Use Permit application. The resolution outlines the Council's desire for the submittal of an Energy Management Plan as part of the associated Special Use Permit application. For additional information on the applicant's response to the Council's adopted resolution, please refer to the Energy Management section in the accompanying Staff Report for the Special Use Permit.

With respect to rezoning requests, the Council has an affordable housing policy, adopted on March 6, 2000, for requests with a residential component, which indicates a Council expectation that applicant's will provide 15% affordable dwelling units.

The Council has discretionary authority to approve or deny a rezoning request. As with a conditional use rezoning request, the specific proposal in the accompanying Special Use Permit application is related to the rezoning request. We believe it is appropriate for the Council to consider a specific Special Use Permit proposal on that application, in tandem with a rezoning hearing. If the Council does not find the Special Use Permit proposal to be an acceptable use of the property, we would recommend that the Council not approve the rezoning request.

PROTEST PETITION

Opportunity for a protest petition to a proposed amendment to the Zoning Atlas is provided for under North Carolina Statutes. If a sufficient protest petition is filed with the Town Clerk at least

2 business days prior to the date of this public hearing, scheduled for January 23, 2013, the proposed rezoning shall not become effective except by favorable vote of not less than three-fourths of the Town Council. A sufficient protest petition was provided by the required deadline. Therefore, a three-fourths (7) favorable vote of the entire Council, is required in order for the rezoning to become effective.

ADVISORY BOARD RECOMMENDATION

Planning Board: The Planning Board met on November 13 and 20 and voted 7-0 to recommend that the Council deny 1) the resolution finding that the Zoning Atlas Amendment request is consistent with the Comprehensive Plan, and 2) the Zoning Atlas Amendment request. A copy of the Planning Board Summary of Action is attached to the accompanying Special Use Permit memorandum, with key discussion points noted below:

- The Planning Board recommended that the Council find the project inconsistent with the Comprehensive Plan because they did not believe the proposal is part of a “plan for student housing in the community” as recommended in the Big Ideas section of the Comprehensive Plan.

Staff Comment: The Comprehensive Plan includes many goals and objectives. One of the “Big Ideas” in the 2020 Comprehensive Plan is that the Town “Increase the ratio of workforce housing by 2020 and develop a plan for student housing in the community.” This big idea calls for coordinated discussions among residents, the Town and University regarding housing. These discussions are on-going. We believe this goal broadly reflects the more general Comprehensive Plan housing goals and themes, which include student housing.

The Town and the University will continue to collaborate on ways to address student housing issues in the community.

- The Planning Board thought that the proposed development would eliminate workforce housing⁴.

Staff Comment: One of the Big Ideas in the 2020 Comprehensive Plan calls for increasing the ratio of workforce housing by 2020. We contacted the property owner to determine what the approximate percentage of the existing apartments would be considered workforce housing. The property owner said he believed that about 80% of the units were occupied by students. We believe that some of the existing housing may be work force housing but that it is principally student housing. Furthermore, we believe that the proposed student housing is fulfilling a need for dedicated student housing in walking distance to the campus, and developments such as the Bicycle Apartments could help relieve the pressure to convert single-family homes to student housing.

⁴ Housing affordable to households earning between 80 and 120 percent of the area median income for a defined area such as a municipality.

- The Planning Board thought that the proposed development may not maintain and enhance property values.

Staff Comment: To date no evidence has been provided regarding property values. Testimony may be provided about adjacent property values at the Public Hearing.

- The Planning Board did not support the Special Use Permit as they considered the proposed development too intense.

Staff Comment: We think that the proposed redevelopment intensity is appropriate for a site with existing multi-family development within a 10 to 15 minute walk of the downtown and campus, with the recommend stipulations in Resolution A. The site is also adjacent not only to single-family homes and the Historic District but also to the University Apartments and the Townhouse Apartments (approved Residences at Grove Park).

- The Planning Board considered the proposed development too close to surrounding neighborhoods and not properly protecting those neighborhoods and the Historic District.

Staff Comment: The proposed redevelopment of the Central Park site, as regards proximity to neighboring properties, would be similar to the existing Central Park Apartments development. We note that the western and northern sides of the site are adjacent to existing multi-family development. The eastern and southern boundaries are adjacent to the Historic District whereas the southwestern boundary is adjacent to heavily wooded lots. The existing Central Park Apartments are currently closer to the southwestern property line.

As regards protection of the historic district and neighborhood, the applicant's alternative plan is proposing variable-width landscape screening on the eastern and southern property lines, with a 40 to 65-foot width and a 20 to 50-foot width respectively. These would be comprised of both existing and supplemental vegetation. There is also a 6-foot high fence proposed on these two property lines adjacent to the Historic District to contain any potential pedestrian traffic in the direction of Hillsborough Street.

- The Planning Board noted that the area surrounding the Bicycle Apartments is identified as a Future Focus Area in the 2020 Comprehensive Plan and recommended that the area be considered premature for redevelopment.

Staff Comment: Identification of a Future Focus Area does not mean development activity is suspended in that area. There are 6 Future Focus Areas identified in the 2020 Comprehensive Plan. The particular area where the Bicycle Apartments is proposed is south of Focus Area 3 (Central West), whose planning process is currently underway, and north of the Downtown Focus Area 1. Focus Area Planning in this area is not scheduled at this time.

Additionally, the applicant has an accompanying rezoning request for the Residential-Special Standards-Conditional (R-SS-C) zoning district. We believe this zoning district has a higher bar, unlike other districts, which require the applicant to show that they are complying with the nine findings associated with the R-SS-C district. Please refer to the rezoning memorandum for additional information.

BACKGROUND

The [2020 Land Use Plan](#)⁵, a component of the [2020 Comprehensive Plan](#)⁶ designates this site which is adjacent to the downtown for High Density Residential Use at 8-15 units/acre. The area is also designated as a Future Focus Area that is to be the subject of subsequent focus area planning initiatives. We believe the Bicycle Apartments at Central Park redevelopment with a proposed 21.3 development unit/acre density complies with the higher density land use plan designation because of the proposal's compliance with the various themes in the 2020 Comprehensive Plan as indicated below, including the development's proximity to downtown and the UNC campus, which will promote walking, cycling, and transit use as well as provide needed housing for students.

The following are themes from the 2020 Comprehensive Plan, adopted June 25, 2012:

Conforms	No.	2020 Comprehensive Plan Themes
√	1	A Place for Everyone
√	2	Community Prosperity and Engagement
√	3	Getting Around
√	4	Good Places, New Spaces
√	5	Nurturing Our Community
√	6	Town and Gown Collaboration

We believe the Bicycle Apartments at Central Park redevelopment proposal complies with the themes of the 2020 Comprehensive Plan. For additional information on how this proposed development addresses the themes and goals of the Comprehensive Plan, please refer to the applicant's Statement of Justification attached to the accompanying Special Use Permit memorandum.

SITE HISTORY

December 13, 1965 Special Use Permit approved for Northampton Plaza (currently University Apartments) and Terrace Apartments, including 4 buildings, 202 dwelling units and 303 parking spaces. The approved site plan also indicated vehicular and pedestrian connections between Northampton Plaza and Terrace Apartments including a trail to the intersection of Henderson and North Streets. The Northampton project was under single ownership.

⁵ <http://www.townofchapelhill.org/Modules/ShowDocument.aspx?documentid=1215>

⁶ <http://www.townofchapelhill.org/Modules/ShowDocument.aspx?documentid=15001>

October 9, 1967	Northampton Special Use Permit Modification approved with additional stipulations, including increased dwelling units and parking, to 229 and 344 respectively. The approved site plan also indicated vehicular and pedestrian connections between Northampton Plaza and Terrace Apartments including a trail to the intersection of Henderson and North Streets.
April 25, 1977	Modified Northampton Special Use Permit approved to convey property to preservation society and relocation of historic house.
November 14, 1977	Approved Special Use Permit Modification to convert Northampton Plaza to senior housing. Approval invalidated December 1, 1979 as permit was not acted upon.
November 4, 1981	Application for Special Use Permit Modification submitted to separate Northampton Plaza and Terrace apartments into separate complexes and convert Northampton Plaza into condominiums. The application was withdrawn on December 16, 1981.
March 12, 1984	Adjacent Northampton Plaza and Northampton Terrace properties, jointly encumbered by a Special Use Permit, transferred from single ownership to separate ownership.
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 Town Council.
June 15, 2012	Zoning Atlas Amendment and Special Use Permit applications, including a request for partial revocation of the existing Special Use Permit, submitted by Trinitas Ventures.

RESOLUTION

(Rezoning From Office Institutional-1 and Residential-4 to Residential-Special Standards-Conditional)

A RESOLUTION REGARDING THE CHAPEL HILL ZONING ATLAS AMENDMENT FOR 602 MARTIN LUTHER KING JR BLVD AND CONSISTENCY WITH THE COMPREHENSIVE PLAN (PIN 9788-49-1242, PROJECT #12-009) (2013-02-27/R-5)

WHEREAS, the Council of the Town of Chapel Hill has considered the application from Trinitas Ventures to amend the Zoning Atlas to rezone property described in the accompanying rezoning application from Office/Institutional-1 (OI-1) and Residential-4 (R-4) to Residential-Special Standards-Conditional (R-SS-C) and finds that the amendment, if enacted, is in the public's interest and is warranted, to achieve the purposes of the Comprehensive Plan including, but not limited to:

- Provision of a range of housing options for current and future residents;
- Foster success of local businesses; and
- Promote a safe, vibrant, and connected community; and
- A transportation system that accommodates transportation needs and demands while mitigating congestion and promoting air quality, sustainability, and energy conservation.
- A vibrant, diverse, pedestrian-friendly, and accessible downtown with opportunities for growing office, retail, residential, and cultural development and activity.
- A range of neighborhood types that addresses residential, commercial, social, and cultural needs and uses while building and evolving Chapel Hill's character for residents, visitors, and students.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby finds the proposed ordinance to be reasonable and consistent with the Town Comprehensive Plan.

This the 27th day of February, 2013.

ORDINANCE

(Rezoning From Office Institutional-1 and Residential-4 to Residential-Special Standards-Conditional)

AN ORDINANCE AMENDING THE CHAPEL HILL ZONING ATLAS FOR 602 MARTIN LUTHER KING JR BLVD (PIN 9788-49-1242, PROJECT #12-009) (2013-02-27/O-1)

WHEREAS, the Council of the Town of Chapel Hill has considered the application for 602 Martin Luther King Jr. Blvd. to amend the Zoning Atlas to rezone property described below from Office Institutional-1 (OI-1) and Residential-4 (R-4) to Residential-Special Standards-Conditional (R-SS-C) zoning district and finds that the amendment is warranted, because of changed or changing conditions in the area or in the jurisdiction generally, and in order to achieve the purposes of the Comprehensive Plan;

- New approved higher-density development on major transportation corridors as well as in or near downtown, including the Residences at Grove Park, Shortbread Lofts, Greenbridge, 140 West, East 54, and Charterwood;
- A newly approved Comprehensive Plan that acknowledges significant changes in the community regarding sustainability, development patterns, and economic development;
- Provision of a range of housing options for current and future residents;
- Foster success of local businesses;
- Promote a safe, vibrant, and connected community;
- A transportation system that accommodates transportation needs and demands while mitigating congestion and promoting air quality, sustainability, and energy conservation;
- A vibrant, diverse, pedestrian-friendly, and accessible downtown with opportunities for growing office, retail, residential, and cultural development and activity; and
- A range of neighborhood types that addresses residential, commercial, social, and cultural needs and uses while building and evolving Chapel Hill's character for residents, visitors, and students.

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Chapel Hill that the Chapel Hill Zoning Atlas be amended as follows:

SECTION I

That the site, identified as now or formerly Orange County Parcel Identifier Number 9788-49-1242 that is currently zoned Office Institutional-1 (OI-1) and Residential-4 (R-4) and located at 602 Martin Luther King Jr. Blvd., the Central Park Apartments site being between Hillsborough St. and Martin Luther King, Jr. Blvd. and east of University Apartments multifamily development, including half of the Martin Luther King Jr. Blvd. right-of-way that is abutting the property frontage, shall be rezoned to Residential Special Standards-Conditional (R-SS-C). The description of the entire property is as indicated on the attached map and below:

Being all of that parcel of land lying in Chapel Hill Township, Town of Chapel Hill, Orange County, North Carolina, containing 9.05 acres of land, more or less, including one half of the abutting road right-of-way and the tract being and more particularly described as follows:

COMMENCING at a GPS point set in the roadway of Martin Luther King, Jr. Boulevard, said point having NCGS Grid Coordinates of N=789433.39 feet, and E=1983331.22 feet, NAD 83(2007); thence

N 70°49'50" E, a distance of 60.10 feet to an existing iron pipe lying on the easterly right-of-way Martin Luther King, Jr. Boulevard, said point also being the southwestern-most boundary corner of that parcel of land as conveyed to Sydney A. Martin ("The Gables Condominiums"), recorded in Deed Book 583, Page 61, Orange County, North Carolina Registry of Deeds, to the **POINT OF BEGINNING**;

thence leaving the easterly right-of-way of Martin Luther King, Jr. Boulevard, and following the southerly boundary line of the aforesaid Sydney A. Martin parcel along the following four (4) calls;

- 1) thence N 70°42'16" E, a distance of 73.82 feet to an existing iron pipe;
- 2) thence N 60°52'25" E, a distance of 118.50 feet to an existing iron pipe;
- 3) thence N 51°58'04" E, a distance of 63.87 feet to an existing iron pipe; and
- 4) thence N 69°24'34" E, a distance of 69.28 feet to a point, said point being the southeastern-most boundary corner of the aforesaid Sydney A. Martin parcel, said point also lying on the westerly boundary line of that parcel of land as conveyed to Townhouse Apartments, LLC, recorded in Deed Book 1642, Page 285, aforesaid records;

thence following the westerly boundary line of the aforesaid Townhouse Apartments, LLC parcel

S 01°06'18" W, a distance of 67.79 feet to a point, said point being the southwestern-most boundary corner of the aforesaid Townhouse Apartments, LLC parcel;

thence following the southerly boundary line of the aforesaid Townhouse Apartments, LLC parcel

S 88°03'14" E, a distance of 807.61 feet to an existing iron pipe lying on the southerly boundary line of the aforesaid Townhouse Apartments, LLC parcel, said point also being the northwestern-most boundary corner of that parcel of land as conveyed to Pamela Zeman, recorded in Deed Book 5066, Page 427, aforesaid records;

thence following the southwesterly boundary line of the aforesaid Pamela Zeman parcel S

26°48'41" E, a distance of 149.37 feet to an existing iron pipe, said point being the southwestern-most boundary corner of the aforesaid Pamela Zeman parcel, said point also being the northwestern-most boundary corner of that parcel of land as conveyed to Lauren Rivers, recorded in Deed Book 4131, Page 591, aforesaid records;

thence following the southwesterly boundary line of the aforesaid Lauren Rivers parcel S

19°29'00" E, a distance of 144.41 feet to an existing iron pipe, said point being the southwestern-most boundary corner of the aforesaid Lauren Rivers parcel, said point also being the northwestern-most boundary corner of that parcel of land as conveyed to Donald Whittier and Diane Marie Dorney, recorded in Deed Book 4260, Page 188, aforesaid records;

thence following the southwesterly boundary line of the aforesaid Donald Whittier and Diane Marie Dorney parcel S 25°32'08" E, a distance of 188.31 feet to a point, said point being the southwestern-most boundary corner of the aforesaid Donald Whittier and Diane Marie Dorney parcel, said point also lying on the northwesterly boundary line of that parcel of land as conveyed to Richard F. Donnan and Caroline W. Donnan, recorded in Deed Book 183, Page 167, aforesaid records;

thence following the northwesterly boundary line of the aforesaid Richard F. Donnan and Caroline W. Donnan parcel S 66°52'04" W, a distance of 24.34 feet to an existing iron pipe, said point being the northwestern-most boundary corner of the aforesaid Richard F. Donnan and Caroline W. Donnan parcel, said point also being the northeastern-most boundary corner of that parcel of land as conveyed to Caroline W. Donnan and Richard F. Donnan, recorded in Deed Book 1470, Page 193, aforesaid records;

thence following the northwesterly boundary line of the aforesaid Caroline W. Donnan and Richard F. Donnan parcel S 63°26'51" W, a distance of 278.86 feet to an existing iron pipe, said point being the northwestern-most boundary corner of the aforesaid Caroline W. Donnan and Richard F. Donnan parcel, said point also lying on the northeasterly boundary line of that parcel of land as conveyed to William J. Thompson, recorded in Deed Book 365, Page 72, aforesaid records;

thence following the northeasterly boundary line of the aforesaid William J. Thompson parcel (1) N 61°37'15" W, a distance of 260.91 feet to a point, said point being the northwestern-most boundary corner of the aforesaid William J. Thompson parcel (1), said point also being the northeastern-most boundary corner of that parcel of land as conveyed to Kathleen Cheape, recorded in Deed Book 365, Page 74, aforesaid records;

thence following the northeasterly boundary line of the aforesaid Kathleen Cheape parcel N 61°37'15" W, a distance of 197.34 feet to a point, said point being the northwestern-most boundary corner of the aforesaid Kathleen Cheape parcel, said point also being the northeastern-most boundary corner of that parcel of land as conveyed to William J. Thompson, recorded in Deed Book 788, Page 360, aforesaid records;

thence following the northeasterly boundary line of the aforesaid William J. Thompson parcel (2) N 61°37'15" W, a distance of 222.32 feet to a point, said point being the northwestern-most boundary corner of the aforesaid William J. Thompson parcel (2), said point also being the southeastern-most boundary corner of that parcel of land as conveyed to The Birgel Family Partnership, recorded in Deed Book 1189, Page 416, aforesaid records;

thence following the northeasterly boundary line of the aforesaid The Birgel Family Partnership along the following two (2) calls:

- 1) thence N 61°37'15" W, a distance of 33.03 feet to an existing PK Nail; and
- 2) thence N 21°58'35" W, a distance of 155.32 feet to an existing iron pipe, said point being the northeastern-most boundary corner of the aforesaid The Birgel Family Partnership parcel, said

point also being the southeastern-most boundary corner of that parcel of land as conveyed to J. Herbert Holland Trust, recorded in Deed Book 406, Page 114, aforesaid records;

thence following the northeasterly and northwesterly boundary lines of the aforesaid J. Herbert Holland Trust parcel along the following five (5) calls;

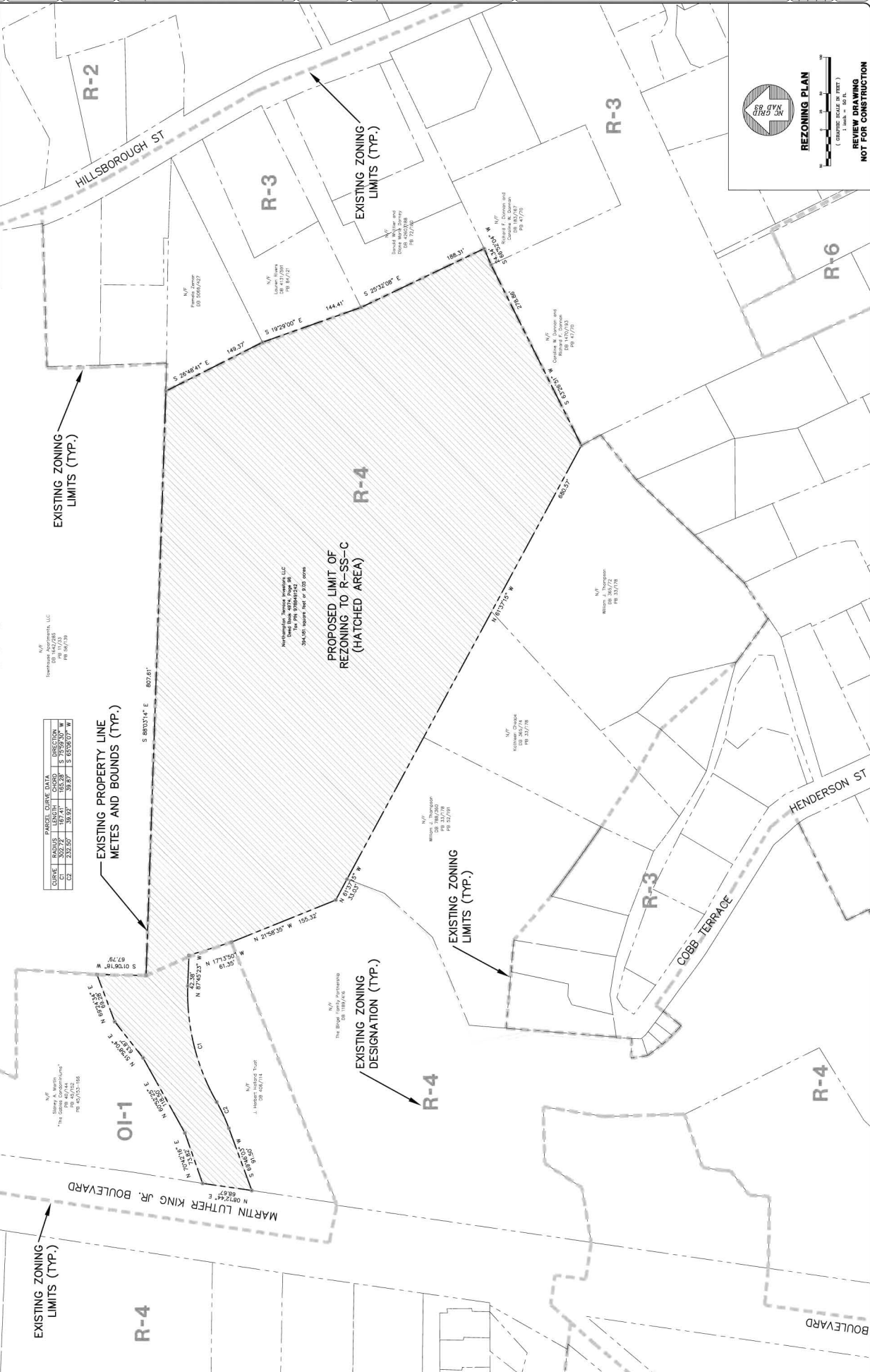
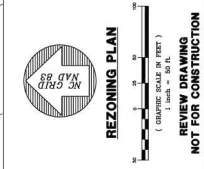
- 1) thence N 17°13'50" W, a distance of 61.35 feet to an existing PK Nail;
- 2) thence N 87°45'23" W, a distance of 42.38 feet to an existing iron pipe;
- 3) thence along a curve to the left, said curve having a radius of 302.72 feet, an arc length of 167.41 feet, a chord bearing of S 75°59'30" W, and a chord length of 165.28 feet to an existing iron pipe;
- 4) thence following a curve to the right, said curve having a radius of 232.50 feet, an arc length of 39.92 feet, a chord bearing of S 65°06'07" W, and a chord length of 39.87 feet to an existing iron pipe; and
- 5) thence S 69°46'03" W, a distance of 91.50 feet to an existing iron pipe, said point being the northwestern-most boundary corner of the aforesaid J. Herbert Holland Trust parcel, said point also lying on the easterly right-of-way of Martin Luther King, Jr. Boulevard;

thence following the easterly right-of-way of Martin Luther King, Jr. Boulevard N 08°12'44" E, a distance of 68.67 feet to an existing iron pipe, to the **POINT OF BEGINNING**, containing 394,181 square feet, or 9.05 acres of land, more or less, and being all of that parcel of land as conveyed to Northampton Terrace Investors, LLC, recorded in Deed Book 4974, Page 96, aforesaid records.

SECTION II

That all ordinances and portions of ordinances in conflict herewith are hereby repealed.

This the 27th day of February, 2013.



PARCEL CURVE DATA				
CURVE	RADIUS	LENGTH	CHORD	DIRECTION
C1	302.72'	167.41'	165.28'	S 75°59'30" W
C2	232.50'	39.92'	39.87'	S 65°06'07" W

PARCEL IDENTIFICATION NUMBER	TOTAL PARCEL ACREAGE	CURRENT ZONING	ACREAGE TO BE REZONED	PROPOSED ZONING
9786-49-1242	9.05 AC.	R-4 (8.49 AC.) O-1 (0.56 AC.)	R-4 (8.49 AC.) O-1 (0.56 AC.)	R-55-C

TOTAL TO BE REZONED = 9.05 AC. (SAME AS SUP ADJGEMENT)

RESOLUTION

(Denying Rezoning From Office Insitutional-1 and Residential-4 to Residential-Special Standards-Conditional)

A RESOLUTION DENYING AN APPLICATION FOR A ZONING ATLAS AMENDMENT FOR 602 MARTIN LUTHER KING JR BLVD (PIN 9788-49-1242, PROJECT #12-009)(2013-02-27/R-6)

WHEREAS, the Council of the Town of Chapel Hill has considered the application of 602 Martin Luther King Jr. Blvd. to amend the Zoning Atlas to rezone property described below from Office Insitutional-1 (OI-1) and Residential-4 (R-4) to Residential-Special Standards-Conditional (R-SS-C) zoning district and fails to find that the amendment:

- a) corrects a manifest error in the chapter, or
- b) is justified because of changed or changing conditions in the area of the rezoning site or the community in general, or
- c) achieves the purposes of the Comprehensive Plan.

NOW, THEREFORE, BE IT RESOLVED by the Council of the Town of Chapel Hill that the Council hereby denies the application of 602 Martin Luther King Jr. Blvd. to amend the Zoning Atlas to rezone the property identified as now or formerly Orange County Parcel Identifier Number 9788-49-1242 that is currently zoned Office Insitutional-1 (OI-1) and Residential-4 (R-4) and located at 602 Martin Luther King Jr. Blvd., the site being between Hillsborough St. and Martin Luther King, Jr. Blvd. and east of University Apartments multifamily development, including half of the Martin Luther King Jr. Blvd. right-of-way within the Chapel Hill Town Limits that is abutting the property frontage, shall not be rezoned to Residential-Special Standards-Conditional (R-SS-C). The description of the entire property is indicated on the attached map.

This the 27th day of February, 2013.

ZONING ATLAS AMENDMENT APPLICATION

TOWN OF



CHAPEL HILL

Planning Department
405 Martin Luther King Jr. Blvd
phone (919) 968-2728 fax (919) 969-2014
www.townofchapelhill.org

Parcel Identifier Number (PIN): 9788491242

Date: 1 June 2012

Section A: Project Information

Project Name: The Bicycle Apartments at Central Park

Property Address: 602 Martin Luther King Jr. Boulevard

Zip Code: 27514

Use Groups (A, B, and/or C): A

Existing Zoning District: R-4 & OI-1

Project Description: Re-development of site with one apartment building and associated amenities.

Proposal includes rezoning of property to R-SS-C.

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

Applicant Information (to whom correspondence will be mailed)

Name: George Retschle, P.E. - Ballentine Associates

Address: 221 Providence Rd.

City: Chapel Hill

State: NC

Zip Code: 27514

Phone: (919) 929-0481

Email: georger@bapa.eng.pro

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

Signature: 

Date: 29 May 12

Owner/Contract Purchaser Information:

☐ Owner☒ Contract Purchaser

Name: Trinitas Ventures Contact: Mr. Travis Vencel

Address: 201 Main Street, Suite 1000

City: Lafayette

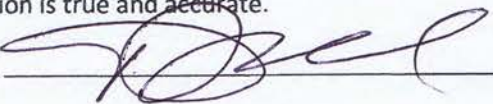
State: IN

Zip Code: 47901

Phone: (765) 464-2800

Email: tvencel@trinitas-ventures.com

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

Signature: 

Date: 5-29-12



**ZONING ATLAS AMENDMENT APPLICATION
SUBMITTAL REQUIREMENTS
TOWN OF CHAPEL HILL
Planning Department**

The following must accompany your application. Failure to do so will result in your application being considered incomplete. For assistance with this application, please contact the Chapel Hill Planning Department (Planning) at (919)968-2728 or at planning@townofchapelhill.org. For detailed information, please refer to the Description of Detailed Information handout.

X	Application fee (refer to fee schedule)	Amount Paid \$	1,702.95
X	Pre-Application Meeting – with appropriate staff		
X	Digital Files - provide digital files of all plans and documents		
X	Mailing list of owners of property within 1,000 feet perimeter of subject property (see GIS notification tool)		
X	Mailing fee for above mailing list	Amount Paid \$	287.70
X	Written Narrative describing the proposal		(Paid with ZCP Application)
X	Statement of Justification		
X	Digital photos of site and surrounding properties		
X	Legal description of property to be rezoned		
N/A	Phasing Plan (if applicable) indicating phasing boundaries and phasing notes		
X	Reduced Site Plan Set (reduced to 8.5"x11")		

Plan Sets (15 copies to be submitted no larger than 24"x36")

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

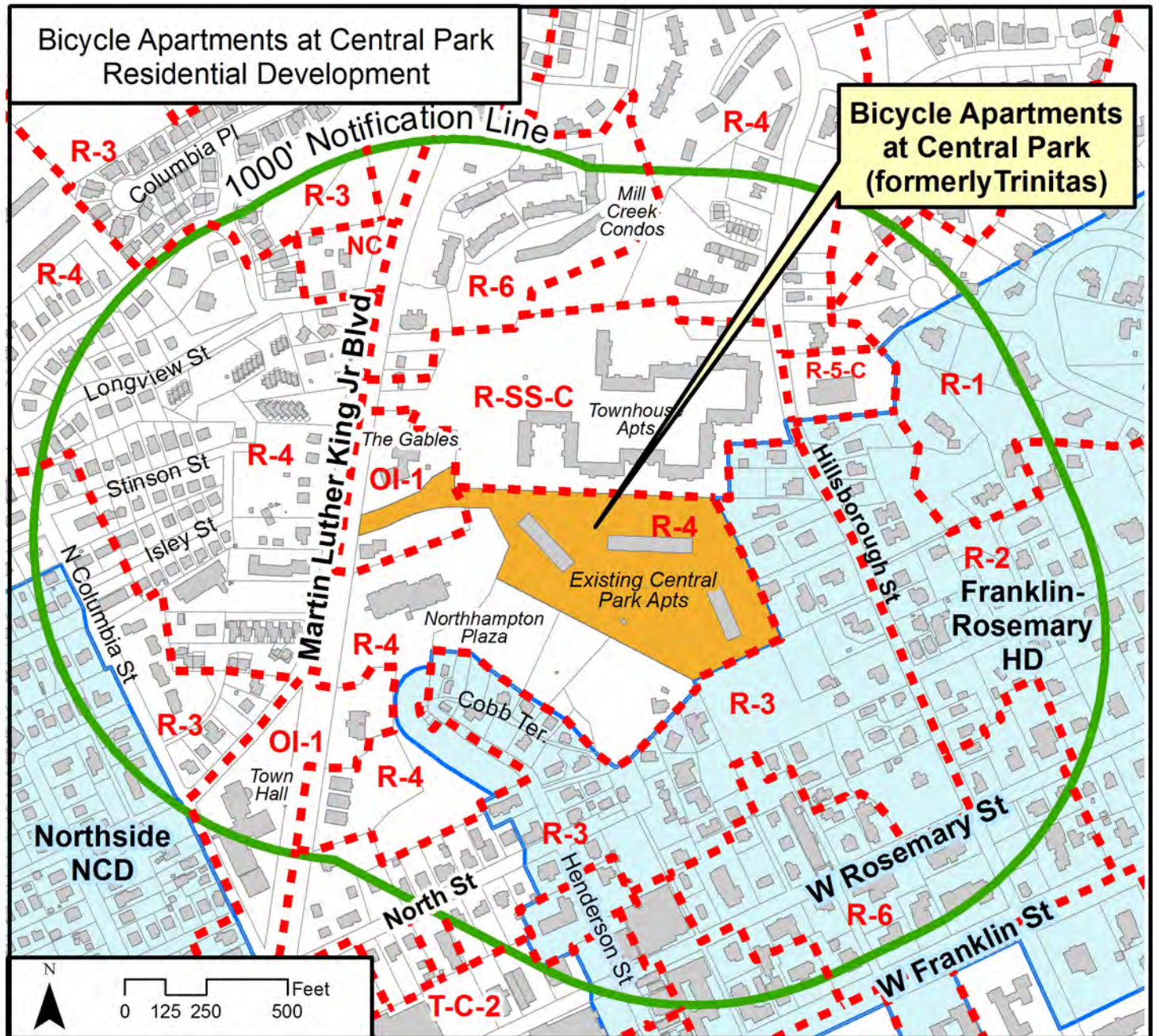
- Project Name
- Legend
- Labels
- North Arrow (North oriented toward top of page)
- Property Boundaries with bearing and distances
- Scale (Engineering), denoted graphically and numerically
- Setbacks
- Streams, RCD Boundary, Jordan Riparian Buffer Boundary, Floodplain, and Wetlands Boundary, where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

Area Map

- a) Project name, applicant, contact information, location, PIN, & legend
- b) Dedicated open space, parks, greenways
- c) Overlay Districts, if applicable
- d) Property lines, zoning district boundaries, land uses, project names of site and surrounding properties, significant buildings, corporate limit lines
- e) 1,000 foot notification boundary

Additional Materials Attached to Special Use Permit

- Additional Council Questions and Responses
- Revised Application Materials – Alternative Plan
- Combined Neighborhood Comment
- Affordable Housing Matrix
- Combined Advisory Board Summaries of Action





**TOWN OF CHAPEL HILL
NORTH CAROLINA
EXECUTIVE SUMMARY**

**Meeting Date: 2/27/2013
AGENDA #12**

Title of Agenda Item: Consider Application for Special Use Permit - The Bicycle Apartments at Central Park, 602 Martin Luther King Jr. Blvd. (R-7)(R-8)(R-9)(R-10)

Council Goal: Focus on Economic Development, Land Use, and Transportation for a Balanced and Sustainable Future

Background: Tonight the Council continues the Public Hearing held on January 23, 2013 to consider a Special Use Permit application for the Bicycle Apartments at Central Park, located at 602 Martin Luther King, Jr. Blvd., between Hillsborough St. and Martin Luther King, Jr. Blvd. and east of University Apartments. The application proposes: 1) demolition of 74 dwelling units in three, 2-story, apartment buildings, 2) construction of a 4 to 6-story apartment building with 194 dwelling units, and 3) parking for 241 vehicles. The proposed alternative plan would shift the building away from the historic district. Accompanying the Special Use Permit application is a request for partial revocation of the existing Special Use Permit and a Rezoning request.

Fiscal Note: In response to Council requests, we are developing a means for assessing the economic impact of proposed development. While we build this system, we have provided an interim chart in the attached memorandum, which attempts to capture the key elements of impact.

Recommendations: That the Council continue the Public Hearings to consider additional information and receive public comment. We recommend adoption of the Revised Resolution to approve a partial revocation of the existing Special Use Permit to change the area encumbered by that permit, and adoption of Revised Resolution A to approve the alternative plan for the proposed multi-family development.

ATTACHMENTS:

Viewing attachments may require [Adobe Acrobat](#).

Staff Memorandum

Revised Resolution - Partial Revocation of Existing Special Use Permit

Revised Resolution A - Alternative Plan, Special Use Permit, Approving the Application

Revised Resolution B - Public Hearing Plan, Special Use Permit, Approving the Application

Resolution C - Special Use Permit, Denying the Application

Additonal Responses to Council's Public Hearing Questions

Applicant's Revised Material

Petition Regarding Access to Cobb Terrace

Combined Neighborhood Comment

Affordable Housing Contributions Matrix

Combined Advisory Board Summaries of Action

Northampton Plaza and Terrace, 1965, 1967 & 1977 Special Use Permits

Area Map

MEMORANDUM

TO: Roger L. Stancil, Town Manager

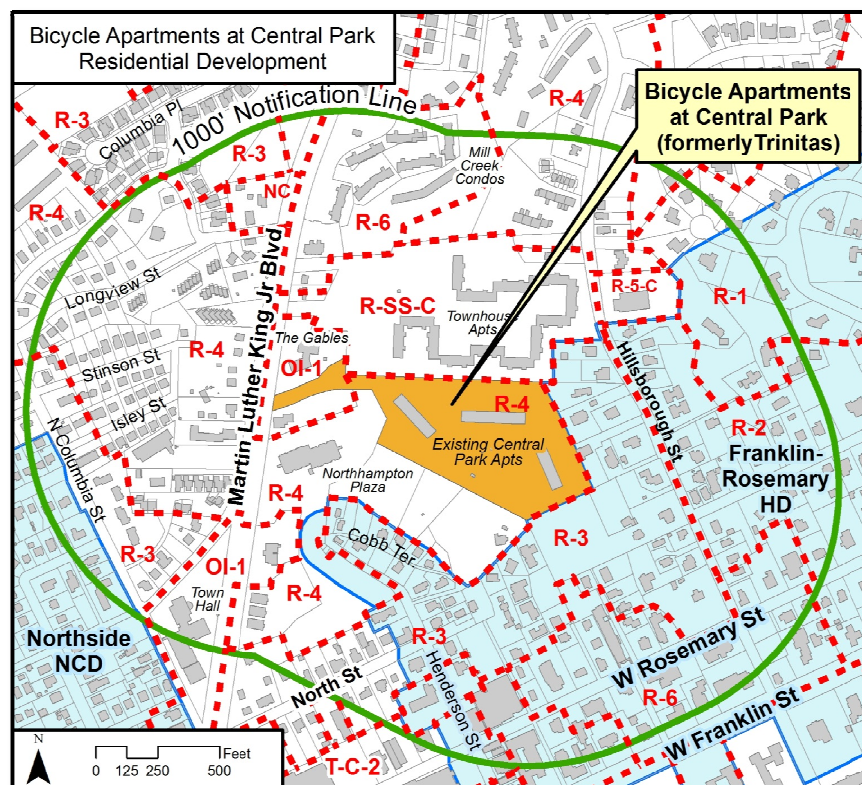
FROM: J. B. Culpepper, Planning Director
Gene Poveromo, Development Manager
Phil Mason, Principal Planner

SUBJECT: Application for Special Use Permit - The Bicycle Apartments at Central Park, 602 Martin Luther King Jr. Blvd. (Project No. 12-010)

DATE: February 27, 2013

INTRODUCTION

Tonight the Council continues the public hearing on redevelopment of the Central Park Apartments site into higher-density student housing from [January 23, 2013](http://chapelhillpublic.novusagenda.com/MeetingView.aspx?MeetingID=196&MinutesMeetingID=-1)¹.



¹ <http://chapelhillpublic.novusagenda.com/MeetingView.aspx?MeetingID=196&MinutesMeetingID=-1>

Tonight's public hearing is continued to receive evidence in support of and in opposition to approval of the Special Use Permit application and partial revocation of the associated existing Special Use Permit.

HIGHLIGHTS

- **Affordable Housing** – There is a Council policy stating an expectation of 15% affordable housing² with applications that have a residential component. The applicant has revised their previous \$90,000 offer for payment-in-lieu of affordable housing and is now proposing \$120,000. We have provided a chart below comparing this proposal with other recent developments. Resolutions of approval have been revised to reflect the applicant's proposed change.
- **Alternative Site Design / Shifting Building Away From Historic District** – The applicant has provided revised site data corresponding to the proposed alternative site plan, with the building footprint shifted away from the Historic District approximately 50 feet and encroaching into the outer band of the Resource Conservation District. Revised Resolution A would approve this adjusted site design.
- **Site Access / Cobb Terrace Stairway** – Staff provides additional information about access and ownership of the Cobb Terrace Stairway.
- **Cobb Terrace Access Petition** - provides additional information regarding access to the site via Cobb Terrace in response to a petition.
- **Trinitas Ventures Tenant Feedback** - The applicant has provided additional information regarding tenant feedback from other Trinitas developments.
- **Economic Impact** - The Council has recently expressed interest in assessing the economic impacts of new development. While the Town has not yet developed a formal process for evaluating economic impact, we have developed a chart below identifying the potential costs and benefits of the Bicycle Apartments. On balance, the proposed redevelopment appears to have a positive economic impact.

These issues and others are discussed in more detail in the *Discussion* section below. Additional questions and responses are attached.

RECOMMENDATIONS

Staff Recommendation: We recommend adoption of the attached Revised Resolutions to 1) approve a partial revocation of the existing Special Use Permit to change the area encumbered by that permit, and 2) adopt Revised Resolution A for the Bicycle Apartments at Central Park Special Use Permit to construct a 4 to 6 story multi-family residential building with 194 dwelling units/608 bedrooms, 294,512 square feet of floor area, and a minimum of 241 vehicular parking spaces.

² The Council has also enacted an Inclusionary Zoning Ordinance that pertains to the provision of affordable housing for development applications proposing residential dwellings for ownership.

Note that Resolution A has taken the changes proposed in the applicant's alternative plan into consideration. The Council may otherwise choose to adopt Resolution B representing the original site plan presented to the Council at the January 23 Public Hearing. Resolution C would deny the Special Use Permit application.

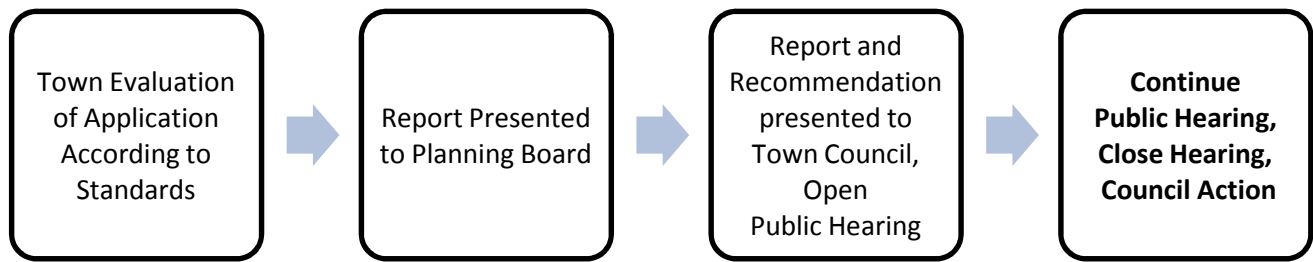
Revised Resolution A includes the following changes since the Public Hearing to reflect the alternative plan:

- Modification to Regulations request a reduction in the gap between parking provided and the minimum parking required by 31 spaces, from 120 to 89. The revised parking proposed is 241 parking spaces rather than 216.
- Modification to regulations to exceed the maximum 61,410 s.f. land disturbance in all Resource Conservation District zones now proposed to increase by 4,727 s.f. from 113,968 s.f. to 118,695 s.f.
- Modification to regulations to exceed the maximum 30,705 s.f. of impervious surface in the Resource Conservation District (RCD) now proposed to increase by 35,077 s.f. from 13,287 s.f. in the upland zone to 48,364 s.f. in the upland, managed use and stream side zones.
- Stipulation about partial revocation of existing Special Use Permit revised to note that pedestrian and vehicular cross-access remain in force from prior approval.
- Floor area increased from 293,816 s.f. to 294,512 s.f.
- Stipulation for a greenway easement across the property to connect possible future Mill Race Greenway.
- Addition of stipulation requiring that Canopy Tree Planting Plan provide replacement canopy tree coverage of 30%.
- Increase landscape buffers from 21 to 23 feet wide on the eastern property line to 40 to 65 feet.
- That the applicant remove the balconies from the east wing of the building facing the historic district.

We also recommend enactment of the accompanying Zoning Atlas Amendment Ordinance, to rezone the northern site, corresponding to the Special Use Permit, from the existing Residential-4 (R-4) and Office/Institutional-1 (OI-1) zoning districts to the Residential-Special Standards-Conditional (R-SS-C) zoning district. Please refer to the Zoning Atlas Amendment memorandum for additional information.

PROCESS

Tonight the Council continues the public hearings and considers possible action.



DISCUSSION

1. **Affordable Housing:** Council members expressed concern that the proposed \$90,000 payment-in-lieu of affordable housing was not adequate and requested that that applicant propose a larger payment and that staff provide information about recent affordable housing payments.

Applicant Response: “We understand the Town’s need and desire to have affordable housing for all. Student rentals that are appropriate and sustainable help by relieving pressure on existing affordable housing opportunities.

The Town has acknowledged that the Inclusionary Zoning Ordinance does not apply to rental developments. While an affordable payment is not required, Trinitas is committed to participation and had proposed a payment in lieu of \$90,000. Trinitas proposes to increase that payment in lieu to \$120,000 (\$6,666 per unit). While our project is most similar to Shortbread Lofts, this payment amount is supported by both the Charterwood and Shortbread Lofts payments. Shortbread Lofts’ payment was calculated at \$5,000 per unit and Charterwood at \$10,087 per unit. $(194-74=120 \text{ new units @ } 15\% = 18 \text{ affordable units @ } \$6,666 = \$120,000)$

We also heard the Council’s concerns that projects create a need for workforce housing. The obvious workforce attributed to this project is our operating staff. In an effort to address this need we are committed to providing a reduction in rent for our staff. We will agree to subsidize our employees’ rent at a rate of 20 percent for those who choose to live on site. This would correlate (at current market rent for 10 employees) to \$1,300 per month in subsidized workforce housing.

The above described affordable payment in lieu and the provisions of a subsidy for onsite workforce housing as well as the other benefits the Bicycle Apartments will bring to Chapel Hill exceed the voluntary commitments made by similar projects recently approved.”

Staff Response: The applicant is proposing: 1) a \$120,000 payment-in-lieu of affordable housing, and 2) a reduced rent subsidy for affordable staff units (20% less than market rate rent) for approximately 10 staff, in response to the Town’s affordable housing policy for rezoning applications. We believe that the applicant’s proposal is reasonable and is

2. **Alternative Site Design / Shifting Building Away From Historic District:** The applicant presented an alternative site design at the public hearing, shifting of the proposed building about 50 feet to the west, away from the historic district and encroaching on the outer band of the Resource Conservation District. Several Council members expressed encouragement about the alternative design and requested additional information.

Applicant Response: “Trinitas is looking to Council for direction as to which footprint is preferred as Council weighs Town goals and objectives. Both footprints conform to the goals of the 2020 plan and the zoning sought. We believe that shifting the building to the west away from the Historic District offers advantages while respecting critical RCD areas. The most critical buffer zone of the RCD is the first 50 feet from the stream bank and while this stream bank is not natural, it has been in place for many years. The alternative footprint has less than allowed disturbance in the combined Stream Side and Managed Zones. The alternative footprint is 68% less than allowed disturbance in this zone and includes improvements to specific areas of this zone. The alternative footprint would require a modification of the regulations to allow an additional 2,350 s.f. of impervious surface in the Managed Zone and requires a modification of regulations to allow a total of 32,006± square feet of impervious surface in the Upland Zone.

Neighbors of the proposed development that live along its eastern property line and others who have expressed concern about the proximity of the development to the Historic District have supported the idea of moving the building and parking to the west, allowing a larger landscape screen. Trinitas has provided supporting materials as well as a comparison table so that Council will have the necessary information to consider each footprint.”

Development Density	Alternative Plan	Public Hearing Plan	Existing Development	LUMO Standard
Dwelling Units	194	194	74	N/A
Floor Area	294,512	293,816	72,000	294,517
Recreation Area	19,881	19,881		
Building Height	65.4 Feet	65.4 Feet		60 Feet
Building Stories	4 - 6	4 - 6	2	
Nearest Building Distance from Eastern Property Line	140 Ft.	68 Ft.	102 Ft.	
Variable Width of Eastern Side Landscape Screening Area	40 - 65 Ft.	7-25 Ft.	25-43 Ft.	0 Ft.
Area of Eastern Side Landscape Screening	25,210 SF	5,640 SF	13,580 SF	0 SF
Canopy Trees in Eastern Side Landscape Screening Area	45 +/-	11	13	0
Impervious Surface (SF)	Alternative Plan	Public Hearing Plan	Existing Development	LUMO Standard

Total Site		170,621 *		188,719		139,968	198,808
RCD - Stream Side and Managed Use Zones (Combined)		16,358		12,239		19,156	18,880
RCD - Upland Zone		32,006		13,287		22,765	11,825
RCD Disturbance (SF)		Alternative Plan		Public Hearing Plan		Existing Development	LUMO Standard
RCD - Stream Side and Managed Use Zones (Combined)		65,538		60,851		107,703	37,760
RCD - Upland Zone		53,157		53,117		59,140	23,650
Totals		118,695		113,968		116,843	61,410
Parking		Alternative Plan		Public Hearing Plan		Existing Development	LUMO Standard
Total		241		216		184	330
Standard		185		169		184	
H/C		7		7		0	
Compact		48		39		0	
Accessible Loading Space		1		1		0	
Specialty Parking							
Low Emission		10		0		0	
Electric Charging		2		2		0	
Ride Share		2		2		0	
Designated Parking		241				184	
Residents		196					
Guests & Staff		45					
* New plan includes 28,000 s.f. of pervious pavement (25%, or 7,000 s.f. of the pervious pavement area is considered impervious per NCDENR standards). This table was provided by the applicant.							

Staff Response: We believe the proposed alternative plan, with its tradeoffs shown in the table above, addresses a number of concerns raised at the public hearing. Key improvements include building placement further from the historic district boundary with wider landscaped areas, additional parking, and the addition of pervious pavement. The tradeoffs associated with this alternative plan would be additional land disturbance and impervious surface in the Resource Conservation District. See *Modification to Regulations* section for additional detail. On balance, we believe that the revised design would help to achieve greater harmony with adjacent neighbors in the historic district while still protecting a distance of 100 feet from the stream bank. Changes have been

made to Revised Resolution A accordingly. Revised Resolution A would authorize the proposed alternative plan.

3. **Site Access / Cobb Terrace Stairway:** 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 Special Use Permit 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-1960’s.

A partial revocation of the existing Special Use Permit must occur prior to approval of the proposed Special Use Permit for the Bicycle Apartments. A recommended condition of the partial revocation of the existing Special Use Permit and proposed Special Use Permit 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 Special Use Permit 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:** Prior to the Public Hearing for the Bicycle Apartments, the Town received a petition (attached) from the Chris Ringwalt of 8 Cobb Terrace requesting that the Town require the owner of University Apartments to reconstruct a trail from University Apartments to Henderson Street and North 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 Special Use Permit modification. In addition, a 1977 adjustment to the boundary of the Special Use Permit 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 lighting, 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 Special Use Permit 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 Special Use Permit 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 authorize the improvements. We have included a stipulation to this effect in the resolution of approval. Furthermore, we have added a condition to the Resolution for partial revocation of the Special Use Permit will ensure cross-access, and the long-term free flow of pedestrian and vehicular traffic between the two sites.

5. **Trinitas Ventures Tenant Feedback:** A Council member expressed concern about negative tenant feedback about other Trinitas student housing projects, including statements about poor construction, crime, noise, parking problems, and generally poor property management.

Applicant Response: "Trinitas is committed to providing quality housing for our residents and to being good neighbors. When problems occur on properties we own or manage we address them. We have researched the internet postings provided and do not believe that they are an accurate reflection of our management, our construction or our resident base. These comments were posted by a limited number of persons and are not representative of the actual residents we have housed over the last 30 years nor are they consistent with feedback we receive when we survey our residents.

It is not possible to quantify comments on the internet; however it is clear that the comments available represent less than one percent of the residents we house annually. Several of the comments provided to the Town were incomplete and/or associated with properties Trinitas neither owns nor manages. A casual search of the internet reveals that these types of comments are not limited to our properties and are common for rental housing facilities. It is very difficult for us to make specific response to anonymous comments that in some cases are several years old. We cannot confirm whether issues existed as described or if the issues (whether as described or not) were addressed but it is

From: Chris Ringwalt [mailto:ringwalt@PIRE.org]
Sent: Monday, January 21, 2013 4:53 PM
To: Town Council; JB Culpepper; Phil Mason; Chelsea Laws
Cc: Chris Ringwalt
Subject: FW: Improved petition for CT

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 an alternate pedestrian route 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 from 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.

Thank you.

Chris Ringwalt
8 Cobb Terrace
(919) 259-0643

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 the situation. In response, on July 13, 1987, the Town Staff ruled that Northampton Plaza was not in compliance with its 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 through the RCD which would provide connectivity to all properties to the north.

The Residents of Cobb Terrace

TOWN OF CHAPEL HILL

206 NORTH COLUMBIA STREET
CHAPEL HILL, NORTH CAROLINA 27514-2699

July 13, 1987

Telephone (919) 968-2700

Mr. Richard Birgel
Northampton Enterprises
P. O. Box 1079
Chapel Hill, N. C. 27514

Mr. Norwood Thomas
Central Carolina Bank & Trust Company, Trustees
P. O. Box 931
Durham, N. C. 27702

Re: Northampton Plaza and Terrace Apartments (SUP-81-B-14 and 83-A-5)

Dear Messrs. Birgel and Thomas:

This is in response to a letter dated March 11, 1987, from Charlotte D. Kilpatrick of Northampton Enterprises. After a thorough review of the Special Use Permit, including modifications approved by the Town of Chapel Hill for Northampton Plaza and Northampton Terrace Apartments, I find that the latest Special Use Permit modification, November 14, 1977, contains a provision requiring a paved sidewalk through the open space, including a railing on one side of the sidewalk.

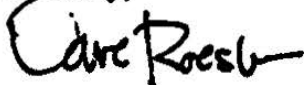
The Special Use Permit covers both Northampton Plaza and Northampton Terrace Apartments jointly. A request in 1981 to the Town of Chapel Hill to separate the Permit into separate Special Use Permits for Northampton Plaza Apartments and Northampton Terrace Apartments was withdrawn by the applicant.

Since the steps which connect the Northampton Apartments to the north end of Cobb Terrace are not shown on the approved site plan, the steps must be deleted or an application to the Town of Chapel Hill must be made for modification of the Special Use Permit.

Enclosed is the approved site plan, dated April 25, 1977, allowing the deletion of 12,960 square feet of land area located on the west side of Henderson Street near Cobb Terrace. At this time, the walkway location was revised only in a minor way and was not eliminated as a requirements of the Special Use Permit.

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.

Sincerely,

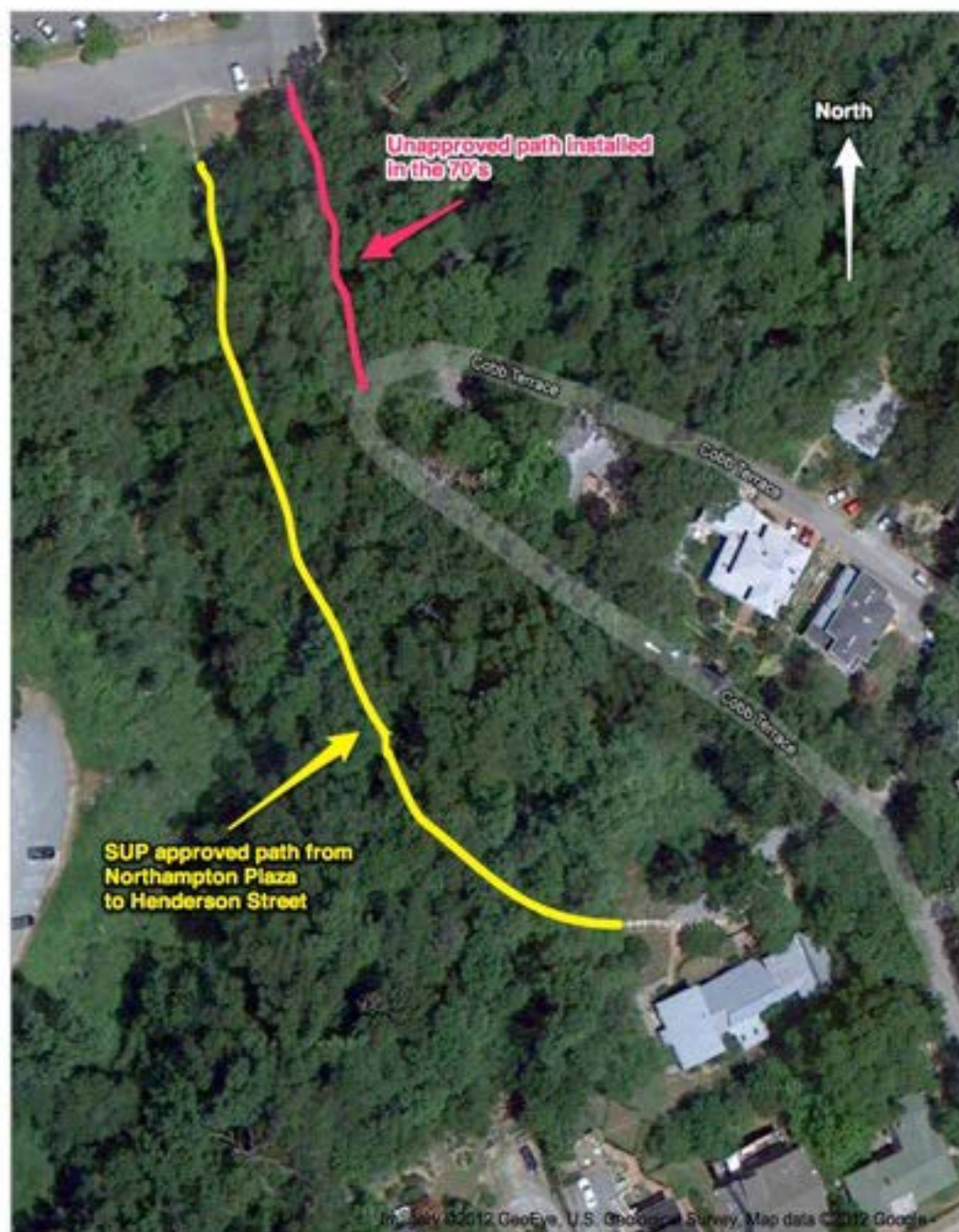


Dave Roesler
Development Coordinator

Enclosure

cc: Ralph Karpinos, Town Attorney
Diana Woolley, Planner
John Davis, Director of Inspections

Google









January 14, 2013

Honorable Mayor Kleinschmidt and Members of the Chapel Hill Town Council:

The Franklin-Rosemary Residents for Action represent concerned neighbors of the proposed Bicycle Apartments.

In advance of the Public Hearing on January 23rd we would like to bring up a few issues for your consideration.

We are concerned that the developers are defining the growth of the Town in the absence of a comprehensive view of needs and appropriateness. This development is a prime example. The Chapel Hill 2020 Plan has defined a Vision for the Town in detail. Now we need to work with the developers to help us reach our vision, not theirs.

The Chapel Hill 2020 Plan says:

“Chapel Hill’s historic districts showcase its rich history in the homes that have housed residents since the 19th century. As the University expands and more students seek housing near campus, Town and Gown collaboration and joint planning efforts will be vital in preserving the character and stability of these areas.”

Taken on its surface this proposed development seems ideal. But once scratched, what is revealed is that this concentration of students in one location places more load on the adjacent neighborhoods than they can reasonably absorb. Negative impacts brought about by this by-design student housing for 608 students, will be felt by some of the most sensitive and precious neighborhoods that define the character of Chapel Hill.

Throughout the Board review process we consistently heard concerns that this project was not being viewed in the context of the area, and the student housing needs of both the Town and the University. This is a discussion that has yet to take place. It impacts both this development and several others soon to be reviewed. It has broad implications for neighborhood preservation and considerations of both workforce and affordable housing. None of this is brought out when viewing this project in isolation. Understandably this is not part of the Development Review Process. But it is most assuredly part of your mission and responsibility to the Town.

We believe that the Town can do better. There is a limited number of acres in need of redevelopment between MLK and Hillsborough Streets. This is the last area/chance close to the town center to really re-shape Chapel Hill. Once a development like Bicycle Apartments goes into this area it is too late. Things cannot be changed

Just think about what this area could become with a mixture of work force, low income, senior and single and multi-family housing, together with students, that could include a park, recreation area, playground and connections to the Greenway and bike paths. A combination of student and long-term residents creates the diverse living environment that Chapel Hill strives for. What we need now is good urban design that offers the balance outlined in the Comprehensive Plan.

In this citizens' portion of the packet we are also including reviews by students who reside(d) in existing Trinitas properties around the country. We urge you to look this over in advance of the Public Hearing on Wednesday, January 23rd.

Thank you for your consideration of our concerns.

The Franklin-Rosemary Residents for Action

Reviews of Trinitas Developments in Other Cities

(This is an abstract of a letter sent to Town Council and Chapel Hill Town Staff November 2012) by Franklin Rosemary Residents for Action

We are writing to you to share our grave concerns about the Trinitas student housing project at 602 MLK Boulevard currently under review for a rezoning and SUP.

Our concern stems from online residents' reviews of the seven Trinitas student housing properties "highlighted" on the Trinitas website. **For your convenience, we have copied, at the end of this letter, some quotes from those reviews** (there are many more online). **We also provide the URLs for the complete reviews posted online.** Here are our findings:

Based on what Travis Vencel said about the building standards and managing of Trinitas properties, we expected mostly glowing reviews, with the occasional negative one written by a disgruntled tenant. Instead, we were surprised to find an overwhelming number of negative and sometimes appalling comments that shattered the idyllic descriptions of Trinitas properties as described to us, to Town officials, and to the Chapel Hill Business Association over the past months.

The reviews consistently point to some major problems:

- Poor quality of the building (thin walls are a recurring theme)
- Incompetent management (rude, non-responsive, unscrupulous)
- Lack of maintenance (garbage in hallways and around buildings, dirty rooms on move-in day, centipedes and mice)
- Unsafe conditions (car break-ins, drunks in hallways, drug dealing, people entering the buildings without proper access, constant partying)

It is clear from the many reviews of students who have experienced life in Trinitas' housing that this developer has not been able to provide the building quality, or the safe and salubrious conditions it claimed to be able to deliver during presentations to Town Council, Staff, and neighbors. This leads us to believe that it is unlikely that living conditions for students in The Bicycle Apartments will be any better.

Poor management is also a concern for residents in adjoining neighborhoods. Travis Vencel has made it clear during the PIM that Trinitas did not have a curfew or any specific rules against noise or partying in the apartments or on the balconies facing our properties. Neighbors would have to call the management of the housing complex to ask them to take action.

We have copied, below, excerpts from reviews posted by residents of the seven student housing properties "highlighted" on the Trinitas Website. **To read all the reviews (several hundred), please cut and paste the URLs into your browser.**

1201 Indiana

<https://plus.google.com/101048995325768168684/about?hl=en>

"Where to even begin... At first glance, this place is great. The apartments themselves are wonderful since they are brand new, but the property and the people who live here make it a horrible place to live. (...) There is hardly any security what so ever in this complex. They have ONE security officer who sits in his car all night by the pool and thats all he does. No one patrols any hallways or the outside grounds. Even if you call in a noise complaint to the office they say they will 'deal with it' but no fines or even warning happen.(...) The walls are PAPER THIN, and you can hear every conversation by your neighbors, even if they are casually talking. There are constant parties here, making it impossible to study or even sleep. There are beer cans and broken glass EVERYWHERE and the poor cleaning lady has to deal with it on a daily basis. I feel extremely bad for her. Puke, beer, broken glass, beer cans, and even pee have stained the carpets all throughout the complex. Cigarette butts are EVERYWHERE outside as well. The rules constantly change due to the idiots that live here, and they have basically stripped us of all our rights to the amenities that we have left. You can hardly ever go out to the pool because it is like MTV spring break 24/7. A giant brofest and a ton of alcohol, and you cant even sit down because there is just way too many people in one tiny pool area. People blast music out by the pool from their own apartment, making it impossible to even enjoy peace and quiet.(...) I just feel very unsafe here, Im very tired of smelling weed all through my hallway all the time, and nothing has yet to be done about any of the problems here. The staff is all talk and no show. Make sure you read your contract word for word and ask a lot of questions about things that concern you. They do not tell you everything about the apartment when you sign your lease. Do not ever recommend to anyone."

"Terrible place to live! I specifically asked the leasing agent will there be any rules and her answer was NO. Then about a month later we get a 10 page paper about the new rules that will be placed into affect. One of them being two guests per resident. Also you are not allowed to display your liquor bottles in your windows. What kind of crap is that? We spend entirely too much for these cheap, raggedy apartments and you're going to tell me I can't party! (...) The management should have known what they were getting themselves into when they were leasing to college students. Duh!!! then again the management is kind of slow because every time I went to pay my rent each month there were new managers on board. Talk about dysfunctional. There's more I would like to share, but I there's just not enough time in a day. Do not move in here. This is your first and only warning people!"

"I was a resident here for several months and I have nothing but complaints. The staff are rude, not knowledgeable, and rip you off as much as possible. The prices you will pay are large, especially considering that the living here is mediocre. I was hopeful that this would be a great place to live, but sadly disappointed by many

aspects of living here. I would not recommend living here to anyone. I, personally, and all of my friends who live here have all had terrible experiences with it.”

“(…) Anybody with complaints about the noise/partying somewhat did it to themselves. That was what this complex was marketed as. I distinctly remember Ryan (the leasing agent) telling my friends and I that management wanted to everyone to have a good time here and that they wanted it to be a place that people wanted to be. So knowing the subset of the population they were marketing to and their marketing strategy; why be surprised that the place is a party place? If you are the average college student and care about school during the week, study, etc. but like to let loose on the weekends this is a good place to live. Not great because it does have it's share of problems but every place does. (...)If you are ok with noisy neighbors sometimes and partying on the weekends then this place might be for you. If not, then don't sign a lease when you know the marketing strategy and target demographic.”

The area surrounding 1201 is terrible and management here has done little to nothing in the way of security. Because of this, many residents have been robbed. Residents were promised secure parking, but that is really just lots that are not fenced and thus easily accessible to anyone. The walls are thin to the point that you can make out entire conversations being held at a normal volumes, and the mattresses might as well be slabs of concrete. The people who run this place are lazy, dishonest, and will take you for every dollar they can get. I would not recommend these apartments to ANYONE. Oh lol and they also change their policies every other week, w/ the most recent addition being limiting residents to having only two guests at any time.

“Tucked in a "developing" area of Indianapolis, 1201 Indiana Apartments come fully furnished, including rock hard mattresses, miscalibrated ovens, and small cabinet space. Looking to meet new friends? The paper thin walls are a great way to get to know your neighbors! As you walk into your new home, you'll be greeted by threats of eviction for helping a neighbor with the door, stairs which could double as sticky fly paper, and beer cans that line the railing-the only thing missing might be the smell of mom's hot apple pie wafting down the hall.”

“I have never been so impressed as to the amount of water one building can have around it at one time as 1201 has created with the overall lack of proper drainage for rain. Pair this with the dorm-like atmosphere and you'll be glad that you're paying your excessive rent on time! As you finally make it through the end of the year and your lease has come to it's end, don't worry, those who live there will always have a little piece of you- the completely stained carpets won't allow them to forget the great memories of the 1201 apartments.”

“The walls are thin to the point that you can make out entire conversations being held at a normal volumes, and the mattresses might as well be slabs of concrete. The

people who run this place are lazy, dishonest, and will take you for every dollar they can get. I would not recommend these apartments to ANYONE."

The Village at Muller Park IU

<http://www.ratemyapartments.com/ratings/IN/Indiana-University-Bloomington/The-Village-At-Muller-Park-58180/>

"There is a shuttle to campus every day and on the weekends there is a shuttle to downtown/bars every night which is really awesome and the fitness center is the best of any apartment complex in Bloomington. However, the internet is beyond terrible, pool is really small and closed pretty much the entire time (just there for looks), parking is a joke, maintenance staff is helpful but they charge for anything that breaks even when it is not your fault. For example our garbage disposal quit and they charged us \$55 to replace THEIR OWN PROPERTY the landlord is supposed to do the maintenance and upkeep which is why people rent in the first place. The office staff are completely unprofessional and make many mistakes with the rent money I gave them. They tried to charge me double rent one month and I had to show them the receipt, which i always keep luckily, to prove my innocence. Also the buildings are not up to par and cost a fortune to heat in the winter. Do yourself a favor and don\'t get drawn in by their delusions of grandeur and save some money by going with another complex."

"This place is terrible they are misleading as hell, they show you one thing and you get another when you move in. They are sneaky and way over priced this place was thrown up in 8 months and you can tell. The property manager doesnt solve anything and the staff changes too often, clearly there is no training when they hire because only one person comes up with the right answers if shes not there your screwed. I wouldnt get swept up with the looks of the place unless you are desprite keep looking, you tacked with fees that you wouldnt believe, the \"insurance\" they have you pay for is useless dont let them cheat you out of your money please take it from someone who learned the hard way. JUST SAY NO."

"the apartments look good on the inside but they're good at making cheap look good." (...)

"your electric bill will be outrageous if you live there because everything in the apartment runs on electricity. the maintnence is terrible the charge you for stuff you thats not your fault. Additionally the ladies in the office are very rude and lazy. when i was trying to pay my rent waiting at the front desk they were talking about a resident there saying that they cant afford to live there, when they realized i was standing there they quickly went to there desks and then someone helped me. the manager is not a manager at all she just smiles at you and tells you what you want to hear and nothing gets done. what it comes down too is that they don't take care of the residents there bottom line."

The Village at Colbert Park

<http://www.apartmentratings.com/rate/IL-Savoy-The-Village-at-Colbert-Park.html>

Reviews 38 Rating 25%

"I moved here in 2009. I was given the sales pitch and ended up living here with a new graduate student. Within the first few months, we heard noises in both of our rooms. Turns out there were mice living in our apartment. Keep in mind we just moved in and NO WE ARE NOT DIRTY. We went to complain to management and thought justice would be served. We also had put in a work order in advanced to solve this problem. Management told us that they do not take care of pest or anything of that sort and suggested we buy mouse traps. They stated that is was not in the LEASE CONTRACT therefore they are not responsible. However I argued that since it is not written anywhere in the lease, then why are tenants responsible???? (...)time finding parking after night classes that ended at 9pm. So I was paying for something that I rarely received. I complained and they stated they tow cars without the parking sticker, however no one around my building ever got towed. So during major campus events, the parking lot was always full AND visitors would ride the shuttle to campus!!!! In general aside from these experiences the following remains true....

- the shuttle is unreliable.
- staff are uninformed and rude
- you put in a service request and your problem is never fixed
- parking is limited
- dog ---- is always all over the place
- the walls are SUPER THIN you can hear someone sneezing
- THE LEASE IS A JOKE!! What is not included is assumed true (ex. taking care of mice, bugs, etc).
- some vandalism has occurred in the complex
- There are other tenants that often get drunk and make a lot of noise outside. When you report them, nothing happens.
- Internet is slow and sometimes does not work.
- Management treats their shuttle drivers like ----!

(...) DO NOT I REPEAT DO NOT LIVE HERE!!! DO NOT GET SOLD ON ANYTHING THEY ARE TRYING TO GET YOU WITH. IT IS NOT WORTH IT AT ALL. I am speaking from personal experience and have lived there two years.

"The apartments are cheaply built. That's not a terrible thing for college apartments, but I paid less to live in FAR superior apartments. The walls are pretty thin, but the worst part for me is that I can hear every step the person above me takes--no exaggeration."

"From: renter14367Date: 08/13/2012Also do not be surprised if The Village tries to contact you several months after you move out attempting to collect on "charges" that you were never informed about. These people ignore the law and fabricate information to trick former tenants into paying absurd charges and threatening them with legal action. It's a lose-lose situation. Tenants put up with the cheap apartments, terrible management and horrid location while living there and are

haunted by the ghosts of greedy management's past when they move out."

"The furniture is crap. Again, I lived in a place with queen serta mattresses, headboards, wood desks, etc, and paid LESS money." (...)Lastly, almost any positive review is written by staff members on here. Some of them are so bad, it's laughable (terrible impressions of students). I think it's awesome that someone called out the 7/27/11 post as a fraud (I'm a law student too and there is NO WAY I'd be writing a review the day before the Bar exam (part of why I'm doing it now). I don't think any would)."

"I would not recommend living here. The quality and annoyances are just to high to justify the exorbitant cost (especially for 1 BDRMs)"

Collegiate Communities

<http://www.apartmentratings.com/rate/IN-West-Lafayette-Collegiate-Communities.html>

Reviews 8 Rating 19%

"1 year after I moved out I was called by a collection agency to pay over 350 dollars that CC said I owed. I had never been notified by CC before that date. They said that I had been sent notices (although I hadn't) and threatened to ruin my credit! It is illegal to have a collection agency notify you if you have not been notified several times about the charges. I disputed the claim and provided the documentation that Collegiate Communities themselves had given me. Basically, they said "Sorry, you don't owe anything!" They also called my other roommates and friends from the building with the same story and when confronted, backed down and admitted they "made a mistake." A bunch of us have notified the Attorney General and BBB for investigation. They are crooks trying to steal money from college students- STAY AWAY! ALSO- One of the ceiling lamps from our apartment fell on my head and shattered on my skull. I had to go the emergency room and CC never acknowledged the incident or apologized, although we notified them of the incident. They did fix the lamp, but never looked to see if I was ok or offered to pay the charges for the emergency room. The apartments aren't in good shape and way overpriced. There are better deals around that won't give you the trouble that CC will!"

"Collegiate Communities is managed/owned by Trinitas Ventures. Upon moving out I also was charged fees that were not specified in the lease. I returned the apartment in better shape than when I received it at the start of my lease. The manager would not give me the name of his supervisor/owner when I tried to get my security deposit returned and the fees removed. I only was able to get the fees reversed as well as get my security deposit returned after spending a lot of time contacting people in high places who in turn contacted Trinitas and convinced them to return my security deposit and remove the fees. I feel that the other reviews posted here also describe the type of conditions which exist at Collegiate Communities properties. At one point during my lease, I called the City of West Lafayette to report a problem which the manager would not fix. The city worker told me that they often

receive complaints from tenants of Collegiate Communities. Save yourself a lot of problems and stay away from Collegiate Communities.”

“Aside from the issues with getting our security deposit returned, which it still hasn't, the living conditions were crap as well. When we did our initial walk through the house seemed decent, not a luxury property by any stretch of imagination, but it at least seemed better than a dilapidated shack. It turned out that it was much closer to the latter than the former. The floors and carpets were dirty, there were holes in walls, the stair railing was falling apart, basement steps were falling apart, one room didn't have a heat duct connected to it, and old (definitely not in health code) cabinets. Also, the toilets clogged really easily and we had to get one replaced, the tub in our bathroom looked like it was from the 1920s and hadn't been maintained since, the washer and dryer were terrible (also one had to be replaced), an old bathroom in basement looked like the scene to a saw movie, and there was something that resembled barfed up ravioli in a basement drain. (...)

“(…) There were so many problems with this property and company I could go on and on, but I frankly don't have the time for that now. Bottom line, stay away from this company, especially if you want to rent a house. On move out day we saw that 0% of the current attendants chose to re-sign, 0%. This company should be investigated and shut-down.”

Willowbrook West

<http://www.apartmentratings.com/rate/IN-West-Lafayette-Willowbrook-West-Apartments.html>

Reviews 132 Rating 34%

“The apartment is filthy on the day of the move-in. The common areas are dirty - they charge previous residents before they move out in order to PROFESSIONALLY have these areas cleaned - but, of course, it does not happen. The bedroom I was supposed to move into seemed like it was vacated on the same day (dirty carpet and furniture - which were again are CLEAN according to the staff). The staff are a joke, downright rude and have not intention of understanding you. It seems like the management just wants to rob the residents out of money. I DO NOT RECOMMEND THIS PLACE TO ANYBODY. Please live somewhere else without going through this trouble. Don't be tempted by the outside looks of the apartment complex!”

“So this place gave its resident \$\$\$ to post positive reviews to they can get more residents. Once you sign the lease you are stuck and then its all hell and downhill after that. My roommate moved out and I am the only one. They never cleaned anything except one bedroom. The carpet in common area never got cleaned and it wasn't even cleaned when I first moved in. Even when I first moved in, the apartment was completely dirty but it was with the previous management. Even though the management has changed, but they both seem to treat the residents with utter dis-concern. They will try to attract new residents with all the specials without

actually taking care of its current residents.”

“(…) Willowbrook is paying residents \$30 to write a positive review here. If you want to know what living at Willowbrook is really like look before June. The apartments are spacious and really affordable, but the management is rude, unorganized, and very unprofessional. Even if you pay your rent on time every month, you will still be charged hidden fees, your checks will be deposited into the wrong account, and there will be late fees. Living here is NOT WORTH IT”

The Collegiate at VCU (recently open)

<http://www.yelp.com/biz/the-collegiate-at-vcu-richmond>

Review 1 Rating 4 out of 5 stars

College Crossing at National (recently open)

<http://www.apartmentreviews.net/ratings/indiana/indianapolis/college-crossing-at-national.htm#readreviews>

Review 3

“College Crossing is only good for college students who are looking for a place to live off campus, but still within walking distance of the campus. A lot of underage drinking and drug usage/selling occurs at this property. Management is aware of excessive drug use (a few units in particular), but has done nothing to remedy the situation.

The building itself is newer and (mostly) well kept. When we moved into our unit at the benign of the 2011-2012 school year, the unit was filthy, despite paying a \$200 a person "redecorating fee" (to prep the unit for our use). We have 4 roommates total, so collectively we Paid \$800 to have the unit reconditioned, yet the rooms, kitchen, and bathrooms were no where near being acceptable for living. This building has a lot of mold as well, the bathrooms are coated with black mold/fuzz growing in the showers, despite cleaning once a week, every week. If you have allergies to mold, I strongly suggest you look elsewhere to live.

As far as safety of the building is concerned, the building is locked, and only residence/residence guests can access the building. There are cameras in all the hallways, but are only used to identify Persons who cause damage to the building. My roommates vehicle was broken into twice in 1 year, causing damage to his ignition switch, which was not cheap to repair. The staff said they were not able to see anyone on the cameras, but most likely never watched the tapes. Multiple other residence have had car break ins/vandalism this year as well. The area that this building/the university is located in is not a very safe area. I highly recommend females not walk to class if it is dark outside. This area has a large "meth" problem, and is not suitable for walking alone at night. The neighborhood directly across from college crossing has frequent police activity, and twice this year we have heard gun shots.

You can hear the people above you at all hours of the day, the floors of the building were very cheaply constructed, thus you can hear the walk, talk, use the bathroom, play music, etc.”

“If you like:

Non-stop, under age drinkers whose parents wipe there @\$#

Shady management that cares more for bad room mates than good renters

Shady old maintenance guy that shares your business with everyone and drinks with underage college kids

Room mates who don't have to care about sharing bills, and are protected by the management

Spoiled kids that party all night even as you try to study, even during the day (again, protected by management)

Drug dealers (ghetto gangsters) and students who deal drugs from their apartments (known by apartment staff, but again, protected)”

From: Elisabeth Benfey [mailto:benfey@duke.edu]
Sent: Friday, June 01, 2012 9:06 AM
To: Travis J. Vencel
Cc: deFosset Shelley; afinn@med.unc.edu; patlowrydesign@gmail.com; tanyafreeman99@yahoo.com; dfinn@earthlink.net; philip.benfey@duke.edu; Kay Pearlstein; Olympia STONE
Subject: Re: Central Park

Dear Travis,

First of all, thank you so much for keeping us regularly informed of the steps you are taking towards building the Bicycle Apartments. I assume that there will now be bicycle trails leading to and from town built into the project! The new changes sound promising.

It is also comforting to know that the scaffolding will be in place for us and the Council to see what the proposed scope of the building will be. Please make sure to include in the height of the scaffolding the roof and/or any structure over the habitable space in order to reflect the TOTAL (i.e. visible) height of the buildings. Obviously, if none of the structure is visible from the Historic District, there will be a lot less resistance to the rezoning. How many students are you now building for, and how many parking spaces will be provided for their use in your new plans? Philip and I are in Europe until June 22nd. I hope the structure will still be up by then!

Also I wanted to let you know that I now have Internet connection and can look at drawings on a screen larger than my iPhone's, so I would love to take a look at your new design, if it works for you.

Again, thank you for bringing us all up to date on this project. I am looking forward to continuing the dialogue between Trinitas and our neighborhood.

Best,

Elisabeth

Sent from my iPad

On Jun 1, 2012, at 2:30 PM, "Travis J. Vencel" <tvencel@trinitas-ventures.com> wrote:

Neighbors,

We anticipate filing our Rezone and SUP applications within the next few days. As soon as we have submitted I will forward a package of information that summarizes our revised project. I wanted to let you know of a few of the changes we have continued to make. We have officially named our project The Bicycle Apartments at Chapel Hill to reflect the environmentally conscious project we are proposing. Once we have filed and have our appropriate permitting from the Town, we will be constructing a scaffolding to demonstrate the height of the proposed eastern end of the building. This structure will be in place for 30 days and we will make every effort to assure that stakeholders like yourselves have the opportunity to see the proposed height. We have continued to reduce the density of our project by lowering the number of units, bedrooms, stories and floor area included.

- The building is now pushed as far West as the RCD will allow

- The building is now 4 stories on the east and 6 stories on the west.
- The floor area has been reduced resulting in a lower unit count and bedrooms have been reduced
- We have increased parking for automobiles and bicycles.
- We will be the first project in Chapel Hill to provide interior secured bicycle parking for every resident (thus the change in our name)

There are many other changes we have made which will be identified in the documents we submit to the Town.

Thanks again for your time and I look forward to continuing to work with you on this project as it goes through the Town process over the next several months.

Travis

Travis J. Vencel

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From: benfeye@duke.edu [mailto:benfeye@duke.edu]

Sent: Thursday, May 03, 2012 5:11 AM

To: Travis J. Vencel; deFosset

Shelley; afinn@med.unc.edu; patlowrydesign@gmail.com; tanyafreeman99@yahoo.com; dfinn@earthlink.net; philip.benfey@duke.edu

Subject: scaffolding

Dear Travis,

First, thank you for sending the drawings, which give a sense of what the overall design will be. The scaffolding will also be useful to gauge the height of the main body of the building. I read your explanation concerning the framing of the scaffolding, which will not include the roof, which will slant towards the peak and will not, therefore (I think it is the logic behind your explanation), be *perceived* as 70 ft, due to perspective. This, I think, may be a problem: we need to know what the perceived (visible) overall mass, including the roof, will be from our yards and from the street. It may therefore make sense to add one pole at either end of the scaffolding that

will represent the total height, including the roof and whatever vents will be poking out of it. This is all the more important because, as presently conceived, the longest building is actually facing Hillsborough, and will form a massive wall -living spaces and roof. Accuracy is key here. I also wanted to assure you that all communications are immediately forwarded, thanks to Shelley's diligence, to all of us. The people whose name figures in the address field, above, are the representatives of our neighborhood, and we appreciate your replying to all.

Best,

Elisabeth

-----Original Message-----

From: Joe Patterson [<mailto:joepatterson@mindspring.com>]

Sent: Sunday, February 26, 2012 3:54 PM

To: Town Council

Subject: Residences at Grove Park SUP

Council members,

During the discussion of the Trinitas Concept Plan at last Monday's meeting, it became apparent to me that those of you that were not on the council when the SUP for the Ram project on the Townhouse Apt property was approved, may not be fully aware of its terms. I have attached a copy. Note that it included a 90 foot secondary building height, three 7 or 8 story buildings, more units per acre than the revised Trinitas proposal, 346 units, 517,000 sq. ft. of floor area and a substantial increase in impervious surfaces in the RCD.

While Ram may have abandoned its option to purchase the property, the owner, current or future, has a vested right to develop the property in accordance with the SUP, and this may well happen.

Thanks for your time,

Joe Patterson