

*Add'l info #2
Clerks copy*

JOHN GODDIN
104 GARDEN STREET
CHAPEL HILL, NC 27517

June 20, 2005

Chapel Hill Town Council

Re: Performance Auto Special Use Permit Modification

To Whom It May Concern:

I live at 104 Garden St., two blocks from Performance Auto Mall on the south side of Old Durham Road. As a resident of the neighborhood that will be most impacted by the proposed expansion of the Performance dealership I would like to express my opposition to the current proposal to modify their special use permit. I am opposed for the following reasons:

1. Conversion of lot 7.27A.C.9 currently zoned Neighborhood Commercial into a parking lot is not an appropriate use of this property. This property is separated from the main Performance campus by a busy state road with no crosswalks or appropriate crossing points. It has long been zoned Neighborhood Commercial by the town. NC zoning is "...intended for the development of low-intensity commercial and service centers that are accessible by pedestrians from the surrounding neighborhoods, serve the daily convenience and personal service needs of the surrounding neighborhoods, and are of such a nature as to minimize conflicts with surrounding residential uses." Parking is allowed only as an accessory use in NC zoning, defined as "A use on the same lot or in the same structure with, and of a nature and extent customarily incidental and subordinate to, the principal use of the lot or structure." This proposal involves converting this property into solely a satellite parking lot for the main Performance campus, which does not reflect the intent of the underlying zoning or the Comprehensive Plan. I object to this proposal on the following grounds:
 - a. It removes this piece of property from being used to support a neighborhood commercial business
 - b. There are a large number of residents who live within walking distance of this property in the Cooper Square Condominiums, University Heights neighborhood, Legion Road townhomes, Colony Lake neighborhood and others. These neighborhoods are all located on the same side of Old Durham Road as the property, unlike Performance, which is located across Old Durham Road.
 - c. The applicant describes the surrounding neighborhood as "... a true mixed-use neighborhood, where housing coexists with intensive business and office uses. The closest comparison is in the Town Center area of Chapel Hill where all types of residential and attached residential uses coexist in close proximity to restaurants, office and commercial uses." A monolithic parking lot covering two parcels long designated for

Neighborhood Commercial uses is not appropriate in an area such as this. The town is in fact redeveloping its own parking lots in the area the applicant finds most comparable to this one.

- d. Pedestrian crossing of Old Durham Road is dangerous for all involved.
- e. Paving of this parking lot will increase already existing drainage problems in the area. Old Durham Road is a ridge line, and placing a parking lot on this property overloads our basin with impervious surface, while allowing less impervious surface on the main campus.
- f. The need for this parking can be mitigated by Performance encouraging alternative methods of transportation to work by employees.
- g. This proposal seeks to nearly double the amount of parking for this business, from 130 spaces to 250 spaces. These spaces are not needed for additional employees and customers, but primarily as display space for product to be sold (cars).
- h. As proposed, this lot will have its entrance and exit on Cooper St., significantly increasing traffic in my neighborhood, which is not designed to handle it.
- i. Performance previously received approval for and constructed a similar parking lot at the corner of Old Durham Road and Cooper St. This involved widening of the pavement in front of the lot for a bicycle lane. Performance then adopted this stretch of pavement as an unloading zone for car carriers, allowing and assisting car carriers to park and unload vehicles there. This created an extremely dangerous situation, as the car carriers make it impossible for someone attempting to access Old Durham Road from Cooper St. to see oncoming traffic. I have narrowly avoided accidents numerous times due to this. Performance held a neighborhood meeting in 2003 when they first came forth with this proposal. A number of neighbors expressed concern over this situation at that time. Performance's response at that time was that it was a town problem, not theirs, and that they had no control over the action of these delivery drivers (hard for me to believe, especially since Performance employees assisted in the offloading and moving of these vehicles onto their property). They did promise to take immediate steps to work with the town on a resolution of the matter. They took no action for three weeks after this, and only became involved after I contacted the town to ask what steps could be taken. The problem is less severe now, due to Kumar Neppali working with DOT to have a No Parking sign erected. I fear a similar abuse and lack of concern for the general public welfare would occur with this new lot. If this lot is approved, the town should rethink its requirement for adding additional pavement in front of it, or work with DOT to clearly make this a right hand turn lane and prohibit parking. This stretch of road is becoming like Weaver Dairy, with wide spots and narrow spots, and no clear indications of traffic patterns.



- j. A modification of regulations is not the appropriate manner in which to approve this proposal, and is tantamount to spot zoning this property to serve a private, not public, purpose. The planning staff justification for this course of action (that in this case a principal parking space is equivalent to an accessory parking space) is nonsensical and absurd. The intent of the zoning ordinance is clearly that parking on a Neighborhood Commercial zoned property is accessory to a Neighborhood Commercial use on that property. That certainly is not the case here. The applicant's original proposal called for a rezoning of this property to Community Commercial. If the applicant wants to use this property for a primary use as a parking lot, they should go through the rezoning process rather than using a modification of regulations. A modification in this instance serves solely a private purpose, not a public one, as is required for its use. Allowing the current parking lot at the corner of Cooper and Old Durham Rd. on a parcel zoned NC was inappropriate, as was allowing it through a modification rather than a rezoning, and does not justify making the same error again.

- k. Performance utilized the property in question illegally for years, gravelling over the backyard and storing vehicles on the property without any permits or approvals. They accessed the backyard by taking out a section of fencing from their existing parking lot. This violated the Special Use Permit for that lot, which states “That the parking lot shall only be used as an employee parking lot. Any use of the parking lot other than employee parking shall be prohibited, including but not limited to the following uses: sale or storage of new cars, used cars, rental cars, body shop cars, or any repair or sales activity.” The illegal development of this lot compounded chronic drainage problems in this area, and flooded condominiums in Cooper Square, directly behind this lot. They also utilized the handicapped access to the parking lot as an extra parking space until reminded that doing so probably left them out of compliance with ADA and could subject them to lawsuits.



2. Performance Auto Mall has consistently, willfully and knowingly violated the terms of their existing special use permits and a wide variety of town zoning regulations. It is inappropriate to reward such behavior by approving this permit modification. They stated in their response to Department Head Comments on their application that they have been in compliance with their existing permits. This is simply untrue. Their violations of their permits and town regulations is so consistent, flagrant and blatant that it is obvious that they have no intention of following the conditions for doing business in Chapel Hill that have been established for them, and do not fear any consequences from such action. This proposal involves a ten year build out of this property, all while Performance continues to operate its existing business. Given current management’s continuous disregard for the town’s rules and regulations, I fear that they will be even more aggressive in their violations in the future as this project moves forward. Performance needs to demonstrate that they have the intention to **maintain compliance with their permits and town regulations for an extended period of time** before they should be allowed to expand their business. The Planning Board has requested an accounting of Performance’s violations. This

information should be carefully considered as you weigh this proposal, and you should realize that the town's record of violations is based solely on citizen complaints, and is far from complete.

Some examples of these violations are:

- a. Illegal development and use of the lot they now propose for parking on the south side of Old Durham Rd. This property was used illegally in a number of different ways starting almost immediately upon Performance acquiring the property. Their use of the backyard for vehicle storage and use of their current lot to provide access violated the terms of the special use permit for their existing lot. The town should be looking at revoking the existing special use permit rather rewarding Performance by approving another parking lot on this property.





This map contains parcels prepared for the inventory of real property within Orange County, and is compiled from recorded deeds, plats, and other public records and data. Users of this map are hereby notified that the aforementioned public primary information sources should be consulted for verification of the information contained on this map. The county and its mapping companies assume no legal responsibility for the information contained on this map.

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Parcels Current Thru 6/3/2005. Owner Information Current Thru 5/26/2005

Parcel Identification Number: 9799679527

Summary Building Land Documents Prior Owners Addresses

[Create Print Data Page](#)



b. **Illegal use of the bank property.** Upon gaining control over the former Bank of America property, Performance immediately turned it into a Subaru dealership, not only using the building, but parking Subarus on every square foot of property, including the grass areas. After being cited and forced to cease this use, they have continued to use the lot for automobile repair on a regular basis, including activities which appear to involve the use of toxic paints and chemicals.



May 11, 2005



June 7, 2005



June 8, 2005



June 9, 2005

c. Storing and displaying cars illegally in landscape buffer and other grassy areas. Performance has continually stored and displayed cars in areas not allowed for that use, including landscape buffer areas. This violates their special use permit and other town regulations, including the sign ordinance since they often raise the hoods on these cars and insert large signs. It should also be considered a violation of their impervious surface limits, since as far as I know, automobiles are not pervious and the grass they are parked on is. They also display cars in the median between the service road and 15-501, and show customers cars in that location, which is dangerous, and clearly in violation of no parking regulations for that area.





May 14, 2005

May 25, 2005



June 4, 2005





June 7, 2005



June 8, 2005



June 11, 2005





June 16, 2005

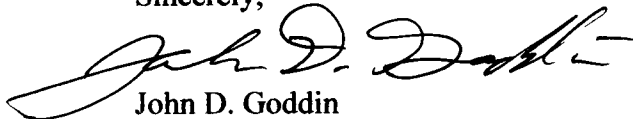
3. Transportation issues

- a. The transportation study done in connection with this proposal is flawed in several ways. It does not take into account the number of trips that this business generates from test drives of new and used vehicles being considered for purchase, and test drives done by mechanics before and after repairing vehicles. This number may exceed the traffic generated by employees and customers coming to and leaving the property, and would have a substantial impact on the surrounding road system.
- b. The study also does not examine the impact on surrounding neighborhood streets from the traffic generated by this business. The intersection of 15-501, Old Durham Road and Scarlet Drive is horribly designed and extremely confusing. Most people who are aware of alternatives to using it do so. Unfortunately that puts them on streets in my neighborhood (University Heights). This neighborhood consists of narrow residential streets with no sidewalks and lots of children and pedestrians. Legion Road extension is the only through street in the neighborhood, and it has a three way stop at one end, and a four way stop at the other end. At least 50% of the vehicles at these two intersection run the stop signs, often speeding up as they approach them to beat the few cars that do actually stop. The intersection of Legion Road and Scarlet Drive is particularly dangerous and is heavily used by pedestrians. The impact of this proposal on these roads should be adequately evaluated and mitigated. This is in my mind very important because it is likely to be an accident between a vehicle and a pedestrian, rather than a little bit longer wait at a traffic signal that is the result of the additional traffic load.
- c. The rear entrance and exit to Performance are currently marked entrance only and exit only, but both receive two way traffic constantly during the day. My guess is that as much or more traffic passes through these access points as come in the front access points along the service road. The access points along Old Durham Road need to be better controlled. Traffic utilizing these access points dumps into my neighborhood due to the

terrible intersection at 15-501, further emphasizing the need to analyze the impact of traffic on these roads as well as 15-501.

In summary, I urge you to deny this application. Rather than compounding an earlier mistake, Performance should not be allowed to convert the Neighborhood Commercial lot on the south side of Old Durham Rd into a parking lot, and serious consideration should be given to revoking the existing special use permit for the lot already on that side due to Performance's willful noncompliance with that permit, non compliance that existed for many years, even after Performance was cited by the town. In addition, Performance should not be given any modification to any permits for any of its property until it shows over an extended period of time (I suggest a year), that they have the intention and the ability to abide by the terms of their current permits and town regulations. The violations I have cited here all occurred while Performance is in the process of applying for this special use permit modification, and would presumably be on their best behavior. If they act this way now, I am very worried as to the level of disregard they will show the town and neighbors if this permit is approved without addressing their repeated and willful non compliance. I thank you for your consideration of these points as you evaluate this proposal.

Sincerely,



John D. Goddin