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CHARLES G. BEEMER
 RETIRED

**PETITION IN SUPPORT OF
 EXPEDITED PROCESSING OF SPECIAL USE
 PERMIT MODIFICATION FOR VILLAGE PLAZA THEATER
 JANUARY 27, 2003 SPECIAL USE PERMIT**

TO: MAYOR and TOWN COUNCIL

FROM: Wayne R. Hadler, Attorney for applicant Eastern Federal Corporation

DATE: January 7, 2004

On behalf of my client Eastern Federal Corporation I hereby petition the Council to approve an expedited processing of a Special Use Permit Modification request of the Special Use Permit for the approved Village Plaza Theater project. We have requested that the scope of the Special Use Permit Modification be limited for the specific purpose of deleting Stipulation #4, which appears to require the applicant to obtain an agreement from an adjoining property owner for certain off-site improvements. The adjoining property is unwilling to provide the agreement. Stipulation #4 states:

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.

Approval for the expedited review is essential to afford the Village Plaza Theater project to proceed in a timely manner and minimize further economic damage to my client. Attached as Exhibit "A" hereto and incorporated by reference herein are a letter from W. Cal Horton, Town Manager to the undersigned recommending my client seek this expedited review along with a copy of my letter to Mr. Horton requested approval of the deletion of Stipulation #4. The letter will hopefully provide adequate information regarding the limited nature of the problem and the need for Council's approval of an expedited processing of the Special Use Permit Modification request.

Respectfully submitted



Wayne R. Hadler, attorney for the Applicant



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.

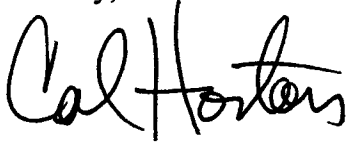
I believe Stipulation #4 was not deleted from the Resolution because of what I believe can be fairly described as an error in process. It appears that the error occurred when neither the staff nor the applicant realized that the stipulation would require that the applicant obtain the cooperation of an 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.

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

Sincerely,

A handwritten signature in black ink that reads "Cal Horton". The signature is written in a cursive style with a large, prominent "C" and "H".

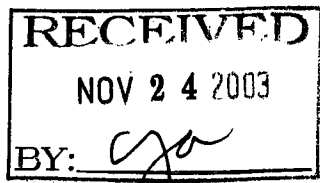
W. Calvin Horton
Town Manager

Cc: Michael Ortiz
Ralph Karpinos

Attachments

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Original to Planning



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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
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-Page Two

November 24, 2003

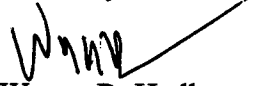
Ralph Karpinos, Attorney for the Town of Chapel Hill
Cal Horton, Town Manager for the Town of Chapel Hill

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