

APPLICATION FOR MODIFICATION
OF THE SPECIAL USE PERMIT
OF
GINN & CO.

STATEMENT OF JUSTIFICATION

Ginn & Co. ("Ginn") owns approximately six of the almost eighteen acres of land that comprise the Village Plaza shopping center in Chapel Hill. Ginn's six-acre parcel (the "Ginn Parcel") is located at the southeastern corner of the intersection of East Franklin Street and Elliot Road. Tenants such as Whole Foods, Zorba's, PIP Printing, and Red Hot & Blue lease space in the buildings on the Ginn Parcel. (Red Hot & Blue leases and occupies the outparcel building on the Ginn Parcel.) Eastern Federal Corp., the owners of the parcel adjoining the Ginn Parcel to the south, operate the Village Plaza Theaters. The remaining parcel of Village Plaza, which is owned by Triangle V II Limited Partnership and is managed by Mark Properties, is the site of such tenants as Spa Health Clubs, Visart Video and Monterey Mexican Restaurant.

In the late-1960's, what is today known as the Village Plaza shopping center was known as the Kroger Plaza shopping center, Kroger being the anchor tenant of the shopping center. On March 10, 1969, the Town of Chapel Hill granted the owner of the Ginn Parcel a unified business development Special Use Permit in order to permit certain redevelopment on the Ginn Parcel (the "SUP"). The SUP was recorded in the Orange County Registry on February 20, 1976 at Book 261, Pages 557-558.

The SUP includes certain "Special Terms and Conditions." Special Term and Condition (4) reads (emphasis added):

(4) that use of the second building be restricted to a dry cleaner or night time dining establishment and if neither of these uses appears practical that the developer resubmit plans for modification of a special use permit to allow another use.

The "second building" referred to in this language is believed to be the building that today houses the Red Hot & Blue restaurant. Back in 1969, the building housed a restaurant named "Peddler's." It is believed that Peddler's served only dinner. At some point in the next five years, the restaurant changed owners and names. By 1974, the restaurant was operated under the name "Four Thieves." The Four Thieves served both lunch and dinner. In 1984, the building was renovated and expanded and opened as a restaurant called "McCarthy's." McCarthy's served both lunch and dinner. Beginning in February 1993, Red Hot & Blue opened its doors and began selling its barbeque. Like Four Thieves and McCarthy's before it, Red Hot & Blue served both lunch and dinner. Red Hot & Blue continues to serve both lunch and dinner today.

By letter dated May 7, 2003, the Town of Chapel Hill informed Ginn (which since January 1994 was the owner of the Ginn Parcel and the building housing Red Hot & Blue) of a zoning violation on the Ginn Parcel. Specifically, Red Hot & Blue's operation for dining during the day, according to the Town, violates the above-referenced condition 4 of the SUP.

Ginn filed a notice of appeal to the Town of Chapel Hill Board of Adjustment. However, subsequent to filing the notice of appeal, the Town Council agreed to expedite the review process of a modification of the Special Use Permit to allow for daytime dining in the second building (currently occupied by the Red, Hot & Blue Restaurant).

The modification of the Special Use Permit is for the limited purpose of allowing daytime dining in the second building (Red, Hot & Blue Restaurant). Serving food at the restaurant during the day will not jeopardize the public health, safety, or general welfare of the citizens of Chapel Hill. The approval of the modification of the Special Use Permit is only intended to "officially permit" a use in the second building that has existed since 1974. Thus, the modification of the Special Use Permit will not change the site as it relates to compliance with Articles 3, 4, 5 and 6 of the Chapel Hill Land Use Management Ordinance, and with all other applicable regulations.

For over twenty-nine years, the restaurant operation in the second building of Village Plaza has served lunches and dinners. By serving lunches, the restaurants located in the second building of the Ginn Parcel have helped draw customers to the theatre and retail establishments on the contiguous property, and have served as a convenient eatery for customers of the theatre and retail stores on the neighboring property. Thus, the approval for the second building to provide daytime dining will enhance the value of all of the contiguous properties. Approving the modification of the Special Use Permit is in effect only "putting on paper" what has existed at Village Plaza for almost three decades. Therefore, it is not anticipated that approval of the modification of the Special Use Permit will have any negative impact on the values of any of the contiguous properties.

Finally, to the extent that the second building is located in an area zoned Community Commercial (CC), in which restaurants serving lunch during the day is anticipated, the approval of the modification of the Special Use Permit conforms with the general plans for the physical development of the Town, as embodied in the Chapel Hill Land Use Management Ordinance and in the Comprehensive Plan.

For the above reasons, it is requested that the Town of Chapel Hill approve the modification of the Special Use Permit for Village Plaza to allow for daytime dining in the second building.