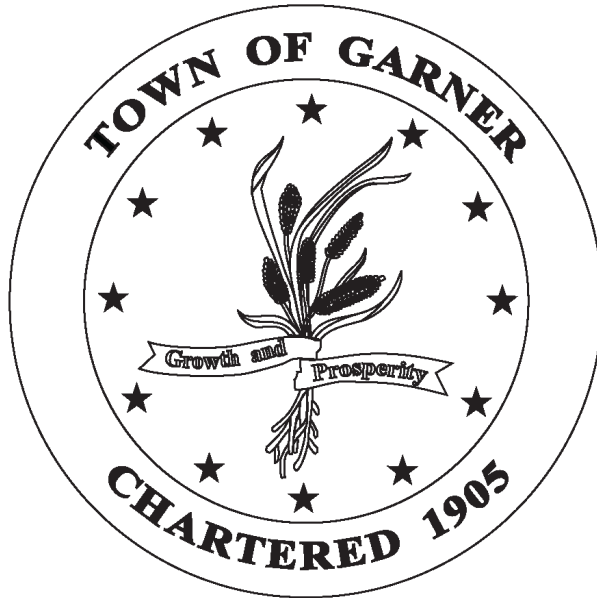


TOWN OF GARNER



Town Council Special Meeting

July 13, 2020
7:00 p.m.

Garner Town Hall
900 7th Avenue
Garner, NC 27529

Town of Garner
Town Council Meeting
Agenda Form

Meeting Date: July 13, 2020		
Subject: Request for Amendment to Special Use Permit SUP-SP-18-01		
Location on Agenda: Old/New Business		
Department: Town Attorney		
Contact: Fred Baggett, Interim Town Attorney		
Presenter: Fred Baggett, Interim Town Attorney		
Brief Summary: Hillwood Enterprises, L.P. is requesting an amendment to Special Use Permit SUP-SP-18-01 to allow its tenant to occupy the facility on August 2, 2020. The proposed terms are attached.		
Recommended Motion and/or Requested Action: Consider approval of amended conditions for SUP-SP-18-01		
Detailed Notes:		
Funding Source: n/a		
Cost:	One Time: <input type="radio"/>	Annual: <input type="radio"/> No Cost: <input checked="" type="radio"/>
Manager's Comments and Recommendations:		
Attachments Yes: <input checked="" type="radio"/> No: <input type="radio"/>		
Agenda Form Reviewed by:	Initials:	Comments:
Department Head:	FB	
Finance Director:		
Town Attorney:		
Town Manager:	RD	
Town Clerk:		

REQUEST FOR AMENDMENT TO SPECIAL USE PERMIT SUP SP-18-01

Amended 7/9/20

PROJECT INFORMATION:

Name of Development: Project Axis

Property Address: 4851 Jones Sausage Road PIN: 1721-25-6323 (formerly 1721-26-5080)

Acreage: 87.16 Zoning: I-2

OWNER AND APPLICANT INFORMATION:

Owner: 4851 JS Project LLC, 7000 Central Parkway, Suite 970, Atlanta, GA 30328

Applicant: Hillwood Enterprises, L.P., 7000 Central Parkway, Suite 970, Atlanta, GA 30328

Contact for Owner and Applicant: Scott Martin, Hillwood Enterprises, tel: 770-407-4763, email scott.martin@hillwood.com.

Signed:



Owner

4851 JS Project LLC,
by Hillwood Enterprises, L.P.
by Todd Parker, its Senior Vice President

Applicant

Hillwood Enterprises, L.P.
by Todd Parker, its Senior Vice President



Site Designer

Jason Bertoncino
WithersRavenel
115 Mackenan Drive, Cary, NC 27511
919 469 3340
jbertoncino@withersravenel.com

Request for Amendment:

Applicant requests the following amendment to SUP-SP-18-01 (the "Special Use Permit") to permit the Applicant and its tenant to occupy the facility on August 2, 2020 in the event that offsite roadway improvements are not yet complete as of that date. In such an event, the proposed Special Use Permit amendment conditions the Applicant's ability to obtain a Temporary Certificate of Occupancy on numerous traffic mitigation measures intended to protect the traveling public and minimize travel delays experienced by neighboring residents. The traffic mitigation measures have been reviewed and approved by the North Carolina Department of Transportation. The proposed Special Use Permit amendment imposes Liquidated Damages of \$10,000 a day if Jones Sausage Road and Garner Road are not open to traffic by Monday, August 17, 2020. In addition, the proposed conditions provide that Applicant will not seek up to \$600,000 in reimbursements from the Town of Garner for offsite improvements.

This application for a Special Use Permit amendment is materially different from its prior application. The conditions included in this Special Use Permit amendment are the result of extensive discussions with neighbors as well as feedback from Town Council at prior public hearings.

Amendment to Special Use Permit:

A fourth condition shall be added to the list of conditions to the Special Use Permit under “III. GRANTING THE APPLICATION”, to read as follows:

4. The following change from the *Special Use Site Plans for Project Axis* dated June 22, 2018 (approved as part of the Special Use Permit on July 2, 2018) (the “Site Plan”) is specifically approved by Town Council:
 - a. The facility on the Property (the “Facility”) shall not be occupied for use prior to Sunday, August 2, 2020 unless all approved off-site road improvements for Jones Sausage Road and Garner Road (“Roadway Improvements”) have been completed by Applicant.
 - b. In the event the Roadway Improvements are not complete by Friday, July 31, 2020, the Town Inspections Director or his designee (the “Building Inspector”) may permit the Facility to be occupied on or after Sunday, August 2, 2020 if the following traffic mitigation conditions (the “Traffic Mitigation Conditions”) are satisfied:
 - i. Along the frontage of the Facility on Jones Sausage Road, one lane of through traffic in each direction is open and the following left hand turn lanes on Jones Sausage Road (the “Left-Turn Lanes”) are open:
 1. A 100’ left-turn lane from northbound Jones Sausage Road to Calebar Street;
 2. A 450’ left-turn lane from southbound Jones Sausage Road to Facility Entrance # 2;
 3. A 250’ left-turn lane from southbound Jones Sausage Road to Facility Entrance # 4; and
 4. A 200’ left-turn lane from southbound Jones Sausage Road to Facility Entrance #6.
 - ii. A temporary traffic signal at the intersection of Jones Sausage Road and Calebar Street shall be permitted, installed and operational. The temporary signal shall remain in place until the permanent signal is installed and operational.
 - iii. A temporary traffic signal at the intersection of Jones Sausage Road and Entrance #4 shall be permitted, installed and operational. The temporary signal shall remain in place until the permanent signal is installed and operational.

- iv. Applicant's tenant for the facility shall re-route all truck traffic internally on the Property until such time as the Roadway Improvements are open to traffic. Until Roadway Improvements are open to traffic, trucks shall enter the Property via the southernmost entrance (Entrance #6) and exit the Property via the northernmost entrance (Entrance #1).
- v. Applicant's tenant for the facility shall stagger employee shifts to help reduce peak traffic flows until such time as the Roadway Improvements are open to traffic.

The Building Inspector shall be responsible for determining in good faith whether the Applicant has satisfied the Traffic Mitigation Conditions. The Building Inspector's determination shall be conclusive.

- c. Applicant will not seek any reimbursements from the Town of Garner for roadway construction and utility infrastructure improvements, which reimbursements are otherwise authorized in an amount up to \$600,000, pursuant to the terms of the Development Agreement between the Town and Applicant dated March 19, 2019.
- d. In the event that Applicant obtains a Temporary Certificate of Occupancy prior to completion of Roadway Improvements, Applicant agrees that until Roadway Improvements are complete both it and its contractors will take commercially reasonable steps to limit road construction that would close either (i) all of the northbound or southbound through lanes along the frontage of the Facility on Jones Sausage Road, or (ii) the Left-Turn Lanes. When directed by Applicant or its contractors, such closures shall only occur between 7 p.m. and 6 a.m. or between 9 a.m. and 4 p.m. This condition does not limit the ability of Applicant and its contractors to temporarily relocate through lanes of traffic and/or Left-Turn Lanes on Jones Sausage Road. In addition, this condition does not limit the ability of the Town of Garner, the North Carolina Department of Transportation, or other governmental authorities with jurisdiction to direct closures of through lanes of traffic on Jones Sausage Road and/or Left-Hand Turn Lanes between 6 a.m. and 9 a.m. or between 4 p.m. and 7 p.m.
- e. In the event that Applicant obtains a Temporary Certificate of Occupancy prior to completion of Roadway Improvements, Applicant agrees that it shall complete the following road improvements (the "Permanent Improvements") by Monday, August 17, 2020:
 - i. Final lift of asphalt installed along all Roadway Improvements expanding Jones Sausage Road along the frontage of the Facility and adding a right-hand turn lane from Jones Sausage Road to Garner Road;

- ii. Temporary striping of lanes within the Roadway Improvements;
- iii. Permanent traffic signals installed and operational at the Jones Sausage Road/Calebar Street intersection and the Jones Sausage Road/Facility Entrance #4 intersection; and
- iv. Seeding and erosion control associated with the Roadway Improvements installed. (It shall not be necessary for grass to actually be growing to establish completion.)

The Town Engineer or his designee (the "Town Engineer") shall be responsible for determining in good faith whether the Applicant has completed the Permanent Improvements.

- f. If Applicant obtains a Temporary Certificate of Occupancy but does not complete the Permanent Improvements by Monday, August 17, 2020, Applicant shall pay to the Town of Garner liquidated damages in the amount of \$10,000.00 per day for each day from and including Tuesday, August 18, 2020 until such time as the Permanent Improvements are complete ("Liquidated Damages Amount"). Applicant and the Town of Garner agree that the actual damages to the Town due to the Applicant's delay in completing the Permanent Improvements are difficult to determine and that such Liquidated Damages Amount is a fair and reasonable estimate of the actual damages and that such amount is not intended as a penalty. To secure Applicant's obligation to pay such Liquidated Damages Amount to the Town, the Town may withhold the issuance of a final certificate of occupancy for the Facility until such time as any accrued Liquidated Damages Amount, if any, has been paid in full to the Town. Determination of compliance with these conditions and liability for liquidated damages shall be made in good faith by the Town Engineer.
- g. Applicant shall continue to provide weekly updates to the neighboring property owners and the Town regarding the status of the completion of the Roadway Improvements until Roadway Improvements are complete.

Information and Evidence in Support of Special Use Permit Amendment

After more than two years of planning, preparation, and construction, the new Amazon fulfillment center at 4851 Jones Sausage Road is almost ready to open. Amazon has begun hiring employees, and expects to provide thousands of job opportunities for residents at all skill levels.

Amazon plans to have the Facility fully operational by the start of September. Starting up a 2.6-million-square-foot, state-of-the-art fulfillment center is a complicated process that requires a significant amount of time and advance planning. Startup operations at the Facility will take approximately a month. Accordingly, the Facility must begin startup operations in the first days of August to be fully operational by early September.

Amazon's practice and procedure is to begin the startup process for a new fulfillment center on the first Sunday of the month. Under this process, the targeted startup date is Sunday, August 2, 2020.

In order to ensure that Amazon can begin startup operations on August 2, Amazon and the developer of the Facility, Hillwood Enterprises, L.P., are requesting this amendment to the Special Use Permit. The requested amendment provides that, in the event that offsite road improvements on Jones Sausage Road are not certified to be complete prior to August 2, 2020, the Town's Building Inspector may permit Amazon to occupy the Facility and begin startup operations. In the event that startup occurs prior to the completion of the offsite road improvements, specific traffic mitigation measures must be in place prior to occupancy. These traffic mitigation measures have been reviewed and approved by the North Carolina Department of Transportation, and are intended to address traffic flow and traffic safety concerns associated with the traffic generated by Amazon's startup of the facility.

This request is far more limited in scope than the one previously considered by the Town. Under this proposal, Hillwood would only have two weeks from the Facility startup to complete key offsite road improvements. If specified offsite improvements to Jones Sausage Road are not complete by August 17, Hillwood would be required to pay liquidated damages of \$10,000 per day to the Town.

The terms of this proposal reflect the significant progress that has been made on the roadway improvements to Jones Sausage Road since the Town Council last considered this matter on June 9. Through a variety of efforts in the last month, the estimated completion date for the Jones Sausage Road improvements has moved up six weeks from September 30 to August 17. In addition to making great strides in road construction, Amazon and Hillwood have worked extensively with neighboring homeowners to address their concerns, including by holding an Open House at the Facility on June 23.

As a result of the efforts of Amazon, Hillwood, and the neighboring residents, this proposed amendment achieves the balance that the terms of the original Special Use Permit struck by allowing Amazon to begin limited startup operations subject to specific traffic mitigation conditions that will ensure that the concerns about traffic flow and safety are addressed.

Traffic Mitigation Measures

Because Jones Sausage Road is a state-maintained road, Hillwood had to obtain the North Carolina Department of Transportation's approval to install the proposed temporary traffic mitigation measures. NCDOT has reviewed the plans and the estimated traffic that will be generated by the startup of the Amazon facility, and has approved the proposed traffic mitigation measures.

At the June 13 Town Council meeting, Hillwood also will provide the testimony of licensed engineers regarding the safety and efficacy of the proposed traffic mitigation measures.

Offsite Roadway Improvements That Will be Provided

The Site Plan and other associated documents associated with the Special Use Permit calls for certain offsite Roadway Improvements, including:

- Expanding the portion of Jones Sausage Road fronting the Property to four lanes with a median and left hand turn lanes;
- Installing traffic lights at the intersection of Jones Sausage Road and Calebar Street and the intersection of Jones Sausage Road and Facility Entrance #4;
- Installing a dedicated left-hand turn lane from the Hunters Mark subdivision exit (eastbound Calebar Street) to northbound Jones Sausage Road; and
- A new right turn lane from southbound Jones Sausage Road to Garner Road.

Applicant Has Made Significant Progress in Installing Roadway Improvements Since June 9

Applicant has made significant steps in constructing the Roadway Improvements over the last month, shaving six weeks or more from the previously estimated September 30, 2020 completion deadline. As set out in the proposed conditions, Applicant now estimates that it will complete key Roadway Improvements to Jones Sausage Road and Garner Road by August 17, 2020.

Hillwood will provide detailed evidence regarding the current status of road improvements at the July 13 Town Council meeting.