



5517 Chapel Hill Boulevard • Suite 2000 • Post Office Box 51729 • Durham, NC 27717-1729
Telephone (919) 489-9001 • Toll Free (800) 437-9001 • Fax (919) 489-5774
Writer's E-Mail Address: MOrtiz@Faison-Gillespie.com

February 20, 2004

Mr. Gene Poveromo
Planning Department
Town of Chapel Hill
306 North Columbia Street
Chapel Hill, North Carolina 27516

Re: Eastern Federal Concept Plan

Dear Gene:

As you are aware this firm represents both Ginn & Company and Crowell Little. I did not receive a copy of the theater's Concept Plan until the day of the Town Council meeting; thus, I was not in a position to respond in writing prior to the Council meeting. I did, however, want to provide the Town of Chapel Hill with Ginn & Company's and Crowell Little's written response to the theater's Concept Plan.

It is my understanding that the Concept Plan involves modifying stipulation number 4 of the Special Use Permit granted to the theater on January 27, 2003. More specifically, the theater's Concept Plan would delete the requirement to improve driveway D as part of stipulation 4. My clients are strongly opposed to any modification to the Special Use Permit; particularly, the requirement to delete the improvements to driveway D. It is no accident that the improvements to driveway D were included as a crucial stipulation to the Special Use Permit. There are two main entrances serving the theater. These entrances are driveways C and D. The traffic engineer retained by the Town of Chapel Hill to study this overall project recognized from the very beginning the importance of driveway D. The traffic engineer's own study showed that a significant portion of the traffic entering the theater would proceed through driveway D. There is no reason to think this will change if driveway C is modified and driveway D is left unchanged.

The traffic engineer retained by the Town recognized that driveway D would need to be widened to accommodate the massive

Mr. Gene Poveromo
February 20, 2004
Page 2

(166)

influx and exodus of vehicles going into the parking lot and leaving the parking lot once the ten-screen theater is fully operational. Not only did the Town's traffic engineer recommend approving driveway D, but the Town's planning staff fully endorsed this position. All of the Town's staff reports to the Town Council recommended that driveway D be widened to allow for two exits and one entrance.

Driveway D is located at a 4-way intersection. A 4-way intersection by its very nature has a number of conflicting traffic movements. Cars traveling south on Elliott Road will be competing with cars coming north and east to make a left hand turn at this critical intersection. The failure to address driveway D will only add to the conflicting traffic movements, because cars attempting to turn into the very narrow driveway will be competing with vehicles attempting to leave the shopping center.

In order to alleviate significant backup and queuing problems in the parking lot, an exclusive right turn lane needs to be maintained. Cars exiting driveway D are going to stack (back up) while waiting to turn left. Without widening driveway D, vehicles turning right will be blocked, while left turning vehicles are stacking, and it will create a virtual gridlock situation leaving the shopping center. This backup of vehicles is going to impact vehicles parked to patronize the Red, Hot & Blue restaurant and other local merchants. The inability of the parked cars to back out of the parking spaces along driveway D is only going to further exacerbate a difficult parking arrangement. Parked cars are going to be competing with cars entering and exiting the shopping center for use of driveway D.

Based on the current drawings, the theater only has 118 parking spaces on its property. All the other parking spaces necessary to satisfy the theater's parking requirements need to be drawn off neighboring land. Based on the Chapel Hill ordinance, a place of assembly such as the theater requires one space for every four seats. Given that the theater will have 1,600 seats, it equates to 400 parking spaces. Thus, just the theater alone will need to draw 282 required parking spaces from neighboring land. Using the equations provided in ITE's *Parking Generation*, 2nd Edition, the proposed 10-screen, 1600-seat theater would require approximately 478 parking spaces. In

Mr. Gene Poveromo
February 20, 2004
Page 3

other words, the theater is expecting to "share" 75% of the spaces in the adjacent shopping centers to fulfill its parking space needs. It should be noted that the City of Raleigh does not permit any reduction in theater parking spaces for shared parking and the Town of Cary permits no more than a 25% reduction for shared parking.

The Special Use Permit that was approved on January 27, 2003 combined both the Mark Properties and the theater into one SUP. However, the parking required for both projects is 688 spaces. Even including the Mark Properties parking spaces with the theater, the combined projects are still 198 parking spaces short. This means a significant amount of the parking will need to be drawn off the Ginn & Company parking lot and the Staples shopping center. When this occurs, the most likely entrance to handle this parking overload is going to be driveway D.

The traffic study prepared for the Town did not evaluate the parking needs of the proposed theater. The traffic study assumed that the vast majority of theater patrons could use spaces that serve the retail businesses in the two adjacent shopping centers. However, no study was performed to verify that an adequate number of spaces would indeed be available in the shopping center parking lots during peak theater periods. Hence, it is critical to assess the availability of spaces that can be shared at critical times. It is also critical to assess what entry points will be used to access the shared spaces. Until this is completed, modifications to driveway D cannot be simply ignored.

Furthermore, driveway D is the main truck/service entrance for vehicles servicing the tenants of both the Ginn property and the Staples property. The failure to address this entrance will seriously impact these delivery vehicles servicing the local merchants. Whole Foods itself receives at least eight tractor trailer loads of merchandise every day, as well as a minimum of 15 smaller truck deliveries every day. In addition, the PTA Thrift Shop receives and ships out bulk merchandise by service vehicles every day. These service vehicles will naturally be competing with theater patrons for use of driveway D.

Mr. Gene Poveromo
February 20, 2004
Page 4

Compounding this problem is the fact that driveway D alleviates some of the stacking problems that occur when vehicles in the Staples property back up while attempting to turn left from the Staples property onto East Franklin Street. Many local citizens familiar with the shopping center's internal circulation recognize that a safer alternative route is to drive through the back of Staples property and out driveway D to get to Franklin Street. By taking this route, the shopping center patrons in both the Staples property and the Whole Foods property, as well as theater patrons, are making a right hand turn onto Elliott Road and a protected left or right hand turn onto Franklin Street. The failure to recognize this fact and modify driveway D accordingly will ultimately impact the safety of shopping center patrons trying to proceed out of the shopping center onto Franklin Street.

The traffic analysis for the Town did not consider the impacts of traffic queues on the driveways nor the traffic queues on Elliott Road. There is limited distance on the driveways for traffic to back up. Long queues could spillover into parking lot circulation aisles blocking the flow of traffic within the parking lots. The southbound left turn lanes on Elliott Road at Driveways C and D are short and cannot be readily lengthened. The southbound left turn lane at Driveway C is only about 40 feet long (2-3 car lengths). Traffic could spillover into and block the southbound through lanes of Elliott Road as well as the abutting northbound left turn lane. Such queues could block traffic exiting Driveway D to the north. The southbound left turn lane at Driveway D is about 80 feet long (i.e., about 4-5 car lengths). Long queues here could block traffic trying to turn left out of the driveway along the north side of Red Hot and Blue and block left turns into this driveway.

The importance of driveway D is further impacted by the recent realization that the cross access and parking agreement between the theater and Mark Properties to the south is not a free flowing unrestricted cross parking arrangement. Mark Properties has the right to restrict the theater patrons from parking on its property. Pursuant to the cross access and cross parking agreement, the right of theater patrons to park on Mark Properties is subordinate to the rights of Mark Properties' own customers and tenants. At any time, Mark Properties may

Mr. Gene Poveromo
February 20, 2004
Page 5

169

prohibit the theater's patrons from using Mark Properties parking lot and other facilities. Should this occur, the importance of driveway D will be magnified.

Any attempt to eliminate the requirement to improvement driveway D ignores the recognized importance of this driveway. This driveway D was critical to the traffic engineer's overall analysis of the theater expansion project. Driveway D was important and included in the Town of Chapel Hill's report to the Council when it recommended approving the project. Driveway D plays a critical role in handling the traffic flow in and out of the theater project, the Whole Foods project, and the Staples project. Based on all this, Ginn & Company, as well as Crowell Little, the owner of the Staples project, ask that the theater's most recent Concept Plan be rejected and any attempt to modify stipulation number 4 to the theater's SUP be denied.

With best wishes, I am

Sincerely,



Michael R. Ortiz
FOR THE FIRM

MRO:slg
3416-1\L\053Poveromo

cc: Mr. Steve Ginn
Mr. Crowell Little