

CONCEPT PLAN PROPOSAL

Applicant Information

Name: Richard Gurlitz
Address: 5310 South Alston Avenue, Suite 220
City: Durham State: NC Zip: 27713
Phone (Work): 919-489-9000 FAX: 919-493-8937 E-Mail: richard@gurlitzarchitects.com

Property Owner Information (included as attachment if more than one owner)

Name: Eastern Federal Corporation Phone: 704-377-3495
Address: 901 East Boulevard
City: Charlotte State: NC Zip: 28203-5203

Development Information

Name of Development: Village Plaza Theatres
Tax Map: 7.46 Block: B Lot(s): 11 & 11B Parcel ID #: 9799242361 & 9799148584
Address/Location: 141 S. Elliott Road, Chapel Hill, NC 27514
Existing Zoning: CC New Zoning District if Rezoning Proposed
Proposed Size of Development (Acres / Square Feet): 10.919 / 475,632
Permitted / Proposed Floor Area (Square Feet): 111,368 / 110,034
Minimum # Parking Spaces Required: 688 #Proposed 490
Proposed Number of Dwelling Units: n/a # Units per Acre n/a
Existing / Proposed Impervious Surface Area (Square Feet): 371,350 / 360,905
Is this Concept Plan subject to additional review by Town Council? Yes

The undersigned applicant hereby certifies that: a) the property owner authorizes the filing of this proposal b) authorizes on-site review by authorized staff; and c) to the best of his/her knowledge and belief, all information supplied with this proposal is true and accurate.

Signature: [Handwritten Signature] Date: 1.9.04

Please submit 20 sets of all materials, or 35 sets of all materials including reduced (8 1/2" by 11") copies of all plans if the Concept Plan is subject to additional review by the Town Council, no later than the first day of the month. Materials must be collated and folded to fit into a 12" x 15" envelope.

The Community Design Commission meets regularly on the third Wednesday of each month. Meetings with the Town Council will be scheduled after the Community Design Commission meeting. For confirmation of a meeting dates and the placement of your request on the agenda, please call the Planning Department at (919) 968-2728.

ATTACHMENT 1
TO
CONCEPT PLAN PROPOSAL
OF
EASTERN FEDERAL CORPORATION
and
TRIANGLE V II LIMITED PARTNERSHIP
Developer's Program

(Required Information Key No. 1)

DEVELOPER'S PROGRAM

Eastern Federal Corporation ("Eastern") and Triangle V II Limited Partnership ("Triangle") own approximately twelve of the eighteen acres of land that comprise the Village Plaza shopping center in Chapel Hill. Eastern's parcel is primarily designed to operate the Village Plaza Theaters. Triangle's parcel is the site of such tenants as Spa Health Clubs, Visart Video and Monterey Mexican Restaurant. Ginn & Co. ("Ginn") owns the remaining six-acre parcel located at the southeastern corner of the intersection of East Franklin Street and Elliot Road. Whole Foods, Zorba's, PIP Printing and Red Hot & Blue are establishments operating on the Ginn parcel.

On January 27, 2003, the Chapel Hill Town Council approved a Resolution for An Application For a Special Use Permit For Village Plaza Shopping Center on property described as Chapel Hill Township Tax Map 46, Block B, Lots 11 and 11B (PIN #9799-24-2361 and 9799-14-8584).

The approved SUP resolution contains "Stipulations Specific to the Development." Stipulation (4) reads:

4. Elliott Road Access Driveway "C and D": That the applicant improve the two northern most driveways (driveway "C and D") along Elliott Road to provide 30-foot wide driveways with striped left and right turn lanes exiting the site, stop signs and one lane entering the site. That, if practical, the reconstructed driveways shall intersect Elliott Road at a 90 degree angle. The final design and configuration of these two reconstructed driveways along Elliott Road shall be reviewed and approved by the Town Manager prior to the issuance of a Zoning Compliance Permit.

While the location of the driveways intended to be improved in Stipulation 4 is unclear, and was never clarified to Council at the January 27, 2003 meeting, the Town planning staff has reviewed the entire project file and interpreted that "D" is located just south of Red Hot & Blue. Driveway "D" is not on the applicant's site but is located on the adjacent parcel owned by Ginn (just to the north of Eastern's parcel). Mr. Waldon explained to the Council at the January 27, 2003 meeting that the Town Staff had taken off the cross-access easement agreement as part of the list of conditions since the applicant was unable to reach an agreement with the adjacent property owner Ginn and that the Town could not require a third-party to comply with the conditions of the Project. Stipulation 4 requires a third-party owner agreement to provide an easement for the off-site improvements of Driveway "D" and, therefore, should have been deleted from the requirements of the approved resolution. However, in what has been described as an "error in process" by Town Manager Cal Horton, Driveway "D" was not deleted from Stipulation 4 prior to the approval by Council. For purposes of additional background attached as Exhibit "A" and incorporated herein by reference is a letter to the Town Attorney and Town Manager from the applicant's attorney, Wayne R. Hadler dated November 24, 2003 and a response letter from the

Town Manager to Wayne R. Hadler dated December 12, 2003.

The modification of the Special Use Permit is for the limited purpose of removing the requirement to improve Driveway "D" along Elliott Road as set forth in Stipulation 4. The removal of the requirement will not jeopardize the public health, safety, or general welfare of the citizens of Chapel Hill. The modification of the Special Use Permit will not change the site as it relates to compliance with the Chapel Hill Land Use Management Ordinance, and with all other applicable regulations.

By removing the requirement of improving Driveway "D" there will be no loss of valuable parking spaces on the Ginn property and no loss of a sidewalk along Elliott Road that would result from the approximate three (3) foot widening of Driveway "D." Therefore, it is not expected that the approval of the modification will have any negative impact on the values of any of the contiguous properties. Approving the modification of the Special Use Permit is in effect approving the intent of the Project approval granted January 27, 2003 in which the Council removed a cross-access easement that would have required an agreement from the adjacent property owner.

Lastly, the approval of the modification of the Special Use Permit to remove the off-site improvement of Driveway "D" conforms with the general plans for the physical development of the Town, as contained in the Chapel Hill Land Use Management Ordinance and in the Comprehensive Plan.

For the above reasons, it is respectfully requested that the Town of Chapel Hill approve the modification of the Special Use permit for Village Plaza Shopping Center Renovation.

Original to Planning

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BY: *go*

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WAYNE R. HADLER
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JEFFREY A. JONES
KATE L. COLBURN

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RETIRED

TELEPHONE
(919) 929-0391
FAX
(919) 967-3063

November 24, 2003

Ralph Karpinos, Attorney for the Town of Chapel Hill
Cal Horton, Town Manager for the Town of Chapel Hill
306 N. Columbia Street
Chapel Hill, NC 27516
By Hand-Delivery

Dear Ralph and Cal:

On behalf of my client Eastern Federal Corporation, this letter is written as a formal request to interpret Stipulation No. 4 from the Special Use Permit for Village Plaza Shopping Center Renovation as no longer applicable to the Project to the extent it requires Eastern Federal to make off-site improvements. Stipulation 4 requires the applicant (Eastern Federal) to improve the two northern most driveways along Elliott Road. While the location of the driveways intended to be improved in Stipulation 4 is unclear, and was never clarified to Council, the Town planning staff has reported to me that their interpretation is that driveway "D" is located just south of Red Hot & Blue which is located on the adjacent property owners parcel just to the north of Eastern Federal's property. The Staff has also decided to call Driveway "E" the entry which is located within our property south of Driveway "D". It should be made clear that neither the Council nor the Applicant were ever informed about the Staff's driveway designations. The stipulation for improving Driveway "D" should have been removed from the requirements, but was included as an oversight by the Town Staff. At the meeting on January 27, 2003, Mr. Waldon explained that the Town Staff had taken off the cross-access easement agreement as part of the list of conditions since the applicant was unable to reach an agreement with the adjacent property owner and the Town could not require a third-party to comply with conditions for the Project.

My review of the meeting minutes from January 27, 2003 indicate that the Council, after discussion, agreed that the applicant should not be required to make off-site improvements or obtain easements from a property owner refusing to provide the same. Therefore, it is reasonable to administratively remove the improvement of Driveway "D" as a requirement in light of the Council having discussed and approved that the applicant would not be required to make improvements or obtain easements from an adjacent owner refusing to provide the same. It would be an economically wasteful use of the applicant's resources and the Town's resources to require the applicant to return to the Council to review this matter. An additional review by Council would delay the Project creating an economic hardship for the applicant. The Council has already supported the Town's position that it is not reasonable to require a third-

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November 24, 2003

Ralph Karpinos, Attorney for the Town of Chapel Hill
Cal Horton, Town Manager for the Town of Chapel Hill

party to agree to a Stipulation or to require the applicant to get an agreement from another property owner who refuses to provide that agreement.

We believe that Stipulation No. 4 as written was included simply as an oversight by the Staff and should have been removed from the list of stipulations when Council agreed this project should move forward without third-party agreements that were not obtainable or enforceable. I look forward to your assistance in the interpretation of Stipulation No. 4 as no longer applicable in relation to the applicant being required to make an off-site improvement of Driveway "D".

If you have any questions, please give me a call prior to providing your written response.

Sincerely,



Wayne R. Hadler

- cc: Mayor Kevin Foy
- Richard Gurlitz, Architect for the Project
- Gene Poveromo, Town Planner
- Roger Waldon, Director of Planning Dept.
- Bill Wilson, Vice-President - Eastern Federal Corporation



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TOWN OF CHAPEL HILL

December 12, 2003

Wayne R. Hadler
Beemer, Savery, Hadler & Jones
Suite 800-B, Franklin Square
1829 E. Franklin Street
Chapel Hill, NC 27514

Subject: Village Plaza Theater - January 27, 2003 Special Use Permit

Dear Mr. Hadler:

This correspondence is in response to your November 24, 2003 letter (attached) addressed to me and Ralph Karpinos concerning the Town Council's review and approval of a Special Use Permit for the Village Plaza Theater. Specifically your letter presented an opinion that Stipulation #4 of the Village Plaza Theater resolution, adopted by the Town Council on January 27, 2003, is not applicable to the project. I have reviewed the facts and have come to a different conclusion.

I believe Stipulation #4 was not deleted from the Resolution because of what I believe can be fairly described as an error in process. It appears that the error occurred when neither the staff nor the applicant realized that the stipulation would require that the applicant obtain the cooperation of an adjoining property owner who had made clear that such cooperation would not occur. Subsequently, the Council was not made aware of the potential predicament and proceeded to approve the Resolution without deleting the stipulation.

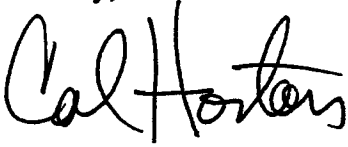
It could be argued that the Council would have the authority to allow the Manager to delete Stipulation #4. However, I believe that it would be more prudent to require the applicant to submit a Special Use Permit Modification application and request that the Council delete the stipulation in question.

I recommend that your client submit a Special Use Permit Modification application and petition the Council to seek expedited processing of the application. I further suggest that your client request that the Special Use Permit Modification be limited to the specific purpose of deleting stipulation #4; and, that your client request that the application fee be reduced to the costs of giving notice of the hearing.

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I have discussed this subject with Ralph Karpinos and he agrees with the content of this correspondence.

Sincerely,

Handwritten signature of W. Calvin Horton in cursive script.

W. Calvin Horton
Town Manager

Cc: Michael Ortiz
Ralph Karpinos

Attachments