

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
OCTOBER 25, 2012

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 X

Sharon Ferris *

Justin Mullarkey X

Bill Fleming *

Kevin Faison *

Thomas Taft, Jr. *

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

VOTING MEMBERS: Shook, Ewen, Faison, Fleming, Frank, Ferris, Taft

OTHERS PRESENT: Mr. Merrill Flood, Community Development Director
Mr. Mike Dail, Planner
Mr. Chris Kelly, Engineer
Chief Joe Bartlett, Interim Chief of Police
Mrs. Elizabeth Blount, Secretary
Mr. Bill Little, Assistant City Attorney
Mr. Jonathan Edwards, Communications Technician

MINUTES

Mr. Frank made a motion to approve the August 23rd minutes as presented, Mr. Ewen seconded and the motion passed unanimously. Mr. Taft made a motion to approve the September 12th minutes as presented, Mr. Fleming seconded and the motion passed unanimously.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY HME PROPERTIES, LLC-
APPROVED**

The applicant, HME Properties, LLC, desires a special use permit to operate a pet crematory pursuant to Appendix A, Use (15)c. of the Greenville City Code. The proposed use is located at 107 Trade Street. The property is further identified as being tax parcel number 02945.

Mr. Dail delineated the area on the map. He stated that the property is located in the southern portion of the city’s jurisdiction, close to Greenville Boulevard.

Zoning of Property: CH (Heavy Commercial)

Surrounding Zoning:

North: CH (Heavy Commercial)

South: CH (Heavy Commercial)

East: CH (Heavy Commercial)

West: CH (Heavy Commercial)

Surrounding Development:

North: Parker's BBQ
South: Lee of Greenville, Prints and Plaids
East: Briley's Tire
West: D&J Distributors, Pair Electronics, Napa Auto Parts

Description of Property:

The property is 0.56 acres in size has 105 feet of frontage along Trade Street and contains a 7,036 square foot commercial building. The applicant's veterinary clinic is currently operating in the building.

Comprehensive Plan:

The property is located within Vision Area "E" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on September 13, 2012 and October 11, 2012. Notice of the public hearing was published in the Daily Reflector on September 17, September 24, October 15 and October 22, 2012.

Other Comments:

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

Dr. Mark Hayes, applicant, spoke in favor of the application. He passed out cremation equipment information concerning the equipment he will use for the cremation. He stated that he is currently contracting out cremations. The only options that his clients have are to bury their pet in a pet cemetery or cremation because the city does not allow home owners to bury pets on their property. The cremations will be conducted at a recently acquired hospital.

Mr. Ewen asked for clarity concerning burying pets on property.

Dr. Hayes stated it is not suppose to be done.

Mr. Faison asked if the applicant would contract out to other pet clinics in town.

Dr. Hayes stated that the crematory service would not be a separate business. It would be established in order to eliminate contracting out and to provide a better service in house.

Mr. Faison asked if the customers would receive a better rate.

Dr. Hayes stated that he believed they will.

No one spoke in opposition of the application.

Mr. Dail stated that staff had no objection to the request.

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

No board discussion.

Chairman Shook read the criteria. No objections.

Mr. Fleming made a motion to adopt the finding of facts, Ms Farris seconded and the motion passed unanimously.

Mr. Ewen made a motion to approve the petition, Mr. Fleming seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY BRIAN STROUD-APPROVED

The applicant, Brian Stroud, desire a special use permit to operate a tattoo shop pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 2110-A Bells Fork Road. The property is further identified as being tax parcel number 42821.

Mr. Dail delineated the area on the map. He stated that the property is located in the southeast portion of the city's jurisdiction along Bells Fork Road.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: CG (General Commercial)
South: CH (Heavy Commercial)
East: RA20 (Residential Agricultural)
West: CG (General Commercial)

Surrounding Development:

North: Bells Fork Shopping Center, Single Family Residence
South: East Carolina Auto Exchange, Vacant/Agriculture
East: Vacant Single Family Residence, Vacant/Agriculture
West: Trade Mart

Description of Property:

The property is 1.21 acres in size, has 210 feet of frontage along Bells Fork Road and contains an 8,000 square foot commercial building with two units. Currently, Bells Fork Hardware is operating within the other unit of the building.

Comprehensive Plan:

The property is located within Vision Area "D" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on September 13 and October 11 2012. Notice of the public hearing was published in the Daily Reflector on September 17, September 24, October 15 and October 22, 2012.

Staff Recommend Conditions:

Must obtain a permit from the Department of Public Health as required by NCGS §130A-283 and and comply with any other health department requirements including but not limited to sanitation, first aid, vaccinations, health certifications, disposal of needles and other bio hazard waste materials.

No loitering permitted outside of business.

Other Comments:

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

Mr. Brian Stroud, applicant, spoke in favor of the application. He stated that he was a professional artist and had been professionally tattooing for 14 years. The business will be a 1,000 square foot art gallery with a state of the art tattoo studio in the back.

Mr. Taft asked if the studio was already built.

Mr. Stroud stated yes and they had been renting the building since early August.

No one spoke in opposition of the application.

Mr. Dail stated that staff had no objection to the request.

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

No board discussion.

Chairman Shook read the criteria. No objections.

Mr. Ewen made a motion to adopt the finding of facts, Mr. Taft seconded and the motion passed unanimously.

Mr. Farris made a motion to approve the petition, Mr. Frank seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A REASONABLE ACCOMMODATION BY PARADIGM, INC.

The applicant, Paradigm, Inc. desires a reasonable accommodation to locate a family care home within a quarter mile of an existing family care home pursuant to Section 9-4-103 (D)(4) of the Greenville City Code. The proposed use is located at 4003 Old Pactolus Road. The property is further identified as being tax parcel number

53242.

Since the applicant was not present at the time, Chairman Shook moved the item to the end of the agenda.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY STEPHEN AND BRENDA MOORE-APPROVED

The applicants, Stephen and Brenda Moore, desire a special use permit to operate a beauty shop pursuant to Appendix A, Use (8)e. of the Greenville City Code. The proposed use is located at 1866 W. Arlington Boulevard. The property is further identified as being tax parcel number 48582.

Mr. Dail delineated the area on the map. He stated that the property is located in Arlington Crossing Shopping Center along West Arlington Blvd near the Medical District.

Zoning of Property: MO (Medical Office)

Surrounding Zoning:

- North: MO (Medical Office)
- South: MO (Medical Office)
- East: MO (Medical Office)
- West: MO (Medical Office) & RA20 (Residential Agricultural)

Surrounding Development:

- North: Various Medical Offices
- South: Vacant
- East: Physicians East
- West: Vacant

Description of Property:

The subject property is within Arlington Crossing Commercial Center. The center is 57,000 square foot in size, has approximately 850 feet of frontage along Arlington Boulevard and has a total lot area of 5.34 acres. Existing uses within the center are K&W, Highway 55, Tropical Smoothie, Rite Aid Pharmacy, First Flight Bank, Lemon Grass Restaurant and a Nail Salon.

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/multi-family development for the subject property..

Notice:

Notice was mailed to the adjoining property owners on October 11, 2012. Notice of the public hearing was published in the Daily Reflector on October 15, 2012 and October 22, 2012.

Other Comments:

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

Ms Brenda Moore, applicant, spoke in favor of the application. She stated that she currently owned a salon and wished to relocate to a smaller space with more foot traffic.

Mr. Ewen asked where the current salon was located.

Ms Moore stated between Arlington and Greenville Boulevard.

Mr. Michael Overton, representative of the building's landlord, spoke in favor of the application. He stated that the business would support the district.

Mr. Faison asked if the unit had a no compete clause to prevent another salon from opening in the building.

Mr. Overton stated that the landlord does not have specific none compete clauses but they would not put the same type of business in the building out of respect for current businesses.

No one spoke in opposition of the application.

Mr. Dail stated that staff had no objection to the request.

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

No board discussion.

Chairman Shook read the criteria. No objections.

Mr. Taft made a motion to adopt the finding of facts, Mr. Frank seconded and the motion passed unanimously.

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

PUBLIC HEARING ON A REQUEST TO AMEND A SPECIAL USE PERMIT BY CAPITAL FOOD GROUP, LLC-CONTINUED

The applicant, Capital Food Group, LLC, desires to amend their special use permit to operate a restaurant with regulated outdoor activities pursuant to Appendix A, Use (10)j. of the Greenville City Code. The use is located along Charles Boulevard west of Brook Road. The property is further identified as being a portion of Tax Parcel 04188.

Mr. Dail delineated the area on the map. He stated that the property is located in the center portion of the city's jurisdiction along Charles Boulevard.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: CG (General Commercial)
South: OR (Office Residential)
East: R15S (Residential Single Family)
West: CG (General Commercial)

Surrounding Development:

North: Greenville Mall Parking Lot, Pirates Pointe Shopping Center
South: Vacant (Undeveloped Mall Property)
East: Single Family Residences
West: Greenville Mall

Description of Property:

The restaurant is located on a portion of the larger Greenville Mall parcel. The restaurant's site has approximately 250 feet of frontage along Charles Boulevard with a total lot area of 0.78 acres. The restaurant is 4,838 square feet in size and has 2,809 square feet of patio area. With the expanded area requested by the applicant the site would have 640 feet of frontage along Charles Boulevard and be approximately 2.0 acres in size.

Comprehensive Plan:

The property is located within Vision Area "D" 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 October 11, 2012. Notice of the public hearing was published in the Daily Reflector on October 15, 2012 and October 22, 2012.

Related Zoning Ordinance Regulations:

Restaurant and/or dining and entertainment establishment; outdoor activities.

(1) A principal and/or accessory use associated with or utilized in conjunction with a conventional or fast food restaurant or a dining and entertainment establishment which is intended for the temporary or permanent conduct of activities relative to the sale, transfer or enjoyment of products and/or services to persons located on the business premises and which is open and unenclosed on one or more sides or which is without a complete roof structure. For purposes of this section, all areas not constituting mechanically conditioned area as determined by the Building Inspector shall be considered open and unenclosed. Additionally, fences and/or wire or plastic mesh screens shall be considered open and unenclosed for purposes of this section.

(2) Use of any amplified outdoor audio sound system including loud speakers, audio speakers or other electronic or mechanical sound transmission devices shall be considered as an outdoor activity for purposes of this definition.

Restaurant and/or dining and entertainment establishment; regulated outdoor activities.

Any restaurant and/or dining and entertainment establishment; outdoor activity, as defined herein, which is located within 300 feet, as measured to the closest point, of any residential district, excepting CDF, which allows single-family dwellings as a permitted use.

Current Conditions of Special Use Permit:

Outdoor activity area shall be fenced in order to prevent patrons from entering and exiting the outdoor activity area except by going through the interior of the restaurant.

Outdoor activity area shall be screened with evergreen vegetation along Charles Boulevard in such a way to prevent the outdoor activity area to be seen from Charles Boulevard or from the residential properties to the east.

No restaurant related outdoor accessory activity shall be allowed outside the designated outdoor activity area, as illustrated upon the plan attached to and made part of the permit application and record. Specifically, no outdoor activity shall be permitted to overflow into any parking area or yard area, both on the restaurant lot or onto adjacent lots.

There shall be no live outdoor music, floor show, or dancing associated with any outdoor activity area.

Outdoor amplified sound, including music, shall be allowed, provided (i) any sound transmission device, system, and/or speaker shall be oriented in a manner that directs all mechanical and/or amplified sound toward the restaurant building and away from any abutting residential property line, and (ii) no amplified sound shall be audible from any point located on any property zoned for residential purposes. Outdoor amplified sound is defined as any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside through open door(s) or window(s) or other openings in the building. Measurement standards shall be human auditory senses.

Exterior lighting associated with the outdoor activity area shall be directed away from all public and/or private streets, and away from property zoned for residential purposes. No exterior lighting shall shine directly into a residential dwelling or premises.

All outdoor activity area service delivery and facility use shall be limited to the period 7:00 AM to 12:00 mid-night. No food or beverage may be sold or consumed, and no restaurant related activity, including but not limited to sitting and waiting, shall be allowed within the outdoor activity area prior to 7:00 Am or after 12:00 mid-night of any day.

Violations of Current Special Use Permit Conditions:

Live music has been performed on multiple occasions on the outdoor patio.

Vegetative buffer required along Charles Street has not been planted.

Outdoor seating outside of the authorized area.

It is important to note that the operators of the Mellow Mushroom have been provided the special use permit with the approved conditions before operation began and with each notice of violation.

Violation Notices:

Two violation notices have been sent to the operators of the restaurant informing them of the special use permit violations.

The first notice was sent on July 9, 2012 and the second notice was sent on September 19, 2012.

After the second notice was received by the operators of the restaurant they submitted an application to amend their special use permit. As is typical with departmental procedure enforcement action has been stayed during the application and hearing process.

Chairman Shook asked what the issue with the picnic tables was.

Mr. Dail stated that the board approved activities within the fenced area and the tables were located outside the fence.

Requested Changes

Two proposed requests to expand the outdoor activity area by 5,000 square feet and to have a special events area. This will include live music two times a week ending at 8 pm on weekdays and 10 pm on weekends, minimum fencing requirements, egress and ingress for outdoor activity area and five events a year ending at dark.

Chairman Shook asked the distance of the picnic tables to the residential area across Charles Boulevard.

Mr. Dail stated that the building is approximately 150 feet away.

Mr. Taft asked if the fence will extend to the sidewalk.

Mr. Dail stated the fence will fit the ALE requirements. The original requirement asked for the outdoor activity area to be fenced.

Mr. Faison asked if the vegetation fence fulfills the requirements.

Chairman Shook stated that the original request required a fence to maintain the egress and ingress along with a vegetation buffer along Charles Boulevard.

Chairman Shook asked if the requests were independent or one special use permit request.

Mr. Dail stated that it is one request but the board could divide it up.

Ms Ferris asked was the pecan grove a concern originally because citizens wanted to keep it intact.

Mr. Dail stated that he did not remember.

Mr. Ewen stated that it was not a concern because the original request did not include the pecan grove area.

Mr. Dail stated that the minutes from the original hearing were in the package. Chief Bartlett stated nine months prior when the department first received the permit he was not familiar with the Mellow Mushroom chain so their basic concerns revolved around nuisance, noise and livability of the adjacent neighborhood. Since April to early October 2012, the department received six complaints about the noise from the applicant. No citations were written. The residents did contact Code Enforcement but Chief Bartlett did not have any details concerning the contact. The Police Department did receive two written complaints from the neighbors expressing their concern about the noise and the livability of the neighborhood.

Mr. Frank asked if the noise was loud music.

Chief Bartlett stated yes.

Ms Ferris asked the time frame of the calls.

Chief Bartlett stated between 8:30 and 9:30 pm as stated on the calls for service records.

Mr. Ewen noted that several calls stated that the noise could not be located.

Chief Bartlett stated that the issue may have resolved itself prior to the officer's arrival.

Mr. Taft asked if the calls were specifically live or loud music.

Chief Bartlett stated that he could not speak about the specifics.

Ms Ferris asked if there had been any complaints during special events.

Chief Bartlett stated that he was not aware of any.

Chairman Shook asked if there was any criminal activity at the establishment.

Chief Bartlett stated as the business operates currently, noise was the only violation.

Staff Recommendation:

The Community Development Department recommends denial of the request based on the following facts:

The applicant has failed to comply with current special use permit conditions. Specifically hosting live music in the outdoor activity area, hosting events outside of the activity area, installed seating outside of the activity area, having music and crowd noise that can be heard across the street on residential properties and failure to plant required vegetative screen along Charles Boulevard.

The applicant improperly obtained amplified sound permits for live music when the approved conditions imposed on the initial special use permit prohibited live music.

This area along Charles Boulevard is considered a transition area designed to buffer the residential

neighborhood to the east from the major commercial uses to the west. Appropriate uses in this area would be moderate to low intensity uses. It is staff's position that the current size and allowable use of the outdoor activity area as regulated by the current conditions has met this intensity threshold. Increasing the size of the outdoor activity area and allowable uses of the activity area will reduce the livability of the neighborhood.

Multiple noise complaints for loud music have been received by Community Development Department staff and the Police Department. The Police Department has recommend denial of the request due to the negative impacts on the livability of the neighborhood. This impact will be exponentially increased if the outdoor activity area is enlarged and if the intensity of the proposed uses increases.

Based on these facts it is the position of the Community Development Department that this application cannot satisfy the criteria for approval- specifically the criteria of nuisance or hazard and detriment to public welfare.

Chairman Shook asked for clarity concerning the applicant improperly obtaining amplified permits.

Mr. Dail stated that the applicant obtained permits when the original special use permit prohibited live music.

Chairman Shook asked where they got the permit from.

Mr. Dail stated the Police Department.

Mr. Taft asked if staff would allow the permit with some conditions.

Mr. Dail stated that staff has not had time to formulate an opinion on other conditions.

Mr. Reid Fogleman, part owner and managing partner of Capital Food Group, spoke in favor of the application. He stated that the group wanted to remove the request for live outdoor music. He took responsibility for improperly requesting an amplified permit due to not reviewing all the conditions on the special use permit. He admitted to allowing a musician with a guitar and amplified speakers that faced away from residential area to play on the outdoor patio. He stated that the company had to pay the state of North Carolina \$94,000 for a nutrient wall so they decided to eliminate the vegetation along with the outside bar. The group does plan to plant the proper vegetation in order to decrease traffic noise and to comply with the conditions of the original special use permit. The pecan grove will not be touched but do want to host special functions in the area. Under the current permit, the business is not allowed to have any activities outside the fence. He explained that the picnic tables were for customers that were waiting. They do not serve customers at the picnic tables. They would like to fence in the picnic tables to host large groups. They have reduced their operating hours and they only make 0.123% of their total sales from food and alcohol sales during 10 pm-12 am. The company has 123 employees and has donated \$2 million to local businesses along with several charitable donations to local community organizations.

Mr. Faison asked if the applicant currently owned the pecan grove area but could not use it.

Mr. Fogleman stated they have a 30 year lease for the property.

Ms Ferris asked the applicant if they would be willing to get a separate permit for each event.

Mr. Fogleman stated absolutely. They would know approximately 30 days in advance so they were willing.

Chairman Shook asked staff to give the background history of Freeboot Friday and asked if the applicant could get a special use permit for each event.

Attorney Little stated that the applicant would have to get a permit for each event because it is outside their permitted use application such as Uptown Greenville does for Freeboot Friday. It would have to be done prior to 30 days. It can be done and the board could set some basic perimeters.

Chairman Shook asked what could currently be done on the property without a special use permit.

Attorney Little stated nothing. The applicant is asking for outdoor activity that is within 300 feet of residential property so a special use permit is required.

Chairman Shook asked for clarity that the applicant cannot do anything in the pecan grove area without a special use permit.

Attorney Little stated that the applicant cannot do an outdoor activity in the area.

Mr. Fogleman stated that kids could not throw a football in the area outside the fence nor could the business host a police corn hole tournament because they are activities outside of the fenced area.

Chairman Shook asked if the property was one parcel.

Mr. Dail stated that it is all part of the mall's property. The property is zoned OR and no limitations have been placed on the property being developed. The business cannot perform outside activities without a special use permit approved by the board.

Mr. Faison asked if the applicant currently had to have a special use permit for each individual outside activity.

Mr. Dail stated no, the board is currently suggesting that be a condition.

Ms Ferris asked if the board could specify which outdoor activity was permitted.

Mr. Flood stated the board could be specific if they wanted to. The events sponsored by the restaurant are the activities in question, not random activity outside the fence like throwing a ball. Events sponsored by the restaurant in the pecan grove would require a special use permit due to the ordinance.

Chairman Shook asked if the applicant could rent the area out for tailgaters.

Mr. Flood stated if sponsored by the restaurant yes.

Mr. Fleming asked if the front door of the restaurant faced JC Penny and what was the location of the picnic tables.

Mr. Fogleman stated the front door does face JCPenny and the tables are located near the front entrance. He also mentioned that noise after 10 pm is at a minimum and the property is cleaned before opening and after closing.

Mr. Ewen asked if the expanded area will have concrete or coverings.

Mr. Fogleman stated no.

Mr. Fleming asked if food would be served in the expanded area.

Mr. Fogleman stated yes but only for group reservations. They do not have enough pizza ovens to accommodate an additional 50 patrons.

Mr. Taft asked if the expanded area would be fenced in like the existing area.

Mr. Fogleman stated it would be fenced but not sure if it would be like the existing.

Chairman Shook asked what the applicant was willing to do to mitigate the noise.

Mr. Fogleman stated that vegetation was key and the restaurant being managed the right way. The applicant has worked with the police to minimize any criminal activity. The restaurant is relatively quite at night. They are not trying to be a late night hangout place.

Mr. Faison asked if the \$94,000 vegetation buffer is still on the table.

Mr. Fogleman stated that is something they will do in order to move forward. It will help reduce the noise for the neighborhood and for the outdoor patio.

Mr. Faison asked if the applicant plans to put in a sound buffer.

Mr. Fogleman stated that it has to happen.

Chairman Shook stated that the applicant had to come into compliance with current permit but also asked about the types of plants would be included around the expanded area.

Mr. Fogleman stated that they will plant trees so the outdoor activity is not viewable.

Mr. Ewen asked what the applicant had in mind to plant.

Mr. Fogleman stated that he would get an estimate from a landscaper.

Ms Bebie Barrett, board member of Beau's Buddy Cancer Foundation, spoke in favor of the application. The applicant held an inside event for the foundation and gave a donation.

Mr. Todd Fraley spoke in favor of the application. The speaker worked with the applicant during two events at the restaurant -the ECU Honors College and The Greenville Crop Walk for Hunger. The applicant gave 10% of receipts during the hunger event to local organizations fighting hunger.

Mr. Taft asked what organization the speaker represented.

Mr. Fraley stated that he was a community member that supported the applicant.

Mr. Don Edwards, community advocate, spoke in favor of the application. He stated that the Mellow Mushroom is a fabulous asset to the community. The owner is composed of a group of folks that have a life time of giving back to the community and doing the right thing. The group has given back to the community more in a short amount of time than some long term businesses.

Mr. Jim Ward, resident and investor of Mellow Mushroom, spoke in favor of the application. He ensured that the violations and calls of service will be addressed. The investors picked Greenville to create a sense of community on the site. The group did their very best to consider the welfare of the nearby residential neighborhood and would be given a chance to be all the community wants them to be.

Ms Katrina Combs, resident, spoke in opposition of the application. She stated that the radio on the outdoor patio is played very loud and can be heard against the traffic. The restaurant's location has brought injury to her property and the group has not been considerate neighbors when they decided to not put up a buffer. The group also violated the time of the amplified permit.

Mr. Taft asked if the buffer would help satisfy the noise problem.

Ms Combs stated it will show good will on the applicant's part.

Mr. Mark and Denise Swanner, residents, spoke in opposition of the application. Mr. Swanner stated their house was directly across from the outdoor patio. He stated that he can hear the outdoor radio inside his house as well as in his children's bedrooms which are located in the front of the house. The music would get louder as people got louder. Dumping bottles in the dumpster at 9:30 every night is also a disturbance. He stated that they called Mall Security for several months complaining and then called the police due to unresolved issues. Live music is performed every Wednesday and some Saturdays. It starts off low and then gets louder. The Swanners are against the expansion.

Mr. Faison asked if patio conversation could be heard.

Ms Swanner stated yes if they are loud but not general conversation.

Mr. Ewen asked if heavy vegetation would make a difference.

Ms Swanner stated that she did not know. She is frustrated that it wasn't put in at the beginning.

Mr. Ewen asked if the \$94,000 was for a separate fee and not for vegetation.

Mr. Ward stated that it was for storm water runoff and eco requirements and not for vegetation. He stated that no landscape architect would guarantee survival of the vegetation until November.

Mr. Frank asked if the music could be tempered.

Mr. Fogleman stated that the sound system has different volume levels that can be adjusted even though it is currently maintained at the approved decibel level. They could also manage the disposable of the bottles so it will not be a disturbance.

Chairman Shook stated that the proposed expansion and special events application is the current issue. He explained the procedure for continued violations.

Mr. Ewen asked if the board could delay the expansion until the buffer is in place.

Attorney Little stated that conditions for the application should be discussed during board discussion.

Mr. Swanner stated they are not against the restaurant. They are against how it is impacted their everyday lives. He also stated that management promised to meet but it has not happened. The group has already violated the conditions and he is worried that they will continue to not adhere to the conditions.

Ms Swanner asked if the vegetation cover the entire expansion.

Mr. Fogleman stated that it would. He stated that management has reached out several times to the residents and is willing to meet to discuss any issues.

Attorney Little stated that the floor was open for those to speak in opposition. The applicant may speak during the rebuttal time period.

Mr. Ward stated that the buffer hedge is in the budget. The issue was putting the vegetation in at the appropriate time so it would survive.

Mr. Dwain Cooper, resident, spoke in opposition of the application. He stated his house was in front of the pecan grove. They enjoy the restaurant but feel the expansion will create more crowds and more noise which will make their home environment unpleasant.

Mr. Ward, investor, spoke in rebuttal in favor of the request. He stated that the lot was purchased with the intentions of integrating the pecan grove into the operation of Mellow Mushroom. The property can be developed into a parking lot or a new structure but the group does not want to resort to that.

Mr. Fogleman, part owner, spoke in rebuttal in favor of the request. He reiterated that they are not requesting permission for outdoor live music and is willing to adjust the radio to be suitable for the residents. The pecan grove area is just for events approved by the city and the expanded area is to accommodate approximately 50 more seats.

Chairman Shook asked if the expanded area would have concrete or a covering.

Mr. Fogleman stated he envisioned stone on the ground near the picnic tables.

Chairman Shook asked how drinks would be served.

Mr. Fogleman said the area would be served like a regular seated area.

Chairman Shook asked if lighting would be in the expanded area.

Mr. Fogleman stated that lighting is currently on the outdoor patio but had not considered lighting in the expanded area. Additional lighting would be needed and would make sure it did not shine into the residential area.

Chairman Shook asked if extra sound would be in the expanded area.

Mr. Fogleman stated absolutely not.

Chairman Shook asked if appropriate fencing would surround the expansion.

Mr. Fogleman stated absolutely because they have to protect their patrons along with prevent patrons from leaving without paying.

Chairman Shook asked if the weather was bad would the expanded area be used.

Mr. Fogleman stated no.

Chairman Shook asked if the expanded area would operate under the same operating hours.

Mr. Fogleman stated absolutely.

Chairman Shook asked how the entrance and exit of the expanded area would be controlled.

Mr. Fogleman stated that the entire expanded area will not be fenced because tables will not be in the whole area.

Chairman Shook asked would fencing go where the tables were.

Mr. Fogleman stated yes.

Mr. Taft asked if the fencing will be closer to the parking lot.

Mr. Fogleman stated the expanded area will be an extension of the patio area along Charles Boulevard.

Attorney Little stated that the public hearing was still open and amendments to the application were being given based on the questions asked. He stated that all the suggestions, amendments and proposals were outside the parameters of the original application.

Chairman Shook stated he was trying to get clarity on the direction for the board and the three issues at hand.

Mr. Fleming asked the applicant about the buffer space.

Mr. Fogleman stated 15-20 years.

Mr. Fleming asked did the applicant have a proposal for the fence and trees.

Mr. Fogleman stated no.

Mr. Ward stated that the code is specific and the group will abide by the code.

Mr. Fleming asked if the buffer was a wall and trees.

Mr. Ward stated they would have a vegetation buffer and the fence would act as a deterrent.

Mr. Dail stated there is no code for the vegetation buffer. The buffer was a condition from the original special use permit. The intent of the buffer was not to reduce sound but to reduce visual impact. A condition specifically on the existing permit states that the noise level should be below which could be heard on the residential property.

Mr. Ward stated that the group will try to comply with the limitation and requirements for the vegetation buffer.

Mr. Fleming asked if the timing to plant the vegetation was an issue since the restaurant opened in May.

Mr. Ward stated that the restaurant lost vegetation during the summer and it did not make sense to plant new vegetation at the time. The restaurant wanted the buffer just as much as the residents.

Mr. Fleming asked when the expanded area would be useable if the permit was approved.

Mr. Fogleman stated it would take several months.

Mr. Fleming stated that the expandable area probably would not be usable until March or April 2013.

Mr. Fogleman stated that sounds correct.

Mr. Fleming asked how the applicant would be impacted if the board delayed approval until after the trees were planted.

Mr. Ward stated the group will not plant the trees without approval.

Mr. Fogleman stated that existing required vegetation will be planted immediately and would like to host special events for nonprofit groups outside the fenced area.

Mr. Swanner, resident, spoke in rebuttal against the application. He stated that the applicant should do what they were required to do initially before given permission to do more.

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

Attorney Little stated that the violations were part of the conditions of the proposed application.

Chairman Shook asked if the existing permit was a part of the proposed permit.

Attorney Little stated it was as a condition of the specifications in the proposed application.

Ms Ferris asked if the prior permit was applicable as a historical trend towards the current permit.

Attorney Little stated yes and the board would have to decide does the violations affect the existing use as detrimental based on their noncompliance along with nuisance or hazard based on their noncompliance.

Chairman Shook asked for clarity concerning the main issues.

Attorney Little stated the factors to be considered were conditions and specifications, detrimental to existing uses and nuisance or hazard. All the other suggestions and proposals were not addressed prior with staff so no recommendation was prepared.

Mr. Faison asked if the city agreed that all the previous conditions have to be met.

Attorney Little stated those conditions have to be met whether the proposed application was approved or not.

Mr. Faison asked about a time factor for the conditions to be met by.

Mr. Dail stated that the second violation letter stated that vegetation needed to be installed by October 19.

Mr. Faison asked if a new date had been established.

Mr. Dail stated no because that was the second violation and the next process was to fine the business.

Chairman Shook asked the amount of the fine.

Mr. Dail stated \$50 the first day, \$100 second day and \$250 every day thereafter.

Chairman Shook asked was the noise violation included in the presentation.

Mr. Dail stated yes.

Chairman Shook asked was the fining process suspended because of the proposed application.

Mr. Dail stated that the property was inspected on October 19 and it stayed the procedure because the application was submitted to amend the permit.

Mr. Fleming asked if a certificate of occupancy could be denied until all the conditions of the permit were met.

Mr. Dail stated that the applicant met the site plan requirements. A certificate of occupancy does not hinge on the Board of Adjustment decision. The required vegetation for the site plan was installed but the vegetation by the board was not installed.

Chairman Shook stated that the special use permit covered outdoor activities and the business would not be able to have those activities until the vegetation was installed.

Mr. Dail stated correct.

Mr. Taft stated the board is responsible for protecting the citizens under the zoning laws while not hindering businesses. There should be some deep compromise and the board needs to pay attention that the applicant did not abide by the existing special use stipulations but the final judgment should not be based solely on that point.

Chairman Shook asked for clarity as to the specifics that the board could do with the proposed permit.

Mr. Flood stated that the board had the conditions of the existing request and has heard staff's opinion. If the board wanted to find a compromise, then staff needed time to consider the options. The initial conditions still have to be met by the applicant. Staff is willing to meet with the applicant and the residents to come to a compromise.

Mr. Ewen stated that the applicant would probably want assurance from the board concerning the approval of the proposed permit prior to plant vegetation in order to plant what is needed to cover the expanded area.

Mr. Flood stated that the board could put a condition on the permit for additional vegetation along expanded area; however, enough information was not available at the current time. Interest of both the neighborhood and the applicant must be protected.

Chairman Shook asked about tabling the issue.

Attorney Little stated the discussion about the issue would be continued if the board would like for staff to meet and bring back a report on recommendations.

Chairman Shook asked the procedure for the applicant to amend the application.

Attorney Little stated the board would have to vote to reopen the public hearing to address just the amended item.

Mr. Ewen asked if the board could ask the applicant, residents and staff to get together to discuss the application and then come back to the board.

Attorney Little stated the board could continue the issue with specific instructions.

Ms Ferris asked if the applicant still had to plant the vegetative requirement from the previous permit.

Attorney Little stated yes.

Mr. Ewen recommended that the board continue the item in order for staff, the residents and the applicant to discuss the issue and withdraw the current application and represent it at a future date.

Chairman Shook made a motion to continue the item and request that staff ensure that the applicant bring existing conditions into compliance, research the feasibility of a onetime special use permit for outdoor activities in the pecan grove area, and recommend a specific vegetation plan for the expanded area in accordance to regulations and residents input, Mr. Fleming seconded and the motion passed unanimously.

Mr. Ward asked for the logistics of the continuance.

Mr. Dail stated the plan of action.

PUBLIC HEARING ON A REQUEST FOR A REASONABLE ACCOMMODATION BY PARADIGM, INC.-WITHDRAWN

Chairman Shook asked if the applicant was present and for further instructions.

Attorney Little stated the board could vote to continue the application to the next meeting or authorize to consider it withdrawn and allow the applicant to reapply and not pay the refiling fee. There was no contact with the applicant. Staff recommended withdrawal.

Ms Ferris made a motion to consider the application withdrawn and allow the applicant to reapply without a refiling fee, Mr. Fleming seconded and the motion passed unanimously.

PUBLIC HEARING ON THE SPECIAL USE PERMIT ISSUED TO PYRAMID REHEARSAL STUDIO, INC.-CONTINUED

The Board of Adjustment will rehear the special use permit issued to Pyramid Rehearsal Studio, Inc.. The special use permit was issued to operate a music rehearsal studio pursuant to Appendix A, Use (15)c. of the Greenville City Code. The use is located at 320 W. Tenth Street. The property is further identified as being tax parcel number 80036.

Mr. Dail delineated the area on the map. The property is located at 320 W. Tenth Street and contains 7,100 square foot heated commercial building. The owner Mr. David Edwards received special use permit on July 22, 2010 to operate a recording studio with multiple booths. Community Development received complaints about people illegally residing in the building in 2011. Mr. Edwards was contacted by phone concerning the complaints. Mr. Edwards stated he was unaware of the tenants and agreed to investigate the property. Mr. Edwards did confirm tenants in the building and agreed to address the problem and ensured no one else would live there. In September 2012 complaints were received again about tenants in the building. A letter was sent September 7, 2012 to Mr. Edwards about possible zoning violations. Mr. Edwards did not respond to the letter. City obtained an administrative search warrant to inspect the property for code violations. On September 25, 2012 investigation showed approximately twenty rooms were being used as residential dwellings. Twenty four occupants were present upon arrival with no onsite management. The Fire Marshall and Building Inspector ordered the power be cut because of the fire hazards created by people living in the building. Mr. Edwards was in violation of his special use permit for illegal use of the property.

Mr. Faison asked if the occupants were paying rent.

Mr. Dail stated the occupants stated they were paying \$220 per month and a collection box was located on the premises. A notice of rent increase was posted on the wall during the inspection.

Mr. Faison asked if the applicant stated the rent was for the use of the music studio.

Mr. Dail stated that Mr. Edwards stated his lease included the use for music studios only. Four rooms in the building had recording equipment. No showers were in the building.

Mr. Faison asked if all the occupants said they paid rent.

Mr. Dail stated correct and that Mr. Edwards was present.

Attorney Little stated that Mr. Edwards expressed interest in working with the city concerning the violations. Staff asked the board for a hearing to continue, modify, or rescind the special use permit.

Chairman Shook made a motion to continue the item unto the next meeting, Ms Ferris seconded, and the motion passed unanimously.

With no further business, Mr. Taft made a motion to adjourn, Ms Rich seconded, and it passed unanimously. Meeting adjourned at 9:26 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner