



# Town of INDIAN TRAIL north carolina

Town of Indian Trail, NC

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Indian Trail, North Carolina 28079

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PLANNING AND NEIGHBORHOOD SERVICES DEPARTMENT

## Special Use Permit Staff Report

<b>Case: SUP 2011-008M Special Use Permit</b>			
<b>Reference Name</b>	<b>Open Air Merchant Market</b>		
	<b>Proposed Use</b>	Modification to two conditions of original approval	
<b>Existing Site Characteristics</b>	<b>Existing Zoning</b>	Regional Business District (RBD)	
	<b>Existing Use</b>	Consignment Shop and Flea Market	
	<b>Site Acreage</b>	3.0 acres	
<b>Applicant</b>	Tim Sebert		
<b>Submittal Date</b>	May 1, 2012		
<b>Location</b>	155 Corporate Boulevard		
<b>Tax Map Number(s)</b>	07-084-406		
<b>Plan Consistency</b>	Town of Indian Trail Land Use Map	<b>Designation</b>	74 Business Corridor
		<b>Consistent with Request</b>	Yes

### Project Summary

The applicant is requesting a modification to a Special Use Permit approved by the Board of Adjustment on November 17, 2011. The original permit (SUP2011-008) granted the applicant authorization to establish an open air merchant market conducted on weekends, provided certain conditions were met. After operating the market, the applicant feels two of the original conditions are unnecessary. Any amendment to the original permit must be heard by the Board prior to approving the changes. The modification the applicant suggests is to have the ability to set up tables on a more permanent basis and waiving the requirement for the trash enclosure.

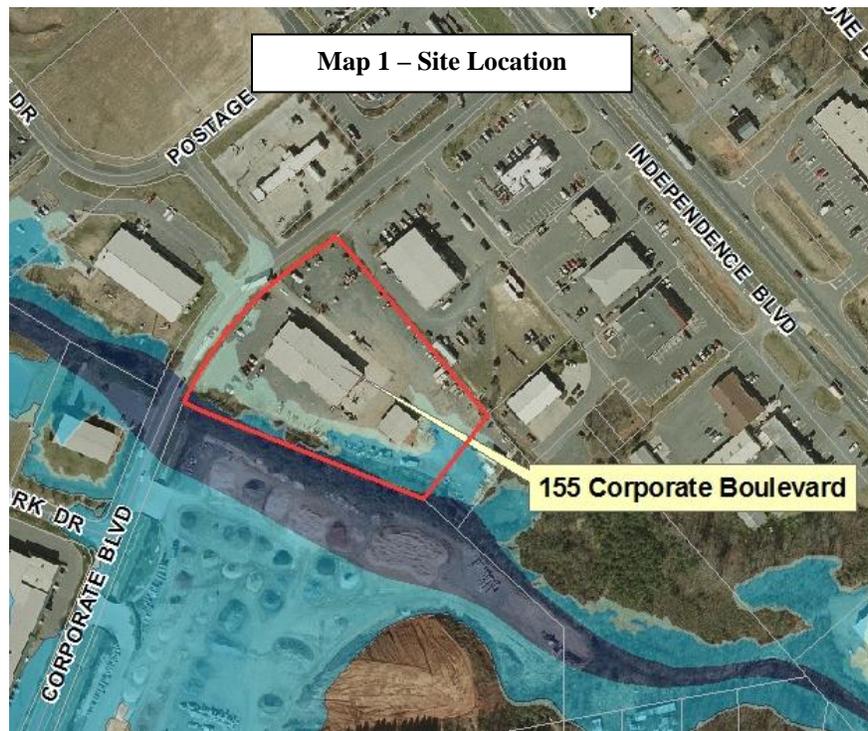
### Analysis

#### Land Use

The applicant is currently operating an indoor consignment shop at 155 Corporate Boulevard consisting of mainly furniture sales. The applicant also operates an open air merchant market on the weekends. The market utilizes the large outdoor area to conduct an open air market on the weekends with approximate capacity of 120 vendors. Vendors sell crafts and second-hand items typically associated with a flea market.

**Existing Site**

The parcel consists of 3.0 acres of land with two buildings on site. The primary building is utilized for the weekday consignment business. There is paved parking in front of the building and an accessory building to the rear. The remainder of the property is a combination of pavement and gravel surrounded by chain link fencing. The merchant market area and associated parking is located within this area.



The adjacent uses are as follows:

<b>Parcel</b>	<b>Address</b>	<b>Use</b>
<b>North</b>	200 Corporate Boulevard	Car Wash
<b>East</b>	101 Post Office Drive	Day Care Center
<b>South</b>	115 Corporate Boulevard	Materials Storage
<b>West</b>	185 Corporate Boulevard	Auto Service
	198 Rowell Drive	Auto Service

**Special Use Permit Compliance**

The original Special Use Permit approval contained twenty conditions of approval. The conditions regulate the operation of the market and required some site improvements. The applicant is working to comply with these requirements with the exception of two of the conditions:

- Condition 7 of SUP2011-008 required a permanent trash enclosure be built on site. *“A trash enclosure shall be built consistent with UDO Chapter 13130.”*
- Condition 15 stated the tables used for the market could be in place the entire weekend, but had to be set up on Friday and taken down on Sunday.

*“Tables and tents used for the outdoor merchant market may be assembled no earlier than Friday after 5PM but shall be disassembled on Sunday at the conclusion of the market.”*

The applicant is of the opinion the trash enclosure is a costly improvement that is not necessary. He would like to have this condition removed. He has also stated the process to set up and break down the tables every weekend is unnecessary. He contends it is a labor intensive process and lessens the visibility of the market during the week.

### **Trash Enclosure**

The site is a legal nonconforming lot with respect to the trash enclosure. The open air market operations are an additional use classified as an intensification of the site. As such, some proportional improvements were required to lessen nonconforming aspects. Trash enclosures are required of all new development to screen the dumpsters from general view.

The dumpster has been relocated from its original location beside the primary building. There are now two dumpsters, one for trash and one for cardboard, located behind the accessory structure to the rear of the lot. This area is approximately 340 feet from the property entrance and not visible from the right of way. This same area, however, is nearby the parking and porta-johns used by the market patrons.





If the Board approves of this modification, staff recommends rewording the condition to state the trash enclosure would be required within one year. Staff would also recommend including the enclosure shall be consistent with UDO 13130, as previously approved by the Board (see Condition 7).

### **Tables**

The Town originally required the tables used for the open air market to only be displayed on the weekends. The reasoning was the market was an accessory use and the tables were temporary in nature. Staff is of the opinion a permanent display of the tables would detract from the improvements made to the site, such as landscaping along Corporate Boulevard. If the Board chooses to approve this modification, staff recommends a permanent structure be built to shelter the tables and provide a clearer delineation of the market operations.



## **Outside Agency Comments**

Town has not received any concerns from the Fire Marshal or Public Works.

## **Plan Consistency**

The subject property is located within the 74 Business Corridor of the Comprehensive Plan. Based on analysis of this use, staff is of the opinion that the proposed use is consistent with the intent of economic corridor as follows:

- **Goal 1.3.2** – Land Use: The subject site is in harmony with the area in which it is located. There are several service-based and retail businesses in the immediate area. Properly conditioned, potential land use conflicts between neighboring properties have been avoided.

Under **UDO Section 360.080**, the Board of Adjustment, when considering whether to approve an application for a special use permit, shall review and evaluate the following:

1. **Whether the application is complete.**
  - a. Staff is of the opinion that the application for SUP2011-008M is complete.
2. **The Board will consider whether the application complies with all of the applicable requirements of this ordinance.**
  - a. As per the stated conditions of this special use permit, staff is of the opinion that SUP 2011-008M is in compliance with the requirements set forth by the Unified Development Ordinance (UDO).
3. **If the Board of Adjustment concludes that all such requirements are met, it will issue the permit unless it adopts a motion to deny the application for one or more of the reasons set forth in UDO Section 360.030.** Such a motion will propose specific findings, based upon the evidence submitted, justifying such a conclusion.

Under **UDO Section 360.030**, the Board of Adjustment must make these required considerations of public health, safety, and welfare. The Board of Adjustment's authority in the review of this special use permit application is broad and the Board may approve with conditions if it concludes, based upon the information submitted at the hearing, that the proposed development will:

1. **Not materially endanger the public health or safety; and**
2. **Not substantially injure the value of adjoining or abutting property; and**
3. **Be in harmony with the area in which it is to be located; and**
4. **Be in general conformity with the Town of Indian Trail Comprehensive Plan and other adopted plans.**

If one of these findings cannot be made, then the Board must move to deny the special use permit request, stating for the record why the Board has decided to do so.

## **Recommendation**

If the Board is of the opinion that the above required findings can be made to approve the project, staff recommends the following conditions to now read:

1. The applicant shall submit a formal site plan for the required re-paving of the parking area and landscape installation by November 30, 2012. Site plan shall meet all applicable

- sections of the UDO including but not limited to parking lot design, landscaping, and shading.
2. The applicant shall provide an additional 18 paved parking spaces prior to commencement of the open air market. The perimeter of the parking area shall be defined by curb and gutter.
  3. Until the entire parking area is re-paved, the property owner shall provide parking attendants to help direct traffic.
  4. A designated vendor parking area shall be provided.
  5. Landscaping consisting of a combination of trees and shrubs along Corporate Boulevard and the front fence line shall be installed.
  6. Landscaping consisting of a combination of ground cover and shrubs along the side fence line where the proposed market is to be located.
  7. **A trash enclosure shall be built consistent with UDO Chapter 13130 by May 31, 2013.**
  8. Parking on Corporate Boulevard is prohibited. The market operator shall post “No Parking” signs during market operations to ensure this condition is met.
  9. The outdoor merchant market is limited to Saturdays and Sundays only.
  10. Overnight camping is prohibited.
  11. Porta-johns shall be provided as bathroom facilities for vendors and patrons.
  12. Vendors are not allowed to set up in the required 10 foot landscaped buffer.
  13. All merchandise must be stored off-site at the end of each day.
  14. All litter shall be disposed of properly at the end of each day.
  15. **Tables and tents used for the outdoor merchant market may be assembled no earlier than Friday after 5PM but shall be disassembled on Sunday at the conclusion of the market. If tables are displayed throughout the week, a structure shall be constructed to provide a permanent delineation of the market area.**
  16. Any preparation of food cannot use open flame nor be located under a tent. Food preparation shall be located at least 10 feet from the nearest tent. All vendors will have to be approved by Union County Environmental Health.
  17. No electricity shall be provided to the vendors; however, they may provide and use their own portable generators if necessary. The use of generators shall be approved by the property owner and may be reviewed by the Fire Marshal.
  18. The following items may not be sold by the outdoor merchants: alcohol, tobacco products, fireworks, explosives, weapons, counterfeit/stolen goods, baked goods, animals, and X-rated adult materials.
  19. The market operator and all vendors shall obtain a privilege license from Indian Trail Town Hall prior to participating in any sales activity.
  20. Any failure to meet these conditions shall be grounds to revoke Special Use Permit and cease market operations.

## **Attachment 1 – Application with Letter of Intent**

### **Staff Contact**

Craig Thomas  
Junior Planner

**ATTACHMENT 1**  
**Application with Letter of Intent**