

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT FOR FEBRUARY 24, 2011

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of City Hall.

Dr. Mulatu Wubneh, Chairman*
Charles Ewen X
John Hutchens *
Linda Rich *
Wanda Harrington *
Minnie Anderson *
Renee Safford-White *
Scott Shook *
Sharon Ferris *
Justin Mullarkey *

The members present are denoted by an “*” and those absent are denoted by an “X”.

VOTING MEMBERS: Ewen, Rich, Safford-White, Shook, Ferris, Mullarkey,

OTHERS PRESENT: Mr. Mike Dail, Planner
Mr. Wayne Harrison, Planner
Ms. Valerie Paul, Secretary
Mr. Bill Little, Assistant City Attorney
Mr. Joe Bartlett, Deputy Police Chief
Mr. Jonathan Edwards, Communications Technician

Chairman Wubneh had the Secretary call the roll for the meeting.

Chairman Wubneh said that Board usually seats seven regular members, all the present members except for Ms. Anderson and Mr. Mullarkey would be voting, but they would be able to participate in the discussions.

MINUTES

Motion was made by Mr. Hutchens and seconded by Ms. Rich to approve the minutes. The motion carried unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY FAMILY MEDICAL SUPPLY

The applicant, Family Medical Supply, desires a special use permit to operating a medical supply sales and rental establishment pursuant to Appendix A, Use (10)k. of the Greenville City Code. The proposed use is located at 1970-B W. Arlington Boulevard. The property is further identified as being tax parcel number 61330.

Chairman Wubneh called for all those wishing to speak for or against the case to come forward and be sworn in.

Mr. Dail delineated the area on the map. He said the property is located at 1970-B W. Arlington Boulevard and it is zoned MO (Medical Office).

Surrounding Zoning:

North: MO (Medical Office)
South: MO (Medical Office)
East: MO (Medical Office)

West: MO (Medical Office)

Surrounding Development:

North: UHS Pain Management Center
South: Arlington Crossing
East: Various Offices
West: Vacant

Description of Property:

The property contains a 10,139 square foot commercial building with multiple units. The property has approximately 225 feet of frontage along W. Arlington Boulevard and 200 feet of frontage along Emerald Place Drive with a total lot area of 1.10 acres.

Comprehensive Plan:

The property is located within Vision Area “F” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends office/institutional/medical development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on February 10, 2011. Notice of the public hearing was published in the Daily Reflector on February 14, 2011 and February 21, 2011.

Related Zoning Ordinance Regulations:

Specific Criteria

(r) *Medical supply sales and rental of medically related products.*

(1) No products shall be visible from a public street right-of-way.

Other Comments:

The proposed project must meet all related NC State fire and building codes prior to occupancy.

There were no questions from the Board for staff, so Chairman Wubneh called for the applicant to come forward and address the Board.

Jon Day spoke on behalf of the applicant. He said that Family Medical Supply is in the business of providing medical items for use in their homes either for sale or lease. He said that a large part of their business is operated out of a warehouse at another location and they intend to use this space primarily as office space. He said that they have applied for a special use permit because a few items would be stored there at the site. Mr. Day said that larger items, such as wheelchairs or beds, would not be stored there. He noted that the use is compatible with the adjoining uses in the building.

With there being no questions from the Board for Mr. Day, Mr. Ron Blake, with Family Medical Supply, came forward to address the Board.

Mr. Blake, Store Manager and Respiratory Therapist for Family Medical Supply, spoke in favor of the application. He said that this location will be a temporary location and they are in the process of building a retail store on W.H.

Smith Drive. He said that they have a major warehouse that everything is shipped out of. He said that patients may come by for a setup of a CPAT machine or something like that, but most services are done in the home.

With there being no questions from the Board, Chairman Wubneh called for further speakers for or against the application. With there being no further speakers, Chairman Wubneh called for staff recommendation.

Mr. Dail said that staff had no objections to the request.

Chairman Wubneh closed the Public Hearing and called for Board discussion. With there being no comments from the Board, he read the criteria and called for a motion to approve the Finding of Facts.

Ms. Safford-White made the motion to approve the Finding of Facts, Ms. Ferris seconded and the motion carried unanimously.

Ms. Harrington made the motion to approve the petition, Ms. Safford-White seconded and the motion carried unanimously.

Chairman Wubneh noted that they could possibly handle items 2 & 3 on the agenda together since they are very much related except that one is unit B-1 and the other is in unit B-5. He asked staff if this would be permissible.

Attorney Little said that they would be able to but if there is a condition on one that is not on the other then it must be specifically identified. He said that they will have similar Finding of Facts because one is a proposed business and the other is that they hope to have a similar business in six months.

Chairman Wubneh said that the Board would be sure to ask that Mr. Dail if there are any special conditions that staff would recommend.

PUBLIC HEARING ON A REQUESTS FOR SPECIAL USE PERMITS BY STORAGE KINGS, LLC

The applicant, Storage Kings, LLC, desires a special use permit to operate an automotive minor repair facility pursuant to Appendix A, Use (9)b. of the Greenville City Code. The proposed use is located at 408 W. Arlington Boulevard, Unit B-1. The property is further identified as being tax parcel number 79715.

The applicant, Storage Kings, LLC, desires a special use permit to operate an automotive minor repair facility pursuant to Appendix A, Use (9)b. of the Greenville City Code. The proposed use is located at 408 W. Arlington Boulevard, Unit B-5. The property is further identified as being tax parcel number 79715.

Chairman Wubneh called for all those wishing to speak for or against the case to come forward and be sworn in.

Mr. Dail delineated the area on the map. He said the property is located at 408 W. Arlington Boulevard, Unit B-1. The property is further identified as being Tax Parcel Number 79715 and it is zoned CG (General Commercial).

Surrounding Zoning:

- North: CG (General Commercial)
- South: CG (General Commercial)
- East: OR (Office Residential)
- West: CG (General Commercial)

Surrounding Development:

North: Arlington Business Park, Ample Mini Storage
South: Vacant
East: Arlington Pointe Apartments
West: Ample Mini Storage

Description of Property:

The subject property is part of the larger 15.606 acre Ample Mini Storage site. The Ample Mini Storage site has approximately 310 feet of frontage along West Arlington Boulevard and contains multiple office and mini storage buildings. The subject building is 5,200 square foot, contains multiple units and is located on the eastern side of the property.

Comprehensive Plan:

The property is located within Vision Area “G” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends office/institutional/multi-family development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on February 10, 2011. Notice of the public hearing was published in the Daily Reflector on February 14, 2011 and February 21, 2011.

Related Zoning Ordinance Regulations:

Definition

Repair; minor. The following activities shall be considered minor repair:

- (1) Engine tune-up; changing of plugs, filters, oil, lubricants, belts, adjustments;
- (2) Change and rotate tires;
- (3) Brake services;
- (4) Electrical system services;
- (5) Radiator services
- (6) Muffler services; and
- (7) Battery service.

Specific Criteria

Major or minor repair facilities.

- (1) All wrecked or damaged motor vehicles and parts shall be screened so as not to be visible from

adjoining property lines and street right-of-way.

- (2) All vehicles on the premises for repair shall be stored at the rear of the principal structure.
- (3) No vehicle shall be stored on the premises for more than 15 days.
- (4) There shall be no exterior storage of items other than vehicles.
- (5) Sale of vehicles shall be in accordance with Article B, section 9-4-22, definition of automobile, truck, recreational vehicle, motorcycle and boat sales, contained therein.
- (6) Rental or utility trailers, cars and trucks shall be permitted as accessory uses, provided that all units in excess of four shall be screened from adjoining street right-of-way and property lines in accordance with Bufferyard C or with a bufferyard of greater intensity as required by the bufferyard regulations.
- (7) Outdoor displays of products such as tires, oil, wiper blades or other similar products shall be permitted provided they are within ten feet of the principal structure and outside required bufferyards. Signage displayed in conjunction with such display shall be in accordance with the sign regulations.
- (8) All services except fuel sales shall be performed within a completely enclosed building.

Other Comments:

The proposed project must meet all related NC State fire and building codes prior to occupancy.

Chairman Wubneh asked if there were any differences in conditions that staff was recommending.

Mr. Dail answered that there was not. He said that the specific criteria that were found in the zoning ordinance would be applied and that they could not go above what is allowed in minor repair to major repair.

With no further questions from the Board, Chairman Wubneh called for the applicant to come forward and address the Board.

Mike Baldwin spoke on behalf of the applicant. He said that the facility will be managed by the Lampe Management Company. He said that in filling out the Special Use Permit application, he felt that he could answer the questions in a way that would satisfy the Board. He said that one space is speculative because there is not a tenant. He said that it does meet the Comprehensive and to his knowledge there is no opposition to the request.

Chairman Wubneh asked if the facility would be able to handle lubricants, oils and other types of fluids.

Mr. Baldwin answered that they would be, but there will not be any oils to be contained for this use.

With there being no further speakers for or against the application, Chairman Wubneh called for staff recommendation.

Mr. Dail said that staff did not have any objections to either request.

Chairman Wubneh closed the Public Hearing and called for Board discussion. With there being no comments from the Board, he read the criteria and called for a motion to approve the Finding of Facts for items 2 & 3.

Ms. Rich made the motion to approve the Finding of Facts on items 2 & 3, Mr. Hutchens seconded the motion and it passed unanimously.

Ms. Harrington made the motion to approve petitions 2 & 3, Ms. Safford-White seconded the motion and it passed unanimously.

ANNUAL REVIEW OF PUBLIC AND PRIVATE CLUBS AND DINING AND ENTERTAINMENT ESTABLISHMENTS OPERATING PURSUANT TO AN APPROVED SPECIAL USE PERMIT

Mr. Dail presented the item to the Board. He said that establishments that operate as public and private clubs and dining and entertainment establishments pursuant to a Special Use Permit issued by this Board are subject to an annual review to make sure that they are meeting the requirements of the City Code and other conditions that may have been placed on their business. He said that staff asks the Pitt County ABC Commission, the Police Department, the Code Enforcement Division, the Fire-Rescue Department, and the Inspections Division if they have had any issues and then summarizes the information to bring before the Board for review. He said staff had also passed out handouts for Calls for Service from the Police Department and the new ordinance that was recently adopted concerning the regulations of public and private clubs; specifically bouncers and the requirements for training them and doing a criminal background check on them.

Chairman Wubneh asked why the Boiler Room was noted as not having their ABC permit, but they are listed as not having any violations.

Mr. Dail answered that they do have a special use permit to operate as a public or private club, but they do not serve alcohol or allow others to partake in alcohol in their establishment.

Mr. Mullarkey asked if staff had the last name of the club owner.

Mr. Dail answered that he was working on finding that information.

Chairman Wubneh said he assumed that having an ABC permit was not required.

Mr. Dail answered that he was correct. He said that there are other public and private clubs and dining and entertainment establishments that were grandfathered in or permitted by right, and that is why they are not listed in this review.

Chairman Wubneh noted for the new members that in the past it used to be a matter of reviewing every case every year until they came up with this type of summary. He said that if there was a problem with any of the establishments, they would have the right to call them in and ask questions. He said that this way was preferable because otherwise the Board would be reviewing 2 or 3 cases at every meeting. He said that even though some of them have excessive calls, but that may not mean anything because it may be calls for areas that are near the club and they cannot be held responsible those calls.

Ms. Harrington asked what the codes, DTP and RO on the Calls for Service Sheet stood for.

Deputy-Chief Bartlett answered that DTP stands for Disturbing the Peace and RO stands for Request Officer.

Mr. Shook asked what Signal 3 stood for.

Deputy-Chief answered that it stands for an intoxicated person.

Mr. Mullarkey asked what 10-54 means.

Deputy-Chief answered that it stands for a hit-and-run. He said that it more than likely happened near that address and that is the address that it was attributed to it.

Mr. Shook noted the amount of calls for Tiebreakers and how a significant number of the calls were for alarms.

Deputy-Chief Bartlett said that they got a printout of all of the calls attributed to that address and what he did was cull out the ones that he did not think had anything to do with the business.

Mr. Shook said that he believed that the ones that happened downtown could have happened out on the street or in front of the location, but Tiebreakers is one of the only nightclubs at that location.

Deputy-Chief Bartlett said that they may be inclined to call because they do not have the police presence that the downtown area has.

Mr. Shook said that it is a fairly big place and it may have a lot of patrons. He asked if Deputy-Chief Bartlett felt if it was a cause for alarm or if anything was out of the ordinary there.

Deputy-Chief Bartlett said that he did not think so.

Mr. Hutchens said that he saw that there is a broad scattering of violations for bouncers amongst many of the establishments and he asked if the City would have to look into the rules regarding bouncers.

Deputy-Chief Bartlett said that there were a couple on the list that they have had issues with and that Attorney Little would address those.

Ms. Ferris said that it appeared that everything listed for the Other Place is arrests, assaults, and fights. She asked if that was one of the establishments that they had concerns with since the calls were for physical violence.

Deputy-Chief Bartlett said that was one of the locations downtown and the incidents may have happened down the block and progressed that way. He said that without researching each individual call and reading the narrative, it would be hard to say.

Ms. Harrington asked what CSA stood for.

Deputy-Chief Bartlett answered that it is a police acronym for Controlled Substance Act violation – a drug violation.

Attorney Little said that there are a couple of clubs that would fall under the area of chronic violators under bouncer training ordinance. He said that the ordinance provides that a civil citation be issued to the club for their non-

compliance. He said that after a period of time of giving the club an opportunity, the City can exercise their right to change that to a daily citation. He said that the clubs were given notice that the fine would change from \$250 a month to \$250 a day for non-compliance. He said that at the present time, that had only been going on for one or two weeks. He said that the City does not believe that it is necessary at this point to call the clubs in for a public hearing to possibly suspend or revoke their special use permit, but that would be the Board's choice. He said that since the establishments can see how serious the City is by the increase in citations, he asked that they hold those two for three months because if they have not complied by that time, then the City would have initiated action in the courts to collect the citations, which would be substantial at \$250 a day, and enforce the ordinance. He said that since they have just started the daily citations after notice, then that would be their recommendation.

Mr. Hutchens asked if, to staff's knowledge, have any of the violators had a bouncer who has crossed the line because he was not properly trained.

Attorney Little answered that to their knowledge, there had not been any incidents. He said that there is probably not a night where the officers downtown do not receive a complaint about a bouncer and that happens whether or not they have been trained.

Mr. Mullarkey asked what types of violations have been seen.

Attorney Little said that the clubs that are being cited are required within a certain amount of days of hiring a bouncer or hiring security to provide the background and initial training for the bouncer/security. He said that the record, which includes the criminal background check, for each bouncer/security has to be provided on a monthly basis. He said that if the club fails to provide the monthly report or have training as required, then that could subject them to the civil citation; he said that it could be failing to provide the names, failing to list those no longer working, failing to provide the background check, or failing to do the bouncer training. He mentioned that they had not yet come up on the annual training, but when they did then the same rules would apply.

Chairman Wubneh asked what happens to the restaurants and nightclubs that are grandfathered in. He asked how the City monitors those establishments.

Attorney Little answered that the City still monitors those establishments through the ABC Commission, compliance with building codes and fire codes and general nuisance activity. He said that the North Carolina General Statute, under Chapter 19, provides cities and counties with the right to shut them down if they affect the general health, welfare, and morals of the city.

Mr. Mullarkey said that there is still a review process and they are still under some type of watch.

Attorney Little said that he was correct.

Mr. Shook asked if it would affect the clubs that were granted special use permits before the bouncer ordinance had been in effect.

Attorney Little answered that it would because they are still required to comply with all laws and ordinances.

Chairman Wubneh asked if they could simply recognize the report or if they would have to take action on it.

Attorney Little said they could take note that if the Board wants staff to bring in these clubs or any other clubs that the Board views as chronic violators, then that is up to their pleasure. He said that they can accept the report and make any recommendations; he said that it would be a simple majority vote.

Ms. Anderson asked if there is a review for the bouncers that have been trained.

Attorney Little said that there was an annual refresher requirement. He gave them a description of the bouncer training session and he said that you find in most of those classes that the participants have been doing the job for a number of years and that they are good at it. He noted that “bouncers” is an old negative term and that “security” was the more proper term.

Ms. Anderson asked if the term “bouncer” would be replaced with the term “security” in the paperwork.

Attorney Little answered that is how the ordinance refers to them, so that is how they will refer to them even though it is an archaic term. He said that “bouncer” is used so that it will not be confused with private security companies which is a different business profession.

With no further discussion, Chairman Wubneh called for a motion to accept the report.

Mr. Hutchens made the motion, Ms. Rich seconded and the motion passed unanimously.

With no further discussion, motion was made and properly seconded to adjourn at 7:47 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner