

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
February 25, 2016

The Greenville Board of Adjustment met on the above date at 6:00 PM in the City Council Chamber of City Hall.

Scott Shook, Chairman-X
Charles Ewen, Co-Chair *
Kevin Faison *
Justin Mullarkey X
Jim Watts *
Jeremy Spengeman *
Claye Frank *
Thomas Taft, Jr. *
Bill Johnson *
Rich Winkler *

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

VOTING MEMBERS: Ewen, Frank, Taft, Faison, Johnson, Watts, Winkler (#1 only), Spengeman (#2 only)

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney
Mr. Michael Dail, Planner
Mr. Scott Godefroy, City Engineer
Mr. Rudy Oxendine, Police Sergeant
Ms. Amy Nunez, Secretary
Mr. Kelvin Thomas, Communications Technician

MINUTES

Mr. Watts made a motion to approve the January 28, 2016 minutes as presented, Mr. Frank seconded and the motion passed unanimously.

Mr. Jeremy Spengeman requested to be recused from item #1 since he is the applicant of the item.

Mr. Frank made a motion to recuse Mr. Spengeman from item #1, Mr. Faison seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR SPECIAL USE PERMIT BY JEREMY SPENGE MAN-APPROVED

The applicant, Jeremy Spengeman, desires to amend an active special use permit to allow the expansion of an existing wine and craft beer shop pursuant to Appendix A, Use (10)c. of the Greenville City Code. The proposed use is located at 650 E. Fire Tower Road, Suites M & N. The property is further identified as being tax parcel number 42403.

Mr. Dail delineated the area on the map. He stated that the property is located in the southeastern portion of the City’s jurisdiction. It is located along Fire Tower Road at the corner of Bayswater Road.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: R6S (Residential Single Family)
South: CG (General Commercial)
East: CG (General Commercial)
West: CG (General Commercial)

Surrounding Development:

North: Single Family Residences (Sheffield Subdivision)
South: AA Mini-Storage
East: Vacant
West: Vacant

Description of Property:

The subject property is 5.66 acres in size, has 530 feet of frontage along East Fire Tower Road and contains Fire Tower Crossing Commercial Center and AA Mini-Storage. Existing use located in the Fire Tower Crossing Commercial Center are Fajitas, Fire Tower Animal Clinic, Faith Temple Church, Salt Wellness and Charles June Karate.

Reason for Request:

The applicant received a special use permit to operate a wine and craft beer shop (Tapped) from the Board of Adjustment on June 25, 2015. The shop is currently in operation and the applicant wishes to expand the shop by adding a 625 square foot patio area.

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 February 11, 2016. Notice of the public hearing was published in the Daily Reflector on February 15, 2016 and February 22, 2016.

Related Zoning Ordinance Regulations:

Definition:

Wine and Craft Beer Shop. An establishment conducted pursuant to G.S. 18B-1001 as amended, and operated as a principal or accessory use, which is authorized to sell wine and/or craft beer in the manufacturer’s original container for consumption off the premises, provided however, the permittee shall be authorized to conduct accessory and incidental wine and/or craft beer tasting on the premises and is further authorized to sell wine and/or craft beer for on-premise consumption, as an accessory and incidental use to the “wine and craft beer shop”, provided the establishment and operation is compliant with section 9-4-103(S). Among the two limited types of alcoholic beverages that may be sold, a “wine

and craft beer shop” may sell wine exclusively, craft beer exclusively, or both wine and craft beer provided that the “wine and craft beer shop” has the requisite state permit(s) that allows retail sales of wine and/or malt beverages for consumption on the premises. A “wine and craft beer shop” that does not meet the requirements of section 9-4-103(S) shall be deemed a public or private club for the purpose of zoning and land use classification. For purposes of the wine and craft beer shop use, craft beer is defined as a malt beverage from a brewer with an annual production of 6 million barrels of beer or less. Notwithstanding the foregoing, wine and beer shops may offer retail products and prepared pre-packaged food for purchase as an incidental use.

Specific Criteria:

- (1) A wine and craft beer shop may sell wine and/or craft beer for consumption on the premises, provided that the on-premise consumption of wine and/or craft beer constitutes an accessory and incidental use to the wine and craft beer shop.
- (2) A wine and craft beer shop that also has the requisite state permit(s) that allows retail sales of malt beverages for on-premise consumption, in accordance with G.S. 18B-1001 as amended, may sell both wine and malt beverages for consumption on the premises, provided that the combined on-premises consumption of wine and malt beverages constitute an accessory and incidental use to the primary retail use wine and craft beer shop.
- (3) For purposes of this section, on-premises consumption of wine and malt beverages shall be deemed an accessory and incidental use to a wine and craft beer shop, provided the combined sale of wine and malt beverages for consumption on the premises does not exceed 40% of the wine and craft beer shop’s total sales of wine and malt beverages including both on-premises and off-premises consumption, for an 30 day period. The term “sales(s)” as used herein shall be the receipt of payment for the wine and malt beverages sold and/or consumed and shall not be a measure of the volume of wine and malt beverages sold and/or consumed.
- (4) Records related to the wine and craft beer shop’s total sales of wine and malt beverages for both on-premises and off-premises consumption shall be maintained on the premises for not less than one year and shall be open for inspection and audit at all reasonable hours when the establishment is open for business by the Zoning Enforcement Officer. The Zoning Enforcement Officer may review the records on the premises or may request that copies of the written records be delivered to the City. The requirements of this subsection shall be for the purpose of determining compliance with subsection (S)(3) above.
- (5) No wine and craft beer shop that includes the on-premises consumption of wine and malt beverages shall be located within a 200-foot radius, including street rights-of-way, of an existing or approved public or private club, dining and entertainment establishment, or other wine and craft beer shop that include the on-premises consumption of wine and malt beverages. The required measurement shall be from the building or structure containing the wine and craft beer shop to the nearest property line of the parcel containing the existing or approved public or private club, dining or entertainment establishment, or other wine shop that includes the on-premises consumption of wine and malt beverages.

- (6) A wine and craft beer shop shall not operate after 11:00 p.m. on Sunday, Monday, Tuesday, Wednesday, and Thursday or after 12:00 a.m. on Friday and Saturday.
- (7) A wine and craft beer shop shall not require a membership, cover or minimum charge for admittance or service during regular or special periods of operation.
- (8) A wine and craft beer shop that does not meet the requirements of section 9-4-103(S) shall be deemed a public or private club for the purpose of zoning and land use classification.
- (9) The provisions of this section shall apply to all wine and craft beer shops whether operated as a principal or accessory use.

Staff Recommended Conditions:

Shall not operate as a private club as defined in Section 9-4-22 of the City of Greenville Zoning Ordinance.

The wine and craft beer shop and outdoor patio area shall comply with all North Carolina ABC laws.

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Chairman Ewen asked if there was a noise requirement.

Mr. Dail stated there is nothing written into the zoning ordinance but the City does have a Noise Ordinance.

Chairman Ewen opened the public hearing.

Mr. Jeremy Spengeman, applicant, spoke in favor of the request. He stated he had always planned to have a patio area and misunderstood that it was not part of the original request. It will have outdoor seating to smoke and drink, lighted area and no speakers or music. They currently meet the condition of less than 40% of onsite sales. They have less than 30%. They are closed Monday and meet all other hour conditions. There is a matching patio already in use on the other side of the building.

No one spoke in opposition of the request.

Chairman Ewen asked for the Staff Recommendation.

Mr. Dail stated staff has no objection with the stated conditions.

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

Chairman Ewen read the required findings criteria. No objections.

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

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

Mr. Spengeman rejoined the Board.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY CARMAX AUTO SUPERSTORES- APPROVED

The applicant, CarMax Auto Superstores, desires a special use permit to operate an automobile sales lot and minor repair facility pursuant to Appendix A, Use (11)f. and Use (9)b. of the Greenville City Code. The proposed use is located at the southeast corner of Whitley Drive and Humber Drive. The property is further identified as being tax parcel number 22922.

Mr. Dail delineated the area on the map. He stated that the property is located in the southern portion of the City near S. Memorial Drive and W. Fire Tower Road.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

- North: CH (Heavy Commercial)
- South: CG (General Commercial)
- East: CG (General Commercial)
- West: CG (General Commercial)

Surrounding Development:

- North: Sheetz, Goodwill Store (Under Construction)
- South: Vacant, Commercial Uses along Fire Tower Road
- East: Vacant
- West: McDonalds, Zaxby's, Starbucks, Sportclips & Dairy Queen

Description of Property:

The subject property is 4.36 acres in size and has frontage along Whitley Drive and Humber Drive.

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 February 11, 2016. Notice of the public hearing was published in the Daily Reflector on February 15, 2016 and February 22, 2016.

Related Zoning Ordinance Regulations:

Definition:

Automobile, truck, recreational vehicle, motorcycle and boat sales. Establishments engaged in the retail and/or wholesale of new and/or used automobiles, trucks, recreational vehicles and campers, motorcycles and motor boats including other watercraft, trailers, marine supplies and outboard motors, collectively referred to as vehicles for purposes of this definition. These establishments frequently maintain repair departments (see also major and minor repair) and carry stocks of replacement parts and accessories. For purposes of interpretation, the concurrent display for sale of not more than any five such vehicles upon a lot containing a legal nonresidential principal use may be considered an accessory use in accordance with applicable condition set forth by definition. Specifically, the concurrent display for sale of not more than any five such vehicles upon any lot containing a legal vehicle-related major or minor repair establishment, or a bank, savings and loan or other lending institution engaged in the repossession of vehicles shall be considered an accessory use to the principal use.

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:

- (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.

Staff Recommended Condition:

Site plan approval is required.

Display of automobiles for sale in the right-of-way or bufferyards shall not be permitted.

Parking or automobile display is not permitted on unimproved surfaces. All spaces for parking and automobile display area must be constructed with asphalt or gravel.

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Chairman Ewen opened the public hearing.

Ms. Jam Dixon, representative on behalf of CarMax, spoke in favor of the request. She presented a presentation of what CarMax is and how it works. CarMax is a retail experience with no haggle pricing, transparent car buying experience, honest friendly people in a stress-free financing environment. CarMax was founded on the principles of honesty and integrity. They began in 1993 in Richmond Virginia where the headquarters is located. They are a Fortune 500 company and a Fortune 100 Best Company To Work For. The company also gives back to the community.

Mr. John Thatcher, representative on behalf of CarMax, spoke in favor of the request. He reviewed the site plan. The property will have a customer/employee parking area, a sales/service building, a sales display area and a staging area. The sales display area is a secure area with a fence and gate. Only employees will operate vehicles in this area to and from the arm gate entrance/exit. The staging area is where cars are stored and prepped for sale and will have a six foot tall screening wall. All service work will be done indoors in conditioned bays. No major engine or body work will be done at this location. This will be known as a satellite store.

No one spoke in opposition of the request.

Chairman Ewen asked for the Staff Recommendation.

Mr. Dail stated staff has no objection with the stated conditions.

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

No board discussion was made.

Chairman Ewen read the required findings criteria. No objections.

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

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

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY BALDWIN DESIGN CONSULTANTS- CONTINUED

The applicant, Baldwin Design Consultants, desires to amend an active special use permit to allow the expansion of an existing private club pursuant to Appendix A, Use (6)m. of the Greenville City Code. The proposed use is located at 2120 E Fire Tower Road. The property is further identified as being tax parcel number 42243.

Mr. Dail stated that a copy of an email was part of the members' packets which stated the applicant would like to continue the request until the March meeting.

2015 ANNUAL REVIEW OF PRIVATE CLUBS AND DINING AND ENTERTAINMENT ESTABLISHMENTS OPERATING PURSUANT TO AN APPROVED SPECIAL USE PERMIT

Mr. Dail stated that the handout contains the inventory of 11 public/private clubs and 6 dining and entertainment establishments that have a special use permit. Some establishments not listed are grandfathered and therefore do not operate under a special use permit. He stated that comments from different review agencies (Pitt Co. ABC Commission, Greenville Police Dept, Planning Div, Code Enforcement Div., Fire/Rescue Dept., & Inspections Div.) were requested to see if any issues exist that would bring the permit back to the board. There were few negative comments and most establishments had no issues. He stated there was an issue with Fitzgerald's but they are now closed. Another issue Staff has found is with Buccaneer Music Hall. They have built an outdoor patio at the rear of the property without an approved building permit, site plan or amended special use permit. They were the third item on tonight's agenda but have requested to continue until next month. Currently the club does not meet the spacing criteria for public/private club since the rules were adopted for 500 feet spacing from single family zoning districts. They are 140 feet from a single family zoning district. Mr. Dail stated that Staff has contacted the business.

Mr. Faison asked if only the expansion was in question and that the business would not have to close.

Mr. Dail stated yes they received a special use permit in 1996. Once the 500 foot rule was adopted they became a non-conforming use. They can continue to operate but they cannot expand.

Attorney Little stated the item was continued to do space and zoning issues. The City is working with the applicant to address the issue to see if it can be resolved. The review shows a large amount of police calls to this location but this is the parking lot of Harris Teeter. He stated they have had a few noise issues and those were from November to December. The issue with the gambling machines had to do with people trying to test the laws and would remove the equipment once Police said they were in violation.

Chairman Ewen asked if the code 1050 was for car wrecks.

Mr. Rudy Oxendine, Police Sergeant, stated code 1050 is accidents and 1054 is hit and run. He stated that the disturbing the peace calls started with the erection of the patio.

Mr. Frank asked what do some of the codes mean.

Officer Oxendine stated that DTP is disturbing the peace, CSA is controlled substance and RO is request office. RO can be just about anything.

Mr. Spengeman asked that the violations are not necessarily related to the Buccaneer.

Officer Oxendine stated he felt the vast majority were not related. He stated it is a very busy intersection and police will have citizens move into the parking lot after accidents.

Mr. Watts asked based on the information that none of the establishments are a public nuisance.

Officer Oxendine stated that based on the information they are not. He did not see anything that stood out.

Mr. Faison stated that City Hotel and Bistro is closed. The hotel is now Holiday Inn.

Mr. Dail stated that there is still a bar area in the hotel but have done away with the club.

Mr. Taft asked if the Board needs to address Buccaneer.

Attorney Little stated that Staff is working on it.

Mr. Frank asked when the patio was built.

Mr. Dail stated it was noticed by the Inspections and the Fire/Rescue Staff sometime in the middle of 2015.

With no further business, Mr. Taft made a motion to adjourn, Mr. Frank seconded, and it passed unanimously. Meeting adjourned at 6:39 p.m.

Respectfully Submitted,

Michael R. Dail, II
Planner