



Rowan County Planning and Development Department

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Conditional Use Permit Request CUP 08-16

MEMORANDUM

TO: Chairman Edds and Board of Commissioners
FROM: Ed Muire, Planning Director
RE: CUP 08-16
DATE: November 8, 2016

REQUEST

- § **CUP 08-16 Request:** Trent Cherry requests issuance of a conditional use permit to utilize two (2) existing tree houses and construct up to five (5) additional tree houses for temporary and overnight lodging on Tax Parcel 120-140 which is located in a Rural Agricultural (RA) zoning district. The application and narrative is included as Attachment 1; Evaluation Criteria as Attachment 2; and Site Plan as Attachment 3.

BACKGROUND

Trent Cherry acquired the 26.1 acre tract (Tax Parcel 120-140) located in the 1900 block of Flat Rock Road on March 31, 2015. The property has been and currently is in the present use value system for “agriculture” as open pastureland and woodlands. As noted in the applicant’s narrative (Attachment 1), the property is currently farmed for corn, barley and hay.

The applicant’s narrative further details how one (1) tree house for the Cherry family evolved into construction of a second tree house, either of which can be rented thru their cherrytreesort.com website or airbnb.com. Staff became aware of the tree houses based on the August 2016 cover story in *Salisbury, the magazine*. Intrigued by the concept, Staff visited the site and then discovered the structures had not obtained zoning permits and likewise, lacked related building, well and septic permits. Consequently, Staff issued a warning citation on August 8, 2016 to cease operations until violations were corrected, resulting in an August 25, 2016 meeting with Mr. Cherry, the County Attorney and the various County departments having jurisdiction.

Based on his investment, Mr. Cherry indicated willingness, and has been given the opportunity, to bring the operations into compliance with all applicable building, environmental and zoning codes. In his situation, this includes:

- § **Building Codes:** Given the non-traditional type of construction, an NC Registered Professional Engineer must certify the tree houses comply with applicable aspects of the residential building code for building, electrical, mechanical and plumbing.
- § **Environment Health:** Provisions for water service and disposal of gray water must obtain requisite permits.
- § **NC DOT:** Obtain a commercial driveway permit for access onto Flat Rock Road.
- § **Zoning Code:** ZTA 02-16 (approved 10-17-16) was prompted by this situation and created the term “cabins”, which includes tree houses, and

consideration as a conditional use in the NB, RA district and permitted in CBI.

Wanting to retain the present use value deferral for farming operations, Mr. Cherry opted to apply for this conditional use permit request as opposed to a CBI map amendment.

VICINITY ANALYSIS

Tax Parcel 120-140 has over 1600 feet of frontage on Flat Rock Road (SR #1210) and is situated between the western reaches of the towns of China Grove and Landis. Parcel zoning consists of twenty (20) acres of Rural Agricultural (RA) and six (6) acres of Rural Residential (RR). The parcel is bordered on its eastern edge by an RR district containing the A.S Sechler Estate (subdivision) developed in 1943 and has a mix of single-family and manufactured housing along Beaver Road (SR #1209).

CONDITIONAL USE CRITERIA

The applicant's response to the Evaluation Criteria in Section 21-59 is included as Attachment 2; Staff analysis of the criteria is included below.

1. Adequate transportation to the site exists.

The project has obtained a commercial driveway permit from NC DOT signifying adequate sight distance and safe access for the additional trips generated by current units and any future expansion of the project.

2. The use will not significantly detract from the character of the surrounding area.

As the term tree house implies, the current and proposed units are situated within the existing tree line and are not readily visible from adjoining property or from the road. Allowance of "cabins" in the RA district as a conditional use assumes the use is compatible with the character of the surrounding area provided the specific and general conditional use criteria for consideration are met.

3. Hazardous safety conditions will not result.

Although not yet achieved, the applicant has contracted with a NC Registered Professional Engineer to document the existing units as compliant with the NC Building Code. Given the units were constructed without the benefit of permits and inspections, it is imperative the structures be determined code compliant ensuring the safety of occupants in these rentals. Likewise, any additional tree house units associated with this project must obtain the requisite permits prior to construction and inspections prior to occupancy.

4. The use will not generate significant noise, odor, glare or dust.

The location of the existing and proposed units are setback from property lines to the extent the aforementioned nuisances should not present concerns.

5. Excessive traffic of parking problems will not result.

Flat Rock Road is designated as a minor thoroughfare and the Cabarrus-Rowan Metropolitan Planning Organization's (CRMPO) Comprehensive Transportation Plan (CTP) suggests the current design capacity is 11,800 vehicles per day. 2014 NCDOT traffic counts indicate traffic on Flat Rock Road consists of 2,300 vehicles per day just north of the site near its intersection with West NC 152 Hwy.

6. **The use will not create significant visual impacts for adjoining properties or passersby.**
As noted in Item #2, the existing and proposed tree houses are situated such that visibility for adjoining properties and passersby is not an issue of concern.

SPECIFIC CONDITIONAL USE CRITERIA

Amendments to Section 21-60(7)(b) of the Zoning Ordinance provided specific criteria for development of cabins in settings similar to that of campgrounds and recreational vehicle parks.

1. **Minimum Lot Size.**

The area encumbered by the site plan is six (6) acres and exceeds the minimum lot size requirement of two (2) acres.

2. **Setbacks.**

Although difficult to gauge from the scale of the applicant's site plan, the location of existing and proposed tree house units will comply with the setback standards of 50' front / 30' side street / 20' side and rear.

3. **Density.**

This minimum size of spaces is to be determined by the Rowan County Health Department. The applicant was issued zoning authorization on 8-25-16 to obtain soil evaluations for a septic system to receive any gray water or sewage generated by the units, but no requests for site inspections have been conducted to date.

4. **Interior Drives.**

The interior drive requirement is eighteen feet (18') wide with six inches (6") compacted stone. Access to the existing units is a gravel road, but its width and stone thickness have not been verified by Staff.

5. **Parking.**

A minimum of one (1) off-street parking space per site is required and the current units comply with this standard and future expansions will be required to do so as well.

6. **Screening and Buffering.**

The existing units are located within the tree line which satisfies the screening from adjacent properties requirement. Likewise, the required twenty foot (20') buffer is contained within the setback requirement noted in item #2 of this section. Prior to construction of additional units, Staff will verify these screening and buffering requirements are satisfied.

STAFF RECOMMENDATION

In most cases conditional use permit requests precede construction and operation of a use, but in this case, two (2) tree houses are currently being utilized for rental purposes that have not obtained the necessary permits or inspections certifying minimum safety standards for occupancy have been satisfied. Although appearances suggest the units are of a design and quality construction that would comply with building code standards, no certainty exists based on the manner in which this use evolved. Liability associated with unit rental and operation is primarily that of Mr. Cherry, but the County does have some exposure for allowing continued occupancy of the units without requiring permits / inspections or evidence from a NC Registered professional Engineer the existing units are building code compliant.

While Staff supports the tree house concept and recognizes the uniqueness of this type tourism, Staff recommends conditional approval of the CUP 08-16 request due to unresolved permitting and subsequent liabilities. Pursuant to Section 21-63(a) of the Rowan County Zoning Ordinance, the

Commission may authorize conditional approval of the application which allows the applicant forty-five (45) days to submit a revised application. Although a revised application is not necessary, Staff opinion is that supplemental information related to the request is necessary and suggests these conditions be met within the 45 day period:

1. Obtain all building related permits for the two (2) existing tree house units and provide sufficient documentation to the Rowan County Building Inspections Department certifying each unit complies with the building, electrical, mechanical and plumbing sections of the NC Building Code. This condition is directly related to item #3 of the General Conditional Use Criteria evaluated herein.
2. Obtain the necessary Environmental Health permits for installation of a septic tank system. This condition is directly related to item #3 of the Specific Conditional Use Criteria contained herein.
3. Make any necessary road improvements based upon Staff inspection to achieve compliance with item #4 of the Specific Conditional Use Criteria contained herein.

PROCEDURAL MATTERS

Assuming the Commission grants conditional approval, findings of fact are not necessary until a decision to grant or deny the CUP 08-16 request is made. Issuance of conditional approval essentially continues the request, giving an applicant the benefit of providing additional information in support of the application. However, if the three (3) Staff recommendations noted above and any others imposed by the Commission are not provided within the 45 day period, the application is deemed disapproved and a similar application may not be submitted within twelve (12) months from the date of the hearing.

Worksheets for developing Findings of Fact are also attached for reference and future consideration.