

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
November 21, 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 *
Linda Rich *
Justin Mullarkey *
Kevin Faison X

Claye Frank *
Sharon Ferris X
Bill Fleming *
Thomas Taft, Jr. *

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

VOTING MEMBERS: Mullarkey, 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

Mr. Mullarkey made a motion to approve the October 24 minutes as presented, Ms. Rich seconded and the motion passed unanimously.

Mr. Mullarkey requested to recuse himself from agenda item #1 Arthur Dellano special use request due to indirect financial interest. His business represents the transaction.

Chairman Shook requested a vote to recuse Mr. Mullarkey due to general business conflict of interest. Vote passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY ARTHUR DELLANO-APPROVED

The applicant, Arthur Dellano, desires a special use permit to operate an automobile sales lot pursuant to Appendix A, Use (11)f. of the Greenville City Code. The proposed use is located west of the intersection of S. Memorial Drive and Glenwood Avenue. The property is further identified as being tax parcel number 14286.

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

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

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

Surrounding Development:

North: Buyers Market Shopping Center
South: O'Reilly Auto Parts
East: Single Family Residences, Offices
West: Vacant, Single Family Residence

Description of Property:

The subject property is currently vacant. The property is 1.32 acres in size and has 213 feet of frontage along S. Memorial Drive. The applicant proposes to build a 3,000 square foot commercial building on the site.

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 commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on November 7, 2013. Notice of the public hearing was published in the Daily Reflector on November 11, 2013 and November 18, 2013.

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 conditions 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.

Staff Recommended Conditions:

Site plan approval is required.

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

Other Comments:

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

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 Shook opened the public hearing.

Mike Baldwin, representative for applicant Arthur Dellano, spoke in favor of the request. He passed out a written presentation (brochures) to board members. He stated that Art Dellano is under contract for the remainder of the lot from O'Reilly's Auto Parts to build an auto sales dealership.

Mr. Fleming asked what parcel are we looking at.

Mr. Baldwin stated that it is the northern portion of parcel 14286.

Mr. Ewen asked what is parcel 34476.

Mr. Baldwin stated it is a long private drive to a residential property owned by Mr. Ramos. He also stated that there is a distance of 400 feet from Mr. Ramos's home to the western property line.

Mr. Fleming asked if all the trees would be cut down.

Mr. Baldwin stated that he thinks he could save most of the trees. He stated that you cannot see Mr. Ramos's house because of all the trees. Mr. Baldwin stated that there are 5 car dealerships on S. Memorial Drive from Camelot Inn to Dickinson Avenue. He stated that a car lot is in harmony with what is in the area.

Mr. Baldwin stated he contracted Daniel Cumbo, Transportation Engineer from Wilmington NC. He stated that average daily traffic is 80 trips a day for a car lot versus 2000 for a fast food establishment and 1700 for a shopping center.

Mr. Baldwin stated that the owner said there will not be use of loud speakers. He stated the owner has agreed to have down lights (parallel to asphalt). He stated the parking lot will be asphalt.

Chairman Shook asked Mr. Little how to handle the traffic count report from Mr. Cumbo who is not present.

Mr. Little stated that it is for information purpose only. It also could be an exception to the hearsay rule to explain

facts as presented by Mr. Baldwin.

Mr. Baldwin stated that his intent with the traffic report was for generalities only.

Mr. Ewen asked what kind of building would be constructed and where on the site would it be located.

Mr. Baldwin stated he was not aware of the type of building but that it would be located at the rear of the site with the display sales area in the front.

Mr. Ewen asked if there was enough room.

Mr. Baldwin stated yes. It is 1.33 acres.

Mr. Frank asked if the buffers would remain intact with the trees or are the trees on other properties.

Mr. Baldwin stated that the trees are on other various properties.

Chairman Shook asked if there are trees and buffer area around the private drive and if this drive was paved.

Mr. Baldwin stated that the drive is paved and the majority of the trees are on Mr. Ramos's property.

Chairman Shook asked what are the intended hours of operation.

Mr. Baldwin stated probably 9am to 7pm Monday to Saturday.

Mr. Terry Ramos, owner of adjacent lot, spoke in opposition of the request. He is concerned with the shared tree line and who would pay for any damage to the trees due to asphalt lot for the new business. He is concerned with late night activity if the property is not fenced there could be criminal activity and people hiding in the trees. He is concerned with late activity and noise if the working hours were to exceed the estimated hours of 9am to 7pm stated by Mr. Baldwin earlier. He is concerned with light pollution, encroachment and trespass.

Ms. Rich asked if there has been criminal activity as a result of the Buyers Market property.

Mr. Ramos stated he had a break in once. He stated that Buyers Market has recently put up a high fence with razor wire around the property.

Mr. Ewen asked what type of light would he like.

Mr. Ramos stated full cutoff dark sky compliant which is 0% upright beyond 90 degrees so it does not interfere with the nighttime sky.

Mr. Baldwin spoke in rebuttal and stated that down lights will be used.

Mr. Taft asked if there would be a sign.

Mr. Baldwin stated yes.

Chairman Shook asked Mr. Dail to speak about ordinance regarding light pollution.

Mr. Dail stated that commercial lighting has to be directed so that it would not interfere with residential property.

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

Mr. Fleming stated that a car lot was approved last month at the corner of Evans and Fire Tower. He asked what requirements did they have.

Ms. Rich stated down lighting.

Chairman Shook stated no large balloons and no loud speakers.

Mr. Frank stated that the dark skylight is interesting and that it would be beneficial to many areas.

Ms. Rich stated that the O'Reilly Auto Parts and the Buyers Market are already in this area.

Mr. Little stated that the design guidelines for commercial lighting are as Mr. Dail indicated unless there is evidence produced that indicated only one kind of lighting that would meet the city's ordinance. It must be compliant and not cause a nuisance.

Chairman Shook indicated that Mr. Baldwin offered conditions of no loudspeaker-amplified music and to have down lighting. Staff conditions to meet right of way and site plan approval.

Chairman Shook read the required findings criteria. No objections.

Mr. Ewen made a motion to adopt the finding of facts with the stated conditions, Ms. Rich 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.

PUBLIC HEARING TO DETERMINE COMPLIANCE OF THE SPECIAL USE PERMIT ISSUED TO CAPITAL FOOD GROUP, LLC (MELLOW MUSHROOM)- APPROVED

The Board of Adjustment will hold a rehearing to determine compliance of the special use permit issued to Capital Food Group, LLC to have outdoor activities at the Mellow Mushroom Restaurant pursuant to Appendix A, Use (10)j. of the Greenville City Code. The subject property is located at 2020 Charles Boulevard. The property is further identified as being tax parcel number 04188.

Mr. Dail delineated the area on the map. He stated that the property is located in the central portion of the city's jurisdiction along Charles Boulevard as part of the Greenville Mall property. He stated that Capital Food Group, LLC was issued a Special Use Permit to have regulated outdoor activities on January 27, 2011. The Special Use Permit was amended by the Board at the request of the applicant on November 15, 2012. A Special Use Permit is

required for outdoor activities because the area is within 300 feet of residential properties. As a condition of the amendment a rehearing to review compliance was ordered by the Board after 12 months of operation.

Mr. Dail contacted the Police Department for comment. The Police Department provided a memorandum that stated 2 “Disturbing the Peace” calls were received.

Description of Property:

The restaurant is located on a portion of the larger Greenville Mall parcel. The restaurants 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 foot in size and has 2,809 square foot 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.

Reason for Rehearing:

The following condition was placed on the special use permit issued to Capital Food Group, LLC:

“The amended special use permit shall be granted for a period of 12 months. Prior to the expiration of the permit period, a public hearing will be held before the Board of Adjustment concerning compliance or noncompliance and whether or not to renew the special use permit including any modifications to the conditions.”

Notice:

Notice of the rehearing was mailed to the adjoining property owners on November 7, 2013. Notice of the rehearing was published in the Daily Reflector on November 11, 2013 and November 18, 2013.

Police Comments:

During the period of November 16, 2012 thru November 7, 2013 the Police Department received two calls for service for the subject property.

Other City Department Comments:

Public Works:	No Issues or Concerns
Code Enforcement:	No Issues or Concerns
Inspections:	No Issues or Concerns
Fire/Rescue:	No Issues or Concerns

Citizen Complaints:

City staff received two emails concerning the outdoor activity area at the Mellow Mushroom.

Mr. Fleming asked if the police was called regarding amplified sound on the dates Ms. Katrina Combs mentioned in her email.

Ms. Rich said that the email says the police was called.

Mr. Fleming stated that the police did not have any records of her calls.

Mr. Dail stated the memorandum from the Police Department was just a summary.

Mr. Little stated that no enforcement action was taken and no violation was made because either it had been complied with or abated.

Mr. Fleming asked if the shrubbery mentioned in Mr. Marc Swanner's email had been inspected.

Mr. Dail stated that the shrubbery has not been installed.

Mr. Mullarkey asked if the previous vegetation requirement had been fulfilled.

Mr. Dail stated yes. He stated that the additional shrubbery requirement was for a new outdoor extension area in using the green area where events would be. He was not sure if the intent to continue using the green area was still valid.

Noah Barrow, applicant and managing partner of Mello Mushroom, spoke on behalf of the request. He stated at the present time they are not using the green area and if they did, they would install the additional shrubbery. He stated that there are no issues coming from the patio area.

Mr. Taft asked if there will be live music on the patio area.

Mr. Barrow stated that if they have live music, they will contact the neighbors in advance but they are not having live music right now.

Chairman Shook asked if picnic tables were to be installed.

Mr. Barrow stated not now but maybe next year and they would be temporary. He stated if they do use the green area for corn hole gaming, they will install the additional shrubbery.

Mr. Ewen asked if the extra area would be used for softball teams to meet after games.

Mr. Barrow stated no. There will not be any new permanent seating area installed.

Mr. Frank asked where did the previous noise issues come from.

Mr. Barrow stated he was unclear. He stated that if the music from the speakers on the patio was loud enough to be heard by the neighbors across the street, that it would make an uncomfortable dining environment.

Katrina Combs spoke in opposition of the request. She commended Mellow Mushroom for doing much better in the past year. She stated the noise issues were loud music from the patio speakers while employees set up before opening and after closing. She stated that they did have live amplified music that was against the original agreement. She stated she called the police twice, March 14, 2013 at 7:30 pm and April 11, 2013 at 6:30 pm.

Mr. Ewen asked if there have been any incidents since the new manager started.

Ms. Combs stated no, not in the last 5 weeks. She stated there was an incident with an alarm going off for about 4 hours.

Mr. Mullarkey asked what time.

Ms. Combs stated that it was at 3 am to about 6 am and lights were flashing.

Mr. Mullarkey asked if police showed up.

Ms. Combs stated yes but that they could not get in the building. She stated it was the only incident in one year. She stated that she can sit on her front porch and see the customers eating at Mellow Mushroom.

Mr. Mullarkey asked that overall the past year has been good.

Ms. Combs stated yes and it was much better.

Mr. Taft asked if there were any issues with the outdoor area, green area.

Ms. Combs stated not since last year, no.

Mr. Ewen asked that if we stay the course it would be okay.

Ms. Combs stated yes and that she spoke with her neighbors and they agreed.

Mr. Barrow spoke in rebuttal. He stated they will speak with staff regarding not messing with the stereo system in the morning and at night. He stated he will have an updated call list for the alarm company.

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

Chairman Shook asked Mr. Little if they are voting.

Mr. Little stated that this rehearing is an update. He stated that you have 3 options with a simple majority vote: make decision to have full blown hearing to review entire permit to determine if need to revise permit, vote to continue for another year, or vote to withdraw the condition to review in one year.

Chairman Shook asked if they wanted to make changes, would they have to come back to the Board or just comply.

Mr. Little stated that they would need to comply with all conditions in permit.

Mr. Fleming stated he would like to review in a year.

Mr. Taft stated that it does not seem necessary to put the burden on staff to prepare a review. He stated that if there is an issue, a compliant would be brought to the Board.

Mr. Little stated that complaints or violations of the permit will come to this Board as a review or rehearing.

Mr. Mullarkey stated that any infractions would be brought to the attention of Mr. Dail and he would bring it to the attention of the Board.

Mr. Little stated that copies of violations or citations from the Police Department would need to be presented to substantiate neighbor's complaints. He stated then Mr. Dail would bring it to the Board.

Chairman Shook stated that the today's review is regarding the green and yellow areas as extension areas to the Mellow Mushroom.

Mr. Little stated yes and that if they use these areas they need to comply with the stated conditions.

Mr. Ewen made a motion to continue as is and to withdraw the condition of an annual review, seconded by Mr. Fleming and the motion passed unanimously.

With no further business, Mr. Fleming made a motion to adjourn, Ms. Rich seconded, and it passed unanimously. Meeting adjourned at 8:07 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner