



CLOSE THE EVIDENTIARY HEARING AND CONSIDER AN APPLICATION: SPECIAL USE PERMIT MODIFICATION FOR CHAPEL HILL NORTH (HARRIS TEETER FUEL CENTER AND PHARMACY EXPANSION) AT 1800 MARTIN LUTHER KING, JR. BLVD. (PROJECT #21-007)

STAFF REPORT TOWN OF CHAPEL HILL PLANNING DEPARTMENT
 Mary Jane Nirdlinger, Interim Director
 Judy Johnson, Assistant Director
 Anya Grahn, Principal Planner

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| PROPERTY ADDRESS 1800 Martin Luther King Jr. Blvd. | MEETING DATE November 16, 2022 | APPLICANT Harris Teeter Properties, LLC, on behalf of Chapel Hill North Station LLC and Chapel 40 LLC |
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TOWN MANAGER’S RECOMMENDATION
 After reviewing and discussing key issues with Town staff and based on the evidence in the record to date, I believe that Council could consider closing the hearing and consider approving the Special Use Permit Modification.

UPDATES SINCE THE MAY 18, 2022, EVIDENTIARY HEARING
 The applicant has submitted the Applicant’s Memorandum of Law as well as a property appraisal (attached).

PROCESS
 The property is encumbered by a Master Land Use Plan (MLUP), approved by the Town Council in 1990. It is also encumbered by a Special Use Permit (SUP) approved by Council in 1991. No development on the property shall be approved unless it is consistent with the Master Land Use Plan. The applicant proposes to modify the SUP to construct a fuel station, a pharmacy drive-in window, and other site improvements.

The application is before the Council for approval of a SUP Modification. If the Council finds that the proposal is consistent with the Master Land Use Plan, a rebuttable presumption is established that the proposed development:

- Maintain or promote the public health, safety, and general welfare;
- Maintain or enhance the value of contiguous property, or be a public necessity; and
- Conform to the Comprehensive Plan.

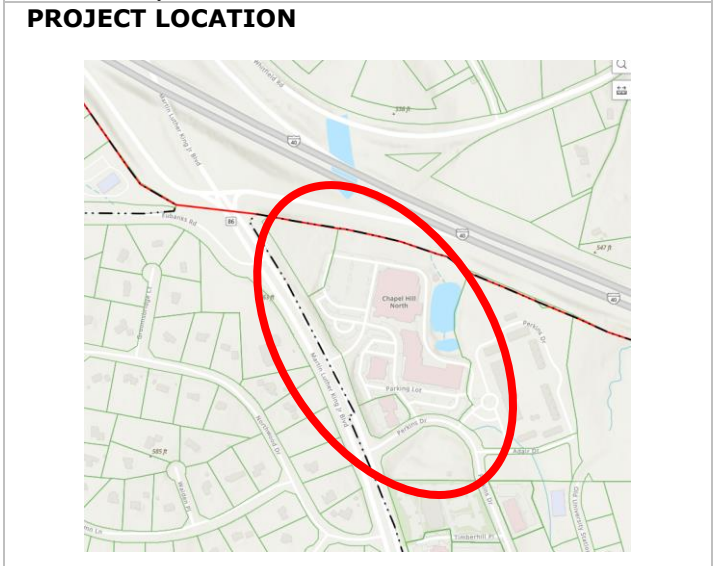
Council’s consideration of the proposal is focused only on the **one additional finding** in order to approve the SUP modification:

- Complies with all required regulations and standards of the Land Use Management Ordinance.

The applicant has requested modifications to regulations, which the Council has the ability to make a finding in the particular case that the public purposes are satisfied to an equivalent or greater degree. Alternatively, the Council could choose not to grant the requested modifications to regulations and the applicant would be required to meet all the regulations and standards of the LUMO.

DECISION POINTS
 The proposed development requests the following modifications to the existing SUP:

- Expand the boundary of the 1991 SUP to include the outparcel for the Harris Teeter fuel center lot (PIN 9880-27-0438)
- Modify the landscape buffers prescribed by the SUP to narrow the Interstate 40 buffer and allow buffer viewpoints along Martin Luther King Jr. Blvd.
- Approve an SUP for a pharmacy drive-in window and service station (uses permitted in the Master Land Use Plan)



PROJECT OVERVIEW
 The existing SUP authorized:

- 106,500 sq. ft. of office square footage
- 150,500 sq. ft. of commercial square footage
- 1,016 parking spaces.

The proposed SUP includes constructing:

- 11,572 sq. ft. expansion to the grocery store building
- Pharmacy drive-in at the north end of the building
- New fuel center with 7 fuel pumps (14 fueling positions) and a 240 sq. ft. kiosk
- Additional 50 parking spaces and drive aisles

The additional floor area and parking spaces are within the threshold amounts of the MLUP and SUP.

ATTACHMENTS

1. Technical Report and Project Fact Sheet
2. Draft Staff Presentation
3. Resolution A (Approving the Application)
4. Resolution B (Denying the Application)
5. Application Materials
6. Memorandum of Law and Property Appraisal, submitted 10.20.2022



TECHNICAL REPORT

UPDATES SINCE THE MAY 18, 2022, EVIDENTIARY HEARING

The applicant has provided some responses to the Council's discussion. Please see the attached applicant's Memorandum of Law and Property Appraisal.

PROPOSED MODIFICATIONS TO SPECIAL USE PERMIT

The requested modification to the 1991 SUP for this development has been outlined below:

- 1. Extend SUP to encumber fuel center parcel:** The existing SUP does not encumber the adjacent outparcel (PIN 9880-27-0438) that is the proposed fuel center site, although it is encumbered by the MLUP for Chapel Hill North. As such, the applicant is requesting to extend the SUP to this parcel in this application. By extending the SUP to the adjacent outparcel (PIN 9880-27-0438), the gross land area encumbered by the SUP will be increased to 736,844 square feet.
- 2. Modify the Landscape Buffer Widths Stipulated by the 1991 SUP:** The 1991 SUP requires the applicant provide a Type 'E' of at least 100 feet in width along Interstate 40; the applicant proposes modifying this to a 30-foot Type 'D' Buffer to accommodate the building expansion. The buffer modification request states that small, minor view corridors and breaks in the landscaping will be provided along the edges of the shopping center property for visibility of the grocery store to the public while still screening the proposed fuel center.

The 1991 SUP also calls for a Type 'D' buffer of at least 30 feet in width along the Martin Luther King Jr. Blvd. frontage with the section of buffer in front of the gas station expanded to at least 50 feet in width. The applicant is requesting the buffer in this area be modified to a 30-foot width with limited breaks for viewpoints.

- 3. Modify to add a drive-in window and service station use:** The Council could find for a public purpose in allowing a drive-in window pharmacy and a service station. The 1990 Master Land Use Plan approved commercial uses within the Chapel Hill North development that were permitted within Community Commercial zoning in the 1981 Development Ordinance (as amended). The pharmacy drive-in window and service station uses are permitted with a Special Use Permit.

PROJECT OVERVIEW

The application proposes modifying the existing Special Use Permit on the site to expand the existing Harris Teeter grocery store to incorporate a pharmacy drive-in window on the north side of the building, construct additional parking areas, and construct a new service station. More details about the proposed development can be found in the Application Materials.

Information about the site and proposed zoning districts can be found below, as well as a list of proposed Modifications to Regulations, other important considerations that staff has identified, and an analysis of the project's consistency with the Comprehensive Plan and relevant Findings of Fact.

RELATIONSHIP TO MASTER LAND USE PLAN

The Land Use Management Ordinance states that "if a Master Land Use Plan is approved for a tract of land, and an application for a Special Use Permit is subsequently received, then the Special Use Permit application must be consistent with the Master Plan. If it is consistent with the Master Plan, a rebuttable presumption shall thereby be established that the proposed development would:

- A. Maintain or promote the public health, safety, and general welfare;
- B. Maintain or enhance the value of contiguous property, or be a public necessity; and
- C. Conform to the Comprehensive Plan." [[See LUMO 4.8.2\(I\)](#)¹]

These are three of the four findings that the Council must make to approve an application for Special Use Permit.

The fourth finding, "that the use or development complies with all required regulations and standards of this chapter, including all applicable provisions of articles 3 and 5, the applicable specific standards contained in the supplemental use regulations (Article 6), and with all other applicable regulations," is the only additional finding that Council must make in order to approve the Special Use Permit Modification application with an approved Master Land Use Plan.

SITE CONTEXT

Staff identified physical and regulatory characteristics of the land relevant to considering this Special Use Permit Modification:

1. On January 23, 1990, the Council approved the existing Master Land Use Plan (MLUP) to facilitate the creation of Chapel Hill North, a mixed-use development.
2. On April 22, 1991, the Council approved the existing Special Use Permit (SUP).
3. The northern outparcel with the proposed fuel center is contiguous to the existing Harris Teeter property.
4. The site is bordered by Interstate 40 to the north, Martin Luther King Jr. Blvd. to the west, and Perkins Drive to the south. Access to the site is from Martin Luther King Jr. Blvd. and Perkins Drive.
5. The proposed development would be compliant with the Master Land Use Plan.

FINDINGS OF FACT

We have evaluated the application regarding its compliance with the Master Land Use Plan and standards and regulations of the Town's Land Use Management Ordinance. Based on our evaluation, our conclusion is that the application as submitted complies with the Master

¹https://library.municode.com/nc/chapel_hill/codes/code_of_ordinances?nodeId=CO_APXALOUSMA_ART4PR_4.8MALAUSPL

Land Use Plan and the regulations and standards of the Land Use Management Ordinance, and Design Manual, with the conditions included in Resolution A.

Tonight, the Council receives our attached evaluation and information submitted by the applicant. The applicant's materials are included as attachments to this memorandum. All information that is submitted at the hearing will be included in the record of the hearing. Based on the evidence that is submitted, the Council will consider whether it can make the one findings:

Special Use Permit – Required Finding of Fact

Finding: That the use or development complies with all required regulations and standards of the Land Use Management Ordinance (LUMO), including all applicable provisions of Articles 3 and 5, the applicable specific standards in the Supplemental Use Regulations (Article 6) and with all other applicable regulations.

Evidence in support: We anticipate that further evidence may be presented for Council's consideration as part of the continued Public Hearing process. The applicant has indicated that all the standards of the Town's LUMO will be met. See attached Application Materials.

Staff finds that conditions of approval and the requested Modifications to Regulations, as proposed, ensure that the proposal complies with all required regulations and standards of the LUMO.

Evidence in opposition: We have not identified any evidence offered in opposition to this Finding.



PROJECT FACT SHEET




Overview

| Site Description | |
|--|--|
| Project Name | Chapel Hill North (Harris Teeter Expansion and Fuel Center) |
| Address | 1800 Martin Luther King Jr Boulevard |
| Property Size (GLA) | 736,884 sq. ft. |
| Project Area | 221,285 sq. ft. (5.08 acres) |
| Existing | Chapel Hill North – Business office-type; and Business-General |
| Orange County Parcel Identifier Numbers | 9880-27-0438 and 9880-27-5036 |
| Existing Zoning | Mixed Use-Office/Institutional-1 (MU-OI-1) |


Site Design

| Topic | Comment | Status |
|---|---|-----------|
| Use/Density (Sec. 3.7) | Business office-type; and Business-General (Expansion to existing Grocery Store with pharmacy drive-in and Fuel Center) | |
| Dimensional Standards (Sec. 3.8) | Comply with LUMO Section 3.8; Dimensional standards (setbacks) only apply to exterior property lines | |
| Floor area (Sec. 3.8) | <i>Maximum:</i> 259,200 sq. ft. of retail per MLUP <i>Existing:</i> 167,301 sq. ft. <i>Proposed:</i> 12,029 sq. ft. <i>Total</i> 179,330 sq. ft. | |
| Inclusionary Zoning (Sec. 3.10) | NA | NA |
| Landscape | | |
| Buffer – North (Sec. 5.6.2) | <i>Required:</i> Type 'E' Buffer with width of at least 100 ft. <i>Proposed:</i> Type 'D' Buffer of 30 ft. | M |
| Buffer – East (Sec. 5.6.2) | <i>Required:</i> Type 'C' Buffer of 20 ft. <i>Proposed:</i> Type 'C' Buffer of 20 ft. | |
| Buffer – South (Sec. 5.6.2) | <i>Required:</i> Type 'C' Buffer of 20 ft. <i>Proposed:</i> Type 'C' Buffer of 20 ft. | |
| Buffer - West (Sec. 5.6.2) | <i>Required:</i> Type 'D' Buffer of 30 ft. <i>Proposed:</i> Type 'D' Buffer with viewpoints. | M |
| Tree Canopy (Sec. 5.7) | <i>Required:</i> 40% <i>Proposed:</i> 40% | |
| Parking Landscape Standards (Sec. 5.9.6) | Meet Town standards | |

| Environment | | |
|--|--|-----------|
| Resource Conservation District (Sec. 3.6) | <i>Maximum:</i> 20% land disturbance, 10% impervious surface <i>Proposed:</i> 5,908 sq. ft. (4.2%) land disturbance, 2,150 sq. ft. (1.5%) impervious surface | |
| Erosion Control (Sec. 5.3.1) | Orange County Erosion Control permit required | |
| Steep Slopes (Sec. 5.3.2) | Meet Town standards | |
| Stormwater Management (Sec. 5.4) | Use existing stormwater pond, evaluate and modify as needed to incorporate impervious surface | |
| Land Disturbance | 224,334 sq. ft. (5.15 acres) | |
| Impervious Surface (Sec. 3.8) | <i>Existing:</i> 405,108 sq. ft. (60.3%) <i>New:</i> +64,904 sq. ft. <i>Total:</i> 470,012 sq. ft. (70.0%) | |
| Solid Waste & Recycling | Public trash and recycling pickup proposed | |
| Jordan Riparian Buffer (Sec. 5.18) | Not applicable | NA |
| Access and Circulation | | |
| Road Improvements (Sec. 5.8) | Proposing to improve internal accessible sidewalk connections to Martin Luther King, Jr. Blvd. | |
| Vehicular Access (Sec. 5.8) | Access from Perkins Drive | |
| Bicycle Improvements (Sec. 5.8) | The applicant has declined to construct a raised bicycle lane along the Martin Luther King Jr. Blvd. | C |
| Pedestrian Improvements (Sec. 5.8) | Pedestrian links throughout the site will help connect the shopping center with public street sidewalks and transit | |
| Transit (Sec. 5.8) | No transit improvements proposed. | NA |
| Traffic Impact Analysis (Sec. 5.9) | Completed | |
| Vehicular Parking (Sec. 5.9) | <i>SUP Maximum:</i> 1,016 spaces <i>Existing:</i> 484 spaces (including 19 accessible spaces) <i>Proposed:</i> 534 spaces (including 20 accessible spaces) | |
| Bicycle Parking (Sec. 5.9) | <i>No change</i> | NA |
| Parking Design Standards (Sec. 5.9.5) | Meet Town standards | |
| Loading Space Requirements (Sec. 5.9) | <i>No change to 2 existing loading docks</i> | |
| Building Height | | |
| Building Height (Sec. 3.8) | <i>Required:</i> Primary Building Height: 44 ft.; Secondary Building Height: 90 ft. | |

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| | <i>Proposed:</i> Primary Building Height: Less than 34 ft.; Secondary Building Height: 34 ft. | |
| Technical | | |
| Fire | Meet Town Standards |  |
| Site Improvements | 11,800 sq. ft. expansion to the grocery store building; pharmacy drive-in window; new fuel center with 7 fuel pumps (14 fueling positions) and a 240 sq. ft. kiosk; additional parking and drive aisles |  |
| Recreation Area (Sec. 5.5) | Not required for commercial uses | NA |
| Lighting Plan (Sec. 5.11) | Maximum of 0.3 foot-candles at property line |  |
| Homeowners Association (Sec. 4.6) | Not applicable | NA |
| Adequate Public Schools (Sec. 5.16) | Not applicable | NA |

Project Summary Legend

| Symbo l | Meaning |
|--|---------------------------------|
|  | Meets Requirements |
| M | Seeking Modification |
| C | Requires Council Endorsement |
| FP | Required at Final Plan; |
| NA | NA |