

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
October 24, 2013

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

Scott Shook, Chairman-*

Charles Ewen *

Claye Frank *

Linda Rich *

Sharon Ferris X

Justin Mullarkey *

Bill Fleming *

Kevin Faison *

Thomas Taft, Jr. *

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

VOTING MEMBERS: Mullarkey, Faison, Rich, Ewen, Taft, Frank, Shook, Fleming

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney
Mr. Michael Dail, Planner
Mrs. Elizabeth Blount, Planner
Ms. Amy Nunez, Secretary
Mr. Jonathan Edwards, Communications Technician

MINUTES

Ms Rich made a motion to approve the September 26 minutes as presented, Mr. Fleming seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY KARIMA ELOUAHIDY-APPROVED

The applicant, Karima Elouahidy, desires a special use permit to operate a Class One Tobacco Shop pursuant to Appendix A, Use (10)ff. of the Greenville City Code. The proposed use is located t 4420 E. Tenth Street, Suite 112. The property is further identified as being tax parcel number 81183.

Mr. Dail delineated the area on the map. He stated that the property is located in the extreme eastern portion of the city’s jurisdiction.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: CG (General Commercial)

South: RA20 (Residential Agricultural)

East: CG (General Commercial)

West: CG (General Commercial)

Surrounding Development:

North: Vacant Commercial Lots, Hardee Village Shopping Center
South: Vacant Agricultural
East: Walmart
West: Vacant Commercial Lots, Pinewood Memorial Cemetery

Description of Property:

The subject property is located in a fourteen unit commercial building interior to the newly constructed Hardee Crossing Shopping Center. Existing uses in the building include Dollar Tree, US Cellular, Hwy 55, Anna’s Nails and Spa, Fantastic Sam’s and Sally’s Beauty Supply.

Comprehensive Plan:

The property is located within Vision Area “C: as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development. The property is located at two major thoroughfares – Porter Town Road and E 10th Street.

Notice:

Notice was mailed to the adjoining property owners on October 10, 2013. Notice of the public hearing was published in the Daily Reflector on October 14, 2013 and October 21, 2013.

Related Zoning Ordinance Regulations:

Definition:

Tobacco Shop (Class 1). An establishment that, as a substantial portion of the use, entails the retail sales of tobacco products including, but not limited to, cigarettes, cigars, chewing tobacco, shisha, unformed or loose tobacco, and/or similar products. For the purpose of this definition, a substantial portion of the use is established if:

- (1) At least 20% of the establishment’s floor area open and accessible to customers is used for the display and/or stocking of tobacco products as provided herein; or
- (2) At least 40% of the sign area of the establishment’s on-site signage that is visible from public rights of way advertises tobacco products as provided herein.

Specific Criteria:

(Y) Tobacco Shop (Class 1)

- (1) No tobacco shop (class 1) shall be located within a 500-foot radius of an existing or approved school. This measurement shall be made from the exterior wall of the proposed tobacco shop (class 1) to the nearest exterior wall of any existing or approved school.
- (2) No tobacco shop (class 1) shall be located within any certified redevelopment area.

The major difference between Class 1 and Class 2 is Class 1 can only sell tobacco products and Class 2 can sell pipes, water bong, etc.

Recommended Conditions:

No wall or window signage shall be installed without an approved sign permit.

The establishment shall not sale water pipes; hookah pipes; bowls, water bong; or similar products.

Other Comments

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

Mr. Ewen asked if any adjacent businesses had any comments.

Mr. Dail stated that he had not received any phone calls concerning the request.

Mr. Faison asked if the applicant was allowed to sell alcohol.

Mr. Dail stated that the applicant could if they chose to but they would have to get an ABC permit.

Chairman Shook opened the public hearing.

Ms Karima Elouahidy, applicant, spoke in favor of the request. She stated that she had a store in Surf City and closed it down and wanted to open in Greenville. She said she will sell tobacco products like cigarettes, cigars, electronic cigarettes and accessories. She stated she will not be selling pipes.

No one spoke in opposition of the request.

Chairman Shook closed the public hearing and opened for board discussion.

Mr. Mullarkey stated that his concern is the point of sale advertising and it blocking view of the inside of the store. The sign ordinance will restrict some of the coverage and the shopping center will probably have some restrictions as well.

Chairman Shook read the required findings criteria. No objections.

Mr. Ewen made a motion to adopt the finding of facts with the stated conditions, Mr. Fleming seconded and the motion passed unanimously.

Mr. Fleming made a motion to approve the petition with the stated conditions, Mr. Frank seconded and the motion passed unanimously.

Mr. Dail introduced the new chief planner, Thomas Weitnauer and the new administrative assistant to the board, Amy Nunez.

AMENDMENT TO THE BOARD OF ADJUSTMENT RULES OF PROCEDURE, CONDUCT OF HEARING GUIDE AND GENERAL MEETING HANDOUT- APPROVED

Assistant City Attorney, Bill Little, presented the revised meeting handout, hearing procedures guide and the

rules of procedures for the Board of Adjustment. The purpose of the documents is to adopt the actions of the board to the changes of the state law in October 2013. The voting criteria changed to a 4/5 majority vote concerning variances but a simple majority concerning all other special use permit appeals. If the vote is a tie, the appeal is not approved. Any material presented must still fit the evidentiary guidelines. Any appeals from the Historic Preservation Commission are strictly on the record of the hearing. The BOA will not hear a new case and any written material will be presented to the board.

Mr. Frank asked if everything that comes before the board could be passed with a simple majority other than variances.

Attorney Little stated that the only change in the rule of procedures. The handout is more detailed and simpler to understand and read.

Mr. Faison asked about not hearing any new cases.

Attorney Little stated that not hearing any new cases only refers to appeals.

Mr. Ewen asked if the board is still quasi judicial when it comes to appeals.

Attorney Little stated that the board is still quasi and appeals can be taken to court as well.

Chairman Shook asked about the appeal procedure.

Attorney Little stated that the briefs from the case will be crossed with the staff's briefs in the board's meeting package at least seven days prior to the meeting.

Mr. Taft asked if there are voting criteria for the appeals.

Attorney Little stated that the same criteria will be used to approve or disapprove.

Chairman Shook asked what other rules the board could change.

Attorney Little stated that the board could change anything except the quasi judicial role.

Mr. Frank made a motion to adopt the changes, Mr. Fleming seconded and the motion passed unanimously.

With no further business, Mr. Taft made a motion to adjourn, Mr. Frank seconded, and it passed unanimously. Meeting adjourned at 7:22 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner