

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
JUNE 28, 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 *	John Hutchens *
Linda Rich X	Sharon Ferris X
Justin Mullarkey *	Bill Fleming *
Wiley Carraway *	Tom Taft, Jr. *
Claye Frank *	

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

VOTING MEMBERS: Shook, Ewen, Fleming, Hutchens, Mullarkey, Carraway, Taft

OTHERS PRESENT: Mr. Merrill Flood, Community Development Director
Mr. Mike Dail, Planner
Mr. Wayne Harrison, Planner
Mrs. Elizabeth Blount, Secretary
Mr. Bill Little, Assistant City Attorney
Council Member Kandie Smith, City Council
Council Member Dennis Mitchell, City Council
Mr. Jonathan Edwards, Communications Technician

MINUTES

Mr. Hutchens made a motion to approve the April 26 and May 24 minutes as presented, Mr. Fleming seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY FATHI ALI MUHSSEN AND KAMAL AMOLGANAHI-WITHDRAWN

The applicant, Fathi Ali Muhssen and Kamal Amolganahi, desires a special use permit to operate a game center pursuant to Appendix A, Use (6)d. of the Greenville City Code. The proposed use is located at 1508 SW Greenville Boulevard. The property is further identified as being tax parcel number 27433.

Mr. Muhssen stated that he wanted to withdraw his application.

Mr. Ewen made a motion to accept the withdrawal, Mr. Mullarkey seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY ASHREF ABED AND DEYA SARSOOR- DENIED

The applicants, Ashref Abed and Deya Sarsour, desire a special use permit to operate a game center pursuant to Appendix A, Use (6)d. of the Greenville City Code. The proposed use is located at 1301 W. Fourteenth Street, Suite E. The property is further identified as being tax parcel numbers 17933, 17934 and 38522.

Mr. Dail delineated the area on the map. He said that the property is located in the center part of the city.

Zoning of Property: CDF (Downtown Commercial Fringe)

Surrounding Zoning:

North: CDF (Downtown Commercial Fringe)
South: CDF (Downtown Commercial Fringe)
East: CDF (Downtown Commercial Fringe)
West: CDF (Downtown Commercial Fringe)

Surrounding Development:

North: Air Mania Screen Printing
South: Harris Barber Shop, Shield of Faith Ministries, D&L Parts Company
East: Midtown Grocery, Vacant Lots, Single Family Residential
West: Single Family Residential

Description of Property:

The subject property contains a 4,000 square foot commercial building with multiple units. The property is 0.37 acres in size and has 155 feet of frontage along W. 14th Street and 90 feet of frontage along Myrtle Street. Existing uses in the subject building are New Birth Outreach Ministries, a Barber Shop and World Wide Wireless.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on May 10, 2012 and June 14, 2012. Notice of the public hearing was published in the Daily Reflector on May 14, May 21, June 18 and June 25, 2012.

Related Zoning Ordinance Regulations

The definition of a game center

Police Comments

The area experiences large amounts of foot traffic, narcotics, gang and prostitution offenses. The police department does not recommend this business in this area.

Mr. Shook asked for clarity concerning the parcels.

Mr. Dail stated that the building sits on one parcel and the parking for the building is the other two parcels.

Captain Ted Sauls explained the police comments from staff report. He said that the location of the property is considered a hot spot for service calls. He stated that if the game center becomes a 24 hour establishment, that it will encourage hanging out and perhaps general more service calls. Within a year's time, the two block area which includes the proposed location have had several hundred service calls. The Police Department wants to ensure the protection of the residents in the area. The biggest issue is the location of the proposed establishment.

Mr. Hutchens asked if the proposed location will increase the difficulty of policing the area.

Captain Sauls said yes. He said people will be bringing and leaving with cash money which increases the chance of people being victimized. Hours of operation may also warrant loitering.

Chairman Shook asked what type of business would or would not be a concern for the area.

Captain Sauls said business that are productive to the community and do not encourage loitering.

Chairman Shook asked about hours of operation that would not be of concern.

Captain Sauls suggested that daytime hours would be better and closing as early as possible.

Mr. Ewen asked if the city's recommended hours of operation were sufficient.

Captain Sauls stated that 10 pm is too late for the warm times of the year.

Chairman Shook asked, in the police's expert opinion, would the health, safety and detriment of the people working or living in the neighborhood be affected by this establishment.

Captain Sauls said it is a public safety hazard.

Chairman Shook asked the officer the length of time he has been on the police force.

Captain Sauls stated this is his sixteenth year.

Mr. Deya Sarsour, applicant, spoke in favor of the application. He stated that he owns the building which currently has four tenants. He also owns the building across the street, Midtown Grocery. The proposed use of the building is an Internet Café opened during the daytime – not a twenty-four hour establishment. The applicant understands the problems in the area and the people in the neighborhood. He endeavored to help the community look as nice as possible for the proposed 10th Streeter Connector.

Mr. Taft asked was a business in the building before.

Mr. Sarsour stated he wasn't sure because he obtained the building in October 2011. A church was there but they moved out.

Mr. R. J. Hemby, co-chairman of the West Greenville Focus Group, spoke in opposition of the application. He reported that there were a total of 367 calls this past year to the area surrounding the proposed establishment. The Focus Group wishes to attract positive businesses to the area to appeal to the entire community and are willing to help the applicant find such a business.

Bishop Rosie O'Neal, founder of Koinonia Church, spoke in opposition of the application. She stated that the proposed business tends to exacerbate addiction and prey on low wealth individuals. This type of business incites impulsive behavior and gambling addiction and does not need to be a part of our community.

Ms Maxine White spoke in opposition of the application. In her personal investigation of two Internet Cafés, she proposed that the establishments were gambling houses. She talked to the managers about the process and monitored the number of people and the caliber of people entering the facilities. She stated that the proposed establishment is not in the best interest of the community.

Pastor Tim Butler, Pastor of People's Baptist Church, spoke in opposition of the application. He stated that the community should look into development but not by establishing casino gambling and Internet Sweepstakes Cafés. He gave statistics concerning addiction and domestic violence affiliated with gambling. He encouraged the board members to not just consider the revenue from the proposed business but at the lives of the people in the community.

Mr. Sarsour spoke in rebuttal to the opposition. He stated that he is willing to work with the officers to reduce crime in the area. He is not trying to cause any problems and is willing to give back to the community.

Mr. Dail read the staff recommendation: Based on the Police Department concerns for public safety because of the high amount of calls for service in this immediate area, the proximity to residential neighborhoods in general and the fact that the proposed use abuts existing single family residences, the Community Development Department is concerned as to whether this application can satisfy the criteria for approval - specifically the criteria of health and safety and detriment to public welfare. If the board determines from the evidence that the applicant can meet the criteria for approval, staff would recommend the following conditions be imposed:

No loitering shall be permitted outside of the establishment.

Trash receptacle must be placed outside of the establishment.

Operating hours shall be limited to 8 am-10 pm Monday through Saturday and 2 pm -10 pm on Sunday.

Chairman Shook closed the public hearing and opened board discussion.

Mr. Hutchens stated that he has been on the board for twelve years. He stated that the heart of the city is the neighborhood – the more emphasis placed on the neighborhoods the better the city becomes. He agrees with the city's recommendation.

Mr. Ewen stated that the state of North Carolina has determined that the proposed establishment is legal and the board has to make a decision based on the impact on specific locations.

Mr. Taft stated that the board cannot take a moral stand on the application but have to consider the input from the

professionals and the community.

Mr. Mullarkey stated that the board has to consider the safety in the area when you have people that live in the community say it is not safe along with the expert opinion of the police. This does help establish that this application is a determinant to public welfare.

Attorney Little reminded the board members that the facts must accompany any negative vote.

Chairman Shook read the required findings criteria. A vote was called for health and safety, detriment to public welfare and nuisance or hazard. The vote is as follows:

Health and Safety

Mr. Hutchens: No due to testimony from the police officer

Mr. Mullarkey: No due to testimony from the police officer, carrying cash, increase of loitering and close proximity to residential housing

Mr. Ewen: No, same reason

Mr. Shook: No, same reason

Mr. Carraway: No, same reason

Mr. Fleming: No, same reason

Mr. Taft: No due to carrying cash out

Detriment to Public Welfare

Mr. Hutchens: No due to testimony from the police officer and the expert testimony of the issuing of money

Mr. Mullarkey: No due to increase availability of cash

Mr. Ewen: No due to location being a troubled spot already and police officer comments of the proposed establishment making it worse

Mr. Shook: No due to expert testimony of police officer

Mr. Carraway: No, same reason

Mr. Fleming: No, same reason

Mr. Taft: No, same reason

Nuisance or Hazard

Mr. Hutchens: No due to testimonies and it will be negative to the neighborhood

Mr. Mullarkey: No, same reason

Mr. Ewen: No due to the number of police service calls to the area

Mr. Shook: No due to expert testimony of police officer

Mr. Carraway: No, same reason

Mr. Fleming: No, same reason

Mr. Taft: No, same reason and the nuisance

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

Mr. Ewen made a motion to deny the petition, Mr. Hutchens seconded and the motion passed unanimously.

Chairman Shook informed the applicant that the petition was denied and that he could see city staff for additional options.

Commission recessed for five minutes.

Mr. Frank asked to be excused from the meeting. Mr. Fleming made a motion to excuse Mr. Frank from the remainder of the meeting. Mr. Taft seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY CORY SCOTT- APPROVED

The applicant, Cory Scott, desires a special use permit to operate a game center pursuant to Appendix A, Use (6)d. of the Greenville City Code. The proposed use is located at 4320-J E. Tenth Street. The property is further identified as being tax parcel number 60442.

Mr. Dail delineated the area on the map. He said that the property is located in the Hardee's Shopping Center located in the extreme eastern part of the city.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

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

Surrounding Development:

- North: Hardee Square Parking Lot, Congregation Bayt Shalom, Homestead Cemetery
- South: Under Construction (Wal-Mart Shopping Center)
- East: Food Lion, Family Dollar, Under Construction (Wal-Mart Shopping Center)
- West: East Carolina Bank, Sheetz, Pinewood Cemetery

Description of Property:

The subject property is located in Hardee Square Shopping Center which contains two commercial buildings with multiple units. The applicants unit is in the southernmost building on the property. Hardee Square Shopping Center is 6.94 acres in size and has 570 feet of frontage along E. Tenth Street and has access to Portertown Road. Existing uses in the subject building are Wahoo Tanning, Savvy Diva, Speedy Wok, Love Nail, Edward Jones and U-Save Cleaners.

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 for the subject property.

Notice:

Notice was mailed to the adjoining property owners on June 14, 2012. Notice of the public hearing was published in the Daily Reflector on June 18, 2012 and June 25, 2012.

Related Zoning Ordinance Regulations:

The definition of a game center.

Other Comments:

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

Mr. Ewen asked if the new Wal-Mart was near the proposed facility.

Mr. Dail stated yes.

Mr. Hutchens asked was the Wal-Mart notified of the petition.

Mr. Dail stated that all property owners were notified.

Mr. Cory Scott, applicant, spoke in favor of the request. He said he is currently and has been a sweepstakes owner for three years. His businesses are successful and have not had any problems at any of his locations. He has 24 hour surveillance inside and outside. He understands that the perception of the business is not good but he works very hard to keep the establishment clean and safe.

Mr. Taft asked where the other applicant's businesses were located.

Mr. Scott said in the Kmart shopping center and the Food Lion Shopping Center on Memorial Drive near Peaden's Grill.

Mr. Mullarkey asked how long the applicant had been in business.

Mr. Scott said since November 2009.

Ms Alysa Aarup, property manager of Hardee Village, spoke in favor of the request. She stated that Mr. Scott was a good tenant, pays bills on time and she has received no complaints concerning his business. His business helps surrounding businesses. The property management company has a one strike policy for this type of business. If they get a complaint from surrounding business or a service call from police, the tenants are asked to move.

Mr. Shook asked if the one strike policy is in the rental agreement.

Ms. Aarup stated yes.

Mr. R. J. Hemby spoke in opposition of the request. He asked the board to put the one-strike policy and respectable hours as conditions if the board approves the request.

Mr. Scott spoke in rebuttal to the opposition. He said his current location in the Kmart Shopping Center is 24 hours. It provides security for the surrounding business and plenty of lighting. He asked that his proposed business be allowed to operate 24 hours due to him not previously having any problems.

Mr. Hutchens asked how much business is conducted at 3 am.

Mr. Scott said on Friday, Saturday and Sunday there is business at 3 am for those who may work third shift. It is not a whole lot but it provides security for the surrounding business to know that we are open during those hours. He also stated that his businesses provide jobs for the community.

Mr. Mullarkey asked is the Sheetz store in front of the proposed location open 24 hours.

Mr. Dail stated yes. He reported that staff has no objection to the request.

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

Mr. Ewen asked Captain Sauls did he have any concerns or objections to the request.

Captain Sauls stated that location is key. The proposed location is not a high call volume area. The surrounding areas are commercial so he did not have any objections to the request.

Mr. Mullarkey said that the proposed location is in a retail dominated market and not close to residents. The request does not propose a detriment to the public.

Mr. Taft said the hours were at question but the Sheetz store is open 24 hours.

Mr. Ewen said the board cannot vote in accordance to their personal take on Internet Sweepstakes but have to judge on the facts. The location is the key component.

Chairman Shook read the criteria. No objections.

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

Mr. Mullarkey made a motion to approve the petition, Mr. Taft seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY MAGDY TAHA-APPROVED

The applicant, Magdy Taha, desires a special use permit to operate a private convention center pursuant to Appendix A, Use (8)l. of the Greenville City Code. The proposed use is located at 1809 Dickinson Avenue, Suite 100. The property is further identified as being tax parcel numbers 15064, 17863 and 17864.

Mr. Dail delineated the area on the map. He said that the property is located close to the center of the city along Dickinson Drive.

Zoning of Property: CDF (Downtown Commercial Fringe)

Surrounding Zoning:

North: CDF (Downtown Commercial Fringe)

South: CDF (Downtown Commercial Fringe)

East: CDF (Downtown Commercial Fringe)
West: IU (Unoffensive Industry)

Surrounding Development:

North: Home Builders Supply, Taylor Warehousing, Sam's Lock & Key, Aladdin Taxi
South: Vacant Commercial Building
East: Vacant
West: Fabric Restoration

Description of Property:

The subject property contains a 50,000 square foot commercial/warehouse building with multiple units. The property is two acres in size and has 304 feet of frontage along Dickinson Avenue and 240 feet of frontage along S. Skinner Street. Existing uses in the subject building are Mack's Furniture and Adoria Beauty Supply.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on June 14, 2012. Notice of the public hearing was published in the Daily Reflector on June 18, 2012 and June 25, 2012.

Police Comments:

Locations experiencing issues when used for rental space typically are associated with nighttime activities. Closing at 10 pm should be considered very important.

Other Comments:

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

Mr. Mack Taha, owner of Mack's Furniture, spoke in favor of the request. He stated that he wanted to open a family-oriented convention center for birthday parties. The center will be a very nice, clean, and professional operation. He promised to protect the business, property, neighborhood and community.

Mr. Ewen asked if the operating hours were sufficient for the applicant.

Mr. Taha said no. He stated that the business will not serve liquor nor food. It will contain meeting rooms for business meeting and valet parking. The business is going to strive to close at 10 pm.

Mr. R. J. Hemby spoke in favor of the request. He stated that the applicant's business is the image of professionalism that is needed in the community.

Mr. Dail reported that staff is of the opinion that the applicant can meet the criteria for approval if the board so finds. However, based on police department concerns about the potential for negative impacts in the area staff recommends the following conditions be placed on the special use permit if approved:

- Operating hours shall be limited to 6 am - 10 pm daily

Chairman Shook closed the public hearing and opened board discussion

Mr. Mullarkey stated that the business owner invested a lot of time and money in making sure the area of town looks good. He said that the business is an encouragement to the community.

Chairman Shook asked for clarity concerning hours of operation.

Captain Sauls stated that the 10 pm time was picked due to calls in the area. The police have had no problems with the business but do have concern with management. Location is still key in the proposal. The location offers the opportunity for unwanted activity if not managed properly. The police do not foresee this problem with the proposed request but do suggest a definitive closing time.

Chairman Shook asked if the police would have a problem with 11 pm closing time.

Captain Sauls stated no.

Chairman Shook stated that the staff recommendation should be from 6 am -11 pm.

Attorney Little instructed the board that they must include in the finding of facts that the applicant made an oral modification to change the hours.

Chairman Shook read the criteria. No objections.

Mr. Ewen made a motion to adopt the finding of facts to include the closing time of 11 pm, Mr. Mullarkey seconded and the motion passed unanimously.

Mr. Hutchens made a motion to approve the petition, Mr. Taft seconded and the motion passed unanimously.

PUBLIC HEARING ON REQUESTS FOR SPECIAL USE PERMITS BY HUMBERTO MARTINEZ-APPROVED

The applicant, Humberto Martinez, desires special use permits to operate a automotive major repair facility pursuant to Appendix A, Use (9)a. of the Greenville City Code. The proposed uses are located at 1100 N. Greene Street and 1114 N. Greene Street. The property is further identified as being tax parcel numbers 18499, 18503 and 18504.

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

Zoning of Properties: CDF (Downtown Commercial Fringe)

Surrounding Zoning:

North: CDF (Downtown Commercial Fringe) & R6 (Residential)

South: CH (Heavy Commercial) & CDF (Downtown Commercial Fringe)
East: CDF (Downtown Commercial Fringe)
West: R6 (Residential) & IU (Unoffensive)

Surrounding Development:

North: Vacant, El Azador Restaurant
South: Afford-A-Bond Bail Bonding
East: Miranda's Convenience Store & Barber Shop, Rays Laundromat
West: Single Family Residences (West Meadowbrook Neighborhood), Vacant Lots

Description of Properties:

The 1100 N. Greene property contains a 1,616 square foot commercial building. The property is 0.55 acres in size and has 208 feet of frontage along N. Greene Street and 116 feet of frontage along Martin Street. The 1114 N. Greene Street contains a 14,070 square foot commercial building with multiple units. The property is 0.93 acres in size and has 160 feet of frontage along Martin Street and 253 feet of frontage along N. Pitt Street. Existing uses in the subject building are Miranda's Convenience Store & Barber Shop and Ray's Laundromat.

Comprehensive Plan:

The properties are located within Vision Area "B" as designated by the Comprehensive Plan. The proposed uses are in general compliance with the Future Land Use Plan which recommends commercial development for the subject properties.

Notice:

Notice was mailed to the adjoining property owners on June 14, 2012. Notice of the public hearing was published in the Daily Reflector on June 18, 2012 and June 25, 2012.

Related Zoning Ordinance Regulations:

Definition of major and minor repair facility

Other Comments:

The proposed project must meet all related NC State fire and building codes prior to occupancy. These properties are located within the 100-year flood plain boundary and will have to meet the provisions for the flood damage prevention ordinance when remodeled.

Mr. Humberto Martinez, applicant, spoke in favor of the request. He stated that he would like to use the buildings for a used tire shop and a small mechanic repair shop.

Mr. Fleming asked did the applicant have an existing business.

Ms Rita Mirando, wife of applicant, spoke for her husband due to his inability to speak clear English. She stated that they have a salon and barber shop in the same building.

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.

Mr. Carraway asked if the city has an ordinance about motor parts properly stored for auto repair shops.

Mr. Dail read the specific zoning ordinance associated with minor and major repair facilities.

Chairman Shook read the criteria for the 1100 N. Greene Street request. No objections.

Mr. Hutchens made a motion to approve the finding of facts as presented, Mr. Carraway seconded and the motion passed unanimously.

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

Chairman Shook read the criteria for the 1114 N. Greene Street request. No objections.

Mr. Fleming made a motion to approve the finding of facts as presented, Mr. Taft seconded and the motion passed unanimously.

Mr. Hutchens made a motion to approve the petition request, Mr. Mullarkey seconded and the motion passed unanimously.

Chairman Shook stated the June meeting was Mr. Hutchens' last meeting. He thanked him for his many years of service.

With no further business, Mr. Fleming made a motion to adjourn, Mr. Mullarkey seconded, and it passed unanimously. Meeting adjourned at 8:49 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner