



Briefing Sheet

Tab J, Version #3

Lead Department: Planning **Action Officer:** Rodney Wadkins/Senior Planner

Subject: Cruizers Convenience Store w/twelve (12) pumps and a Car Wash

Action Requested: Consider Resolution 2006-076 and Resolution 2006-076FDO

June 26, 2006

Briefing: June 12, 2006 **Public Hearing:** (for FDO only) **Action:** July 24, 2006

Expedite less than 30 days: No

If yes, explain rationale:

Executive Summary: The developer is proposing a primarily brick Cruizers Convenience Store with twelve (12) pumps and a car wash on a 2.05-acre site located on the northeast corner of Aviation Parkway and Chapel Hill Road (NC 54). The Planning Department recommends approval of the Flexible Design Option (FDO) request and the Cruizers site plan with a seal date of March 31, 2006 subject to compliance with the conditions outlined in this briefing.

Additionally, the proposed development is located in the Town Center Core Area.

Background:

Owner/Developer: Whistler Investment Group

Pin Numbers: 0755-14-7977, 0755-14-8838
0755-14-8768, and 0755-14-9971

Location: northeast quadrant of the intersection of Aviation Parkway and NC 54.

Project Type: Convenience Store with twelve (12) Pumps

Buildings: Main Store – 3,888 square feet
Car Wash – 1,056 square feet

Parcel Size: 2.05-acres (4 parcels)

Zoning: General Business (GB)

Surrounding Land Uses and Zoning:

- North** – Single family home zoned General Business (GB)
- South** – Single family home zoned General Business (GB)
- East** – Single-family zoned Residential-12 (R-12)
- West** – Railroad right of way and Fire Station #1 (GB)

Site Access

The developer is proposing right-in/right-out access on Aviation Parkway and NC 54. The access shall be controlled by raised concrete medians on both Aviation Parkway and NC 54. Prior to the issuance of a Certificate of Occupancy, all road improvements shall be installed.

Sidewalks

The developer is proposing eight (8) foot concrete multi-use sidewalks along Aviation Parkway and NC 54. The developer will provide a payment in lieu for the construction of a sidewalk and widening of Aviation Parkway on the east side of the entrance drive off Aviation Parkway because the property line is the center of the stream. The NC Division of Water Quality will not permit improvements into half of the stream.

Lighting

Due to the prominent location of the Cruizers, staff believes the lighting should comply with the proposed *Architectural Facade and Site Design Standards* currently proceeding through the approval process. To comply with the *Standards*, Vehicular Canopy Lighting shall not exceed a maximum of twenty (20) foot candles, as well as meet the following requirements:

- B) *Canopies and Awnings*: All fixtures shall be designed to illuminate the underside of a canopy, including vehicular canopies, or awning.
 - 1) Fixtures shall be:
 - a) Recessed fixture incorporating a lens cover that is either recessed or flush with the bottom surface (ceiling) of the canopy or awning that provides full cutoff or fully-shielded light distribution; or
 - b) Surface mounted fixture incorporating a flat glass that provides a full cutoff or fully shielded light distribution; and
 - c) Low wattage – 100 watts or less (This requirement only applies to non-vehicular canopies and awnings).
 - 2) The following fixtures shall not be permitted:
 - a) Indirect lighting that is beamed upward to reflect the underside of the canopy or awning;
 - b) Fixtures that do not provide a fully-shielded light distribution; and
 - c) Other fixtures deemed architecturally non-compatible by the Planning Director.

Since the last Planning Board meeting staff has revised the conditions relating to lighting to clarify any confusion. *See revised Conditions #3, 4, and 5.*

Acreage Fees

Effective April 3, 2006, all fees associated with water and sewer will be collected by the Town of Cary as part of its development fees. Additionally, acreage fees were prepaid on the land for the proposed Cruizers development and will be given credits toward the Town of Cary development fee.

Landscaping and Buffers

Due to the proximity of the railroad right-of-way, the developer was granted permission by the town (*Attachment E*) as well as permission from the railroad to plant landscaping in the right-of-way. The town required an alternate site plan to verify that if at any time the railroad withdrew their permission, the Cruizers site would still comply with the Landscape Ordinance (Refer to Site Plan *Sheets C-3A and C-3B*).

The developer has increased the caliper size of the proposed shade trees to a minimum four (4) inch caliper and the understory trees to a minimum two (2) inch caliper, which exceeds the current ordinance.

The Planning Department prefers Alternate B, which eliminates the parking spaces along NC 54 and places the plant material in that area instead (*Sheet C-3B*). Additionally, Alternate B has a lower percentage of impervious surface at 56% compared to 58% for Alternate A.

Transportation

John R. McAdams originally completed the Traffic Impact Study for the project in 2004 (*Attachment A*) and submitted an Addendum in 2005 (*Attachment B*).

According to this Study, an exclusive northbound right-turn lane on NC 54 at the site driveway is recommended. Based on this recommendation, the developer proposes to construct said turn lane on NC 54.

Additionally, the developer will be responsible for the installation of the two (2) foot wide monolithic concrete islands on Aviation Parkway and NC 54 in order to prevent the left turn out of the entrances.

Parking

The developer is proposing thirty-two (32) parking spaces for Alternate A and twenty-three (23) spaces for Alternate B both of which meet the minimum standard required.

Elevations

The elevations proposed are located on Sheet A1.0 and Sheet A2.0 consisting of brick and EIFS with standing seam metal roofing for all buildings including the canopy.

FEMA Floodplain

Since the lot is located in the floodplain, the finish floor of the Cruizers building shall be two (2) feet above the flood elevation for that area of the

creek. A note to that effect is provided on the plans.

Signs

All signs, including ground, fascia and directional, require separate review and approval. Signage should be limited to the fascia signs as shown on Sheet A1.0. Ground signs should not be permitted.

Per Part C, Article X, Section 3.8 of the Zoning Ordinance, illuminated signs within one hundred (100) feet of any residential use are prohibited, and illuminated signs within three hundred (300) feet of any residential use are prohibited between the hours of 12:00 midnight and 6:00 am.

Site Contamination

The proposed location for the Cruizers was a former location of a gas station, which has been determined to have groundwater and soil contamination.

See *Attachment C* for the Site Assessment Report prepared in November 2004, which includes a letter from NCDENR.

See *Attachment D* for the Mineral Springs Environmental, P.C. action plan to mitigate the on-site contamination.

Staff asked the applicant's consultant if the NCDENR agreed with the action plan prepared by Mineral Springs and received the following response:

I will attempt to get something on NCDNER letterhead by close of business Thursday, however it should be noted that NCDNER is "requiring" nothing at this time and has no mechanism to approve the plan we provided, (they only approve a complete Corrective Action Plan, which is not required at this site) however please refer to the excerpt below documenting a meeting between Bill Cooke of ENCOM Associates and representatives of NCDNER confirming that the proposed remediation plan is to their satisfaction:

"I met with Bob Davies and Mickey Roberts of NCDENR today. I explained the situation and they both agreed that the removal of the impacted soil beneath the building footprint was a great idea. They agreed that removing the soil, taking confirmatory soil samples to show we had removed all of the impacted soil, and then submitting a report detailing the work that was done was the best way to go. It would eliminate the need to address the soil under the building in the future and would help speed up the natural attenuation of the groundwater by removing the potential for leaching out of the soil into the groundwater over time."

After further review and speaking with NCDENR staff believed that the action plan was not comprehensive enough. The current action plan only addresses part of the contamination documented onsite by the developer's consultant.

Flexible Design Option (FDO) Request
FLEXIBLE DESIGN OPTION REQUEST

Phillips Architecture, PA, on behalf of Holmes Oil, is requesting to use the Flexible Design Option for the proposed Cruizers site plan. This request is asking for flexibility in the front setback adjacent to Aviation Parkway and NC 54.

PLANNING DEPARTMENT REVIEW

The setback reduction request falls within the limits of a Flexible Design Option request, and the applicant has demonstrated that the proposed Cruizers project offers desirability of architectural design (*Attachment F*). The Planning Department recommends approval of the FDO request because this allows the building to be pulled up to the corner instead of a more traditional layout with the gas pumps out front.

Staff Recommendation: The Planning Department recommends approval of the Flexible Design Option (FDO) request and Cruizers site plan with a seal date of March 31, 2006 subject to compliance with the following conditions:

1. *The applicant/subsequent property owner/subsequent property owner will carry out remediation measures as detailed in Mineral Springs Environmental, P.C. ("Mineral Springs") document of February 20, 2006 (Attachment D). Additionally, the applicant/subsequent property owner/subsequent property owner will carry out remediation measures for the area designated as "Highest Concentration" (the area designated by the darkest circle on page 3 of Attachment D) and the old UST basin to the level described in bullet 1 of the Mineral Springs document and backfill from the adjacent area.*

However, remediation of the area of "Highest Concentration" and the old UST basin is contingent upon minimal disturbance to any buried fiber-optic cable, or other utilities or infrastructure. If, while excavating, utilities are found in the field other reasonable corrective actions may be necessary as determined by the Planning Director.

The applicant/subsequent property owner/subsequent property owner will carry out annual monitoring for a period of five (5) years on all ten (10) existing monitoring wells to track movement of the plume. Each year the applicant/subsequent property owner/subsequent property owner will forward the results of the monitoring, as well as the results of the soil excavation activities, to the North Carolina Department of Environment and Natural Resources Underground Storage Tank Section Incident Manager (NCDENR) for the site and to the Planning Department for the town. The results shall be forwarded within 30 days of the completion of the sampling event.

If, after five years of monitoring, any of the wells read at a

level ten (10) times the NCDENR 2B surface water standards, then modeling shall be conducted by the applicant/subsequent property owner/subsequent property owner to assess in a technically defensible manner whether natural attenuation will mitigate such contamination to levels below ten times the NCDENR 2B surface water standards by the time such contamination reaches the unnamed tributary located at the eastern boundary of the site.

If such modeling is deemed by NCDENR to be technically valid and the model demonstrates that natural attenuation will achieve such mitigation by the time the groundwater contamination reaches the unnamed tributary, then no further mitigation shall be required by the Town of Morrisville.

If such modeling is deemed by NCDENR to be technically valid and it demonstrates that natural attenuation will not achieve such mitigation by the time the contamination reaches the unnamed tributary, then the applicant/subsequent property owner/subsequent property owner shall prepare and submit a remediation plan to NCDENR for review and approval. The responsibility for implementation of the remediation plan shall be as required by NCDENR. If at any time a No-Further Action is granted by NCDENR, the Town would acknowledge this and not require any further work task.

The applicant/subsequent property owner/subsequent property owner shall maintain all ten monitoring wells on site and allow access upon request so that sampling may be conducted as needed in perpetuity by NCDENR, the Town of Morrisville and/or their designees.

In addition to these measures, the applicant/subsequent property owner/subsequent property owner agrees to install a totally integrated, double wall, tank and line system and perform continuous monitoring of the interstitial space. This system will exceed the DNER minimum standards for "Siting and Secondary Containment Requirements for UST Systems near Wells and Surface Water".

2. The developer shall contribute a fee-in-lieu toward upgrading the intersection signal arms. The amount of the contribution shall be equal to one-quarter (1/4) of the cost to purchase and install the upgraded signal arms or \$25,000.00, whichever is less. The fee-in-lieu shall be placed in a line item until such time the intersection signal is upgraded.
 3. Canopy lighting shall only consist of recessed fixtures incorporating a lens cover that is either recessed or flush with the bottom surface (ceiling) of the canopy or awning that provides full cutoff or fully-shielded light distribution.
 4. The sides of the canopy shall not be illuminated.
 5. Light levels shall not exceed twenty (20) foot candles under
-

- the canopy.
6. The developer shall recombine the lots before permitting.
 7. The developer shall save existing specimen trees that lie in any landscape buffer area.
 8. Prior to issuance of any Certificate of Occupancy, the developer shall place the existing overhead utility lines underground along the frontage of the subject property on Chapel Hill Road (NC 54) as depicted per Site Plan Sheet C-5, with a sealed date of March 31, 2006.
 9. Each driveway shall have right-in/right-out access only.
 10. The developer shall install all road improvements prior to the issuance of a Certificate of Occupancy. All road improvements include but are not limited to the monolithic concrete islands, sidewalk, and road widening along the frontage of the subject property on Aviation Parkway and NC 54.
 11. The developer shall provide a payment in lieu for the construction of a sidewalk and road widening of Aviation Parkway from the northeast side of the entrance drive off Aviation Parkway to the northeastern property line (which is the stream centerline). The amount shall be determined between the Town of Morrisville Engineering Department and the Engineer of Record for the project.

Board/Committee Review: Planning and Zoning Board

Meeting Date: April 13, 2006 **Public Comment:** N/A **Action:** May 11, 2006

Minutes: Planning and Zoning Board Minutes – (April 13, 2006)

Senior Planner Rodney Wadkins introduced the item, noting this plan had been in review by staff for quite some time and that the site formerly housed a gas station. The subject parcels are currently zoned General Business (GB), which allows this type of use. The North Carolina Department of Transportation (NCDOT) will only grant two right-in/right-out driveways, one off each road, and will require a median on both Aviation Parkway and NC 54 to prevent the left out of the site. He explained the request for a Flexible Design Option (FDO) would allow the building to come to the front of the corner lot; staff supported this request, as the building would be visible as opposed to the pumps. He noted the lot had several constraints; it would require installation of underground utilities, and it was located in the floodway and the floodplain, meaning the building would have to be two feet above the base flood elevation. The lot also fronts North Carolina Railroad Right-of-Way. The soil on the property is contaminated from the prior gas station, but the applicant had provided documents to show methods of mitigating the pollution that were approved by the North Carolina Department of Environmental & Natural Resources (NCDENR). One of the proposed conditions is that NCDENR would certify the cleanup prior to permitting. Staff would like to see the applicant preserve as many of the old specimen trees on that site as possible.

Chairman Peter Prichard asked what the difference was between the version of the briefing given to board members immediately prior to the meeting and the one sent in the agenda packages.

Senior Planner Rodney Wadkins answered that condition #6 had been clarified, and condition #9 had been added. Condition 9 addressed the payment-in-lieu of the road and sidewalk construction to the property line, which is the center of the stream; the Division of Water Quality (DWQ) does not like to approve partial construction; to minimize the impact on the stream they will approve a permit for widening when the adjoining property begins development.

Chairman Peter Prichard asked if putting underground fuel storage tanks in the floodplain was allowed.

Senior Planner Rodney Wadkins said that was regulated by the state. He commented that the site was probably not the best location, but the zoning was in place, and underground tank monitoring had greatly improved since the operation days of the last gas station. However, there were no guarantees.

Keith Fenn, John R. McAdams Company, project engineer and Mark Christopher, Phillips Architecture, project architect, spoke to the Planning Board about the project.

Keith Fenn stated that it was certainly in his client's best interest to prevent flooding on this site. He added that a leakage-monitoring system with alarms would be required to be in place.

John Gretz commented that this parcel was the prime corner of the pending Town Center area, and there were major historic buildings on the other corners – would this really be an appropriate plan for this corner?

Kathleen Gordon added that it was a beautiful plan, but she too felt this was a critical corner, an entrance to the Town Center. She also questioned if the Town of Morrisville really needed another gas station and car wash; in her opinion, there was not a pressing need for one. She asked staff to clarify what they would be voting on this evening.

Senior Planner Rodney Wadkins answered that they would be making a recommendation or to table both the Flexible Design Option and the site plan. He gave clarification that Billy Hartness' house across Aviation Parkway was an eligible historic building; and that the area along NC54 was already zoned general business. He noted staff had spoken with the applicant very early in the process about this kind of use at this parcel, but because the Zoning Ordinance allowed the use, staff brought it forth for board review.

Kathleen Gordon asked how many trees could actually be saved (staff acknowledged it would be difficult to save many of them); she said she liked the attempt to put the focus on the front of the building but the back of the building and the pumps would still be visible.

Keith Venn said they recognized the importance of that corner to the Town of Morrisville.

Catherine Willis asked if it would be open later than 8:30 p.m. – that the rest of the stations in town closed at that time and she would like to see

one open later.

Keith Fenn answered yes; they intended to have later hours than 8:30 p.m.

Catherine Willis added that she would like to see the 45-foot oaks that were not in the protected buffer saved in some way, or at least not turned into lumber. She stated that she had mixed feelings about the project. She did feel that this project did meet the standards for a Flexible Design Option, and that gas stations were a need in town – it would be a great location if the town center was ignored. She asked how Mr. Borlie Wong (adjacent property owner) intended to use his property.

Senior Planner Rodney Wadkins answered that Mr. Wong had attempted several different plans but had not had one work yet.

John Gretz asked how someone driving on the west side of NC 54 or the north side of Morrisville-Carpenter Road would get to the station.

Senior Planner Rodney Wadkins answered they would have to make a u-turn.

Chairman Peter Prichard pointed out the Traffic Impact Analysis (TIA) called for joint funding with the Triangle Transit Authority (TTA) – would that still be the case now that the regional rail system might not come through?

Keith Fenn answered that yes, the intent had been to share the burden but it was not really going to affect this project. He also noted that they had already taken into consideration the future road widening projects.

Chairman Peter Prichard noted people would probably use the station to cut through from Aviation Parkway to NC 54. He added that he appreciated the work and thought gone into the project, but the town was so close to having the design guidelines for the Town Center in place.

Kathleen Gordon added she would like to get comments from the absent Planning Board members.

Motion

John Gretz made a motion to recommend denial of the project. Kathleen Gordon seconded the motion.

Catherine Willis asked if the item could be tabled, as she was not positive how she felt about it.

Chairman Peter Prichard asked for a vote on the motion to recommend denial. Those in favor were Kathleen Gordon and John Gretz. Those opposed were Peter Prichard and Catherine Willis. The motion failed.

Catherine Willis made a motion to table the item until the next meeting. Kathleen Gordon seconded the motion and the vote was as follows: those in favor were Kathleen Gordon, Peter Prichard and Catherine Willis. Those opposed: John Gretz. The motion passed and the item was tabled until the May 2006 meeting.

Planning and Zoning Board Minutes – (May 11, 2006)

TAB I – **Cruizers:** *Site Plan for a Convenience Store/Gas Station located on the northeast corner of Aviation Parkway and NC 54 (Chapel Hill Road)*

Tabled at the April 13, 2006 meeting
Senior Planner Rodney Wadkins introduced the item and revisited issues discussed at the prior month's meeting:

- Transportation – two right-in/right-out only entrances and concrete medians on both highways. The cut-through traffic was not anticipated to be enough to disrupt regular traffic flow. He also clarified that the applicant was only responsible for improvements to NC 54 and Aviation Parkway not those along Morrisville-Carpenter Road on the west side of the railroad tracks, which relate to the Triangle Transit Authority (TTA).

It was noted that condition #1 had just been discussed in recent hours with the applicant, who was not comfortable with that condition. The intent of the requirement is to have the site cleaned. The applicant was supportive of finding a compromise but still uncomfortable with Condition 1 as written.

The underlined conditions in the briefing sheet were revised conditions. Staff was available to answer questions, and the consultant and applicant for the project were both present.

Chairman Peter Prichard asked for some clarification on what had changed regarding the contamination and clean-up of the site.

Senior Planner Rodney Wadkins explained that the applicant had had a consultant prepare an action plan to mitigate the contaminated soil under the building footprint. However, Condition #1 as written required that the entire site be cleaned up.

Marc Christopher of Phillips Architecture spoke to the Board on a few items; he noted that the station would have six pumps instead of twelve, with two access points to each pump. Condition two they were comfortable with; condition ten was, he felt, a contradiction to the signalization referred to in condition two. As far as traffic concerns, such as the u-turns and cut-through concerns, the traffic engineer for the project was present if they wished to ask him questions.

Ward Mercer noticed an inconsistency in the number of pumps in some of the paperwork submitted.

Marc Christopher explained that due to the long review process the number had changed; they had started out with 20 pumps and then cut down. There would be 12 total pumps in fueling position. That number was correct; the other was an old number not corrected.

Ward Mercer acknowledged this would then decrease the amount of projected activity at the site.

Kathleen Gordon inquired about the medians and road widening.

Marc Christopher answered that was required as part of improvements to the site; Senior Planner Rodney Wadkins answered that page C3A of the site plan reflected those required improvements.

Marc Christopher addressed the lighting standards noting that the canopy-style lighting had also been significantly reduced. A national lighting consultant, who felt that a light level below an average of 20-foot candles would present a safety issue; the original plan had proposed 25-foot candles but staff had requested lower lighting to reduce impact on surrounding properties, had prepared the lighting plan. He answered that they would proceed with the 20-foot if they had to but would prefer to have brighter lights for safety.

Senior Planner Rodney Wadkins gave the example of the BP Station on Highway 54/Cary Parkway which has 14-foot candles. He explained that staff pulled the average of 20-foot standard from the new proposed architectural standards, but they had also checked with Progress Energy on the standard who agreed it was an appropriate level.

Esther Dunnegan asked for clarification on the process they intended to use to remove contamination from the site.

Marc Christopher answered that anything that was excavated would have a sample taken from it, and then properly disposed of off-site according to the Department of Environmental & Natural Resources (DENR) standards. Staff's request to bring the entire site to low-risk would require a process that would take between five and seven years and cost about \$400,000.00. He stated that the original plan proposed to the Town for mitigation is above what NC Department of Environmental and Natural Resources (DENR) requirements; however, he would ask that the environmental consultant working on the project come forward to answer questions.

Bill Cooke, environmental engineer for the project, gave a brief explanation to the Board of what DENR's criteria was; their process only included the aspect of underground storage tanks. The proposed plan for clean-up would address the following:

12. Excavation of soil under building – there are 10 monitoring wells on site and one on the front of the property within the railroad right-of-way has water that is above the criteria to meet intermediate risk status. Thirty-five soil borings have been done to delineate the contamination and maps of that had been given to staff. Rough calculations showed about seventy-five feet diameter of soil. DENR had reviewed the plans and their opinion is that it went beyond what was needed. He added that they planned to abandon the two well casings per state requirements.

Planning Director Ben Hitchings asked for clarification on what is required by the DENR and what the applicant would be doing. He referenced a letter dated December 1 stating “should be noted does not relieve obligation to clean up the site”.

Bill Cooke stated that legally, neither the current owner or the developer is responsible – the former owner of the property is the one liable and responsible for clean up of the site. Any requirements by DENR would be sent to the respective party – if that person or persons are unable to perform the mitigation, the responsibility would revert back to the state which may or may not ever clean

the site. The proposed plan was a voluntary action on the applicant's part which goes above and beyond the requirements, and accomplishes what probably wouldn't get done otherwise.

Planning Director Ben Hitchings agreed and stated that was one advantage of development, but it presented a challenge on staff's part. The question here was this: would a denial of this project serve to prevent a threat to the public health/safety/welfare or interest of the citizens? He reminded the board they are comparing not a contaminated site to a clean site but an empty contaminated site to a developed contamination site. He was not sure the town could legally require the standards it was asking for; someone would have to be found that could be done realistically.

Esther Dunnegan stated that she felt the concern is that there is already an amount of contaminated soil in Morrisville and now a new filling station was proposed to go where an old filling station had been.

Edward Holmes, owner of Holmes Oil spoke to the board stating he had been in this business for twenty-five years and understood their concerns. He assured the board that they would do everything possible up front to prevent any accidents. The tanks underground would be double-walled and the pipes would be four-level conduit; all of the equipment would be monitored with the latest in technology available. There would be a tank for regular gas and a tank for premium, and then the two would be blended for mid-grade. He also told the board he owns the only station in the triangle to sell bio-diesel fuel and he planned to expand that to this site also; the station he owned was an E-85 facility and the only one found east of Charlotte.

Esther Dunnegan inquired about the monitoring wells – one of ten exceeds the standards; did the others have no contamination or did they just not exceed the standards for risk?

Bill Cooke, environmental engineer for the project, answered that out of ten wells, one compound had been found in each well –Dichloroethane (1, 2 DCA) and eight of the nine had various other compounds. He showed on the map where monitoring well # 2 was located.

Ward Mercer noted that the pattern of contamination exceeding standards ran along Highway 54 and perhaps the levels were higher due to runoff from the road. He asked when the samples were taken for testing.

Bill Cooke answered they were taken in 2004.

Catherine Willis stated that it was nice to see an effort to go above and beyond what was required on an environmentally sensitive site and she appreciated that.

Ward Mercer noted that the property drops about fifteen feet down to the creek; when the entire site is paved, where would that water go?

Keith Fenn answered it would be piped out.

Ward Mercer said that meant if there was a spill, it would go down into the

creek.

Edward Holmes of Holmes Oil spoke again, stating there would be a safety containment hose in place if there was a leak. In more than 20 years he had never had gas escape above the paved surfaces. If a car hits the pump, it would automatically switch off.

Keith Fenn noted that public storm drains also ultimately lead to creeks.

Kathleen Gordon stated that they couldn't remove the site plan from the proposed location and they needed to discuss the potential impact on public health and safety. She liked the plans but she felt the location was a threat to the public, being so close to the stream. There were no guarantees and she just did not think she could honestly say the public was not being put at risk. Until the intermediate risk was downgraded to "low risk", she felt the town would be repeating history. She also was afraid the potential for a lot of u-turns would be a problem; at some point, this corner would be part of the town center; even though the guidelines were not in place, it was known that they wanted the area to be pedestrian friendly and this project would not encourage that.

Bill Cooke asked to address the comment about the facility, stating that simply because something had happened in the past did not necessarily mean it would happen in the future. The tanks that had leaked were installed in the 1950's, put into place forty or more years ago.

Kathleen Gordon reiterated there were no guarantees and the stream located on the property just made it more of a risk.

Bill Cooke insisted that with the new advances in monitoring and prevention he didn't feel the stream would ever be impacted.

Edward Holmes of Holmes Oil added that the car wash would have all pre-treated runoff that would be captured, and recycled when possible.

Catherine Willis stated that she had put the most concentration on this item in the past month and spent a lot of time on it as well. She stated that she had spoken to her neighbors, who loved the idea of a gas station at that location. Even with consideration of the town center, she had come to terms with the fact that the Triangle Transit Authority (TTA) would be laying four tracks along that road regardless of what is on the other side – that in itself would be a huge prevention of pedestrian traffic; even Highway 54 was a natural barrier in itself as no one would want to cross that road by foot. She reiterated how pleased she was that the applicant is going above and beyond requirements and she felt that her background in geology and knowledge about these types of tanks were enough to make her feel okay about recommending approval. Based on the criteria and the zoning she would be in favor of the project.

Esther Dunnegan stated that if they were not going to learn lessons from the past they were doomed to repeat them; she herself had dealt with contamination in her own well water. She said that responsibility fell not just on the previous owner but became everyone's responsibility. She was not comfortable with the reassurance that a leak would not occur and go into the tributary stream. She was

concerned about the monitoring and what would happen if it did leak.

Ward Mercer agreed that it was a great project and well thought-out, but his concern was also the location. He felt it was a huge safety issue – even with the right-in/right-out entrances at the BP on Highway 54/Cary Parkway, people still made U-turns. The Traffic Impact Analysis (TIA) concerns the traffic hazard, but the directions in which people would mostly be going did not match. He questioned the numbers in the TIA – the trip generator only reflected the number of actual trips into the gas station, not directionally related pass-by traffic.

Chairman Peter Prichard asked about the amount of impervious surface.

Rodney Wadkins answered that both plans (A&B) were below the maximum allowance of 65%.

Chairman Peter Prichard expressed appreciation of the use of the Flexible Design Option and congratulated the applicant team on creating a unique gas station. However, he too was concerned about the location; it was the worst intersection in Morrisville traffic-wise already.

Motion

Ward Mercer made a motion to recommend denial of the project. Kathleen Gordon seconded the motion and the vote was as follows: In favor of the motion – Esther Dunnegan, Kathleen Gordon, Ward Mercer, and Peter Prichard. Opposed to the motion – Catherine Willis. The motion to recommend denial passed.

Recommendation: The Planning and Zoning Board recommended *denial* of the Cruizers site plan and Flexible Design Option request.

History of Briefing: This section should only address past briefings, hearings, actions, etc.

<u>Date:</u>	<u>Discussion/Board Direction:</u>
April 13, 2006	Planning and Zoning Board – Tabled item
May 11, 2006	Planning and Zoning Board - Recommendation to Deny
June 12, 2006	Board of Commissioners – 1 st Briefing
June 26, 2006	BOC – Public Hearing
July 10, 2006	BOC – 2 nd Briefing
July 24, 2006	BOC - Decision

- List Attachments:**
- Resolution 2006-076
 - Resolution 2006-076FDO
 - Site Plan – 11” x 17”
 - Site Plan Application
 - Attachment A – TIA (*portion*)
 - Attachment B – TIA Amendment
 - Attachment C – Comprehensive Site Assessment (*portion*)
 - Attachment D - Mineral Springs – Action Plan
 - Attachment E – Town of Morrisville memo
 - Attachment F - FDO request w/Color Elevations
 - Attachment G – Response to Traffic Comments and U-turn Diagram

- Attachment H – Revised Lighting layout

Resource Impact: time/funds/equipment

Staff time required if item is approved: Medium

Funding Source: N/A

Staff contacts at NCDENR, Railroad Company, Progress Energy, and Zoning

Resources Utilized: Ordinance

Staff Coordination: Mark agree, disagree or review. (2nd Briefing is used when information has significantly changed from one briefing to the next.)

Required	Staff Member	1 st Briefing	2 nd Briefing
X	Town Manager	Agree	
X	Senior Director Resources Management	Agree	
X	Senior Director Development Services	Agree	
X	Senior Director Community Services	Agree	
X	Public Information Officer	Reviewed	
	Budget and Analysis Manager		
X	Planning Director	Agree	
X	Town Engineer	Agree	
X	Building Codes Administrator	Reviewed	
X	Police Chief	Reviewed	
X	Fire Chief	Reviewed	
X	Parks & Recreation Director	Reviewed	
	Public Works Director		
	Economic Development		

If disagreeing, explain:

Public Information Plan: Answer the following questions and notate the level of PI Plan needed

Question	YES or NO
Does the item's subject matter affect the majority of our population?	No
(Note: specify the target audience within the Executive Summary section above.)	
Would action have a direct affect, positive or negative, on community services?	No
Does the item propose an internal policy change?	No
Does the item propose an external policy change that would result in an amendment to our town codes, ordinances, Land Use Plan, or Zoning Map?	No
Does the item require an appropriation of funds equal to or over \$90,000?	No
Will/does the item relate to a Capital Improvements Project?	No
Are there any ordinance or general statute requirements for public notification?	Yes
(Note: If so, cite the ordinance or general statute language within the Executive Summary section above.)	
Does the item require a Public Hearing?	Yes
Will there be a public forum session held on the subject to gather input?	No
Public Information Plan	Mark w/ X
“Get Noticed” - five or more YES answers	
“Legal Ease” - three or four YES answers	X
“Standard Issue” - two or less YES answers	



**RESOLUTION 2006-076 OF THE MORRISVILLE TOWN BOARD
OF COMMISSIONERS PERTAINING TO THE ADOPTION OF
THE CRUIZERS CONVENIENCE STORE WITH PUMPS SITE
PLAN**

WHEREAS, Marc Christopher, Phillips Architecture submitted a proposed site plan for the Cruizers Convenience Store with Pumps Site Plan; and

WHEREAS, the Planning and Zoning Board has forwarded a recommendation for the proposed site plan on May 11, 2006; and

WHEREAS, the Board of Commissioners, which is authorized to approve or disapprove the proposed site plan, did receive the Planning and Zoning Board's recommendation at their Briefing Meeting on June 12, 2006:

NOW, THEREFORE, BE IT RESOLVED THAT THE MORRISVILLE TOWN BOARD OF COMMISSIONERS approve the proposed Cruizers Convenience Store with Pumps Site Plan with a seal date of March 31, 2006, subject to the following conditions:

- 1. The applicant/subsequent property owner/subsequent property owner will carry out remediation measures as detailed in Mineral Springs Environmental, P.C. ("Mineral Springs") document of February 20, 2006 (Attachment D). Additionally, the applicant/subsequent property owner/subsequent property owner will carry out remediation measures for the area designated as "Highest Concentration" (the area designated by the darkest circle on page 3 of Attachment D) and the old UST basin to the level described in bullet 1 of the Mineral Springs document and backfill from the adjacent area.*

However, remediation of the area of "Highest Concentration" and the old UST basin is contingent upon minimal disturbance to any buried fiber-optic cable, or other utilities or infrastructure. If, while excavating, utilities are found in the field other reasonable corrective actions may be necessary as determined by the Planning Director.

The applicant/subsequent property owner/subsequent property owner will carry out annual monitoring for a period of five (5) years on all ten (10) existing monitoring wells to track movement of the plume. Each year the applicant/subsequent property owner/subsequent property owner will forward the results of the monitoring, as well as the results of the soil excavation activities, to the North Carolina Department of Environment and Natural Resources Underground Storage Tank Section Incident Manager (NCDENR) for the site and to the Planning Department

for the town. The results shall be forwarded within 30 days of the completion of the sampling event.

If, after five years of monitoring, any of the wells read at a level ten (10) times the NCDENR 2B surface water standards, then modeling shall be conducted by the applicant/subsequent property owner/subsequent property owner to assess in a technically defensible manner whether natural attenuation will mitigate such contamination to levels below ten times the NCDENR 2B surface water standards by the time such contamination reaches the unnamed tributary located at the eastern boundary of the site.

If such modeling is deemed by NCDENR to be technically valid and the model demonstrates that natural attenuation will achieve such mitigation by the time the groundwater contamination reaches the unnamed tributary, then no further mitigation shall be required by the Town of Morrisville.

If such modeling is deemed by NCDENR to be technically valid and it demonstrates that natural attenuation will not achieve such mitigation by the time the contamination reaches the unnamed tributary, then the applicant/subsequent property owner/subsequent property owner shall prepare and submit a remediation plan to NCDENR for review and approval. The responsibility for implementation of the remediation plan shall be as required by NCDENR. If at any time a No-Further Action is granted by NCDENR, the Town would acknowledge this and not require any further work task

The applicant/subsequent property owner/subsequent property owner shall maintain all ten monitoring wells on site and allow access upon request so that sampling may be conducted as needed in perpetuity by NCDENR, the Town of Morrisville and/or their designees.

In addition to these measures, the applicant/subsequent property owner/subsequent property owner agrees to install a totally integrated, double wall, tank and line system and perform continuous monitoring of the interstitial space. This system will exceed the DNER minimum standards for "Siting and Secondary Containment Requirements for UST Systems near Wells and Surface Water"

2. The developer shall contribute a fee-in-lieu toward upgrading the intersection signal arms. The amount of the contribution shall be equal to one-quarter (1/4) of the cost to purchase and install the upgraded signal arms or \$25,000.00, whichever is less. The fee-in-lieu shall be placed in a line item until such time the intersection signal is upgraded.
3. Canopy lighting shall only consist of recessed fixtures incorporating a lens cover that is either recessed or flush with the bottom surface (ceiling) of the canopy or awning that provides full cutoff or fully-shielded light distribution.
4. The sides of the canopy shall not be illuminated.
5. Light levels shall not exceed twenty (20) foot candles under the canopy.
6. The developer shall recombine the lots before permitting.

7. The developer shall save existing specimen trees that lie in any landscape buffer area.
8. Prior to issuance of any Certificate of Occupancy, the developer shall place the existing overhead utility lines underground along the frontage of the subject property on Chapel Hill Road (NC 54) as depicted per Site Plan Sheet C-5, with a sealed date of March 31, 2006.
9. Each driveway shall have right-in/right-out access only.
10. The developer shall install all road improvements prior to the issuance of a Certificate of Occupancy. All road improvements include but are not limited to the monolithic concrete islands, sidewalk, and road widening along the frontage of the subject property on Aviation Parkway and NC 54.
11. The developer shall provide a payment in lieu for the construction of a sidewalk and road widening of Aviation Parkway from the northeast side of the entrance drive off Aviation Parkway to the northeastern property line (which is the stream centerline). The amount shall be determined between the Town of Morrisville Engineering Department and the Engineer of Record for the project.

Adopted this 24th day of July 2006.

Jan Faulkner, Mayor

ATTEST:

Diana R. Davis, Town Clerk



**RESOLUTION 2006-076FDO OF THE MORRISVILLE TOWN
BOARD OF COMMISSIONERS PERTAINING TO THE
ADOPTION OF THE CRUIZERS CONVENIENCE STORE WITH
PUMPS SITE PLAN**

WHEREAS, Marc Christopher, Phillips Architecture submitted a Flexible Design Option (FDO) request to reduce the building setbacks for the Cruizers Convenience Store with Pumps Site Plan; and

WHEREAS, the Planning and Zoning Board has forwarded a recommendation for the proposed FDO request on May 11, 2006; and

WHEREAS, the Board of Commissioners, which is authorized to approve or disapprove the proposed FDO request, did receive the Planning and Zoning Board's recommendation at their Briefing Meeting on June 12, 2006:

NOW, THEREFORE, BE IT RESOLVED THAT THE MORRISVILLE TOWN BOARD OF COMMISSIONERS approve the proposed Cruizers FDO request to reduce the building setbacks as reflected on the site plan with a sealed date of March 31, 2006.

Adopted this 24th day of July 2006.

Jan Faulkner, Mayor

ATTEST:

Diana R. Davis, Town Clerk