

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT FOR JANUARY 27, 2011

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

Dr. Mulatu Wubneh, Chairman\*

Charles Ewen *	Renee Safford-White *
John Hutchens X	Scott Shook *
Linda Rich *	Sharon Ferris *
Wanda Harrington X	Justin Mullarkey *
Minnie Anderson *	

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

VOTING MEMBERS: Ewen, Rich, Safford-White, Shook, Ferris, Mullarkey,

OTHERS PRESENT: Mr. Mike Dail, Planner  
Mr. Wayne Harrison, Planner  
Ms. Valerie Paul, Secretary  
Mr. Bill Little, Assistant City Attorney  
Mr. Joe Bartlett, Deputy Police Chief  
Mr. Chris Kelly, Engineer  
Mr. Jonathan Edwards, Communications Technician

Chairman Wubneh had the Secretary call the roll for the meeting.

Chairman Wubneh said that Board usually seats seven regular members, all the present members except for Ms. Anderson would be voting, but Ms. Anderson would be able to participate in the discussions.

MINUTES

Motion was made by Ms. Safford-White, seconded by Ms. Ferris to accept the December 16, 2010 minutes as presented. Motion carried unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY W.H. SMITH REAL ESTATE, INC.

The applicant, W.H. Smith Real Estate, Inc., desires a special use permit to operating a medical supply sales and rental establishment pursuant to Appendix A, Use (10)k. of the Greenville City Code. The proposed use is located at 1038 W.H. Smith Boulevard. The property is further identified as being tax parcel numbers 52895, 52896 and 52897.

Chairman Wubneh called for all those wishing to speak for or against the case to come forward and be sworn in.

Mr. Dail delineated the area on the map. He said the property is located at 1038 W.H. Smith Boulevard and it is zoned MO (Medical Office).

Surrounding Zoning:

North: O (Office)  
South: OR (Office Residential), R9 (Residential) & CG (General Commercial)  
East: CG (General Commercial)  
West: R9 (Residential) & R9S (Residential Single Family)

**Surrounding Development:**

North: Under Construction (Dentist Office)  
South: Vacant, Single Family Residence, Salvation Army  
East: Vacant  
West: Single Family Residences (Westwood Subdivision)

**Description of Property:**

The property has approximately 400 feet of frontage along W.H. Smith Boulevard and 215 feet of frontage along Dickinson Avenue Extension with a total lot area of 1.82 acres. The applicant intends to build a 17,625 square foot office building with multiple units on this property. The medical supply sales and rental business will be located within one of these units.

**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 January 13, 2011. Notice of the public hearing was published in the Daily Reflector on January 17, 2011 and January 24, 2011.

**Related Zoning Ordinance Regulations:**

Specific Criteria

- (r) *Medical supply sales and rental of medically related products.*
- (1) No products shall be visible from a public street right-of-way.**

**Other Comments:**

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

Chairman Wubneh asked if this request was for one of the units for the entire unit.

Mr. Dail said that it was for just one unit.

Chairman Wubneh asked if they would have to select one unit, or would they be able to pick any as long as the use is Medical Supply.

Attorney Little answered that they would be able to.

Mr. Dail said that they could have one use within the complex and each unit would have to have a special use permit.

Chairman Wubneh asked if the parking calculations were based on square footage.

Mr. Dail answered that this would be considered an office complex and the parking requirement is 1 space per 300 sq. feet of non-storage space. The applicant has not indicated what the sq. footage of non-storage space is, but it would be addressed during the site planning phase and the required parking would be there.

Mr. Mullarkey asked if stormwater management would be required for this site.

Mr. Dail answered that there was a note in the packet about stormwater stating that stormwater retention and stormwater nutrient treatment would be required for this project.

There were no further questions from the Board for staff, so Chairman Wubneh called for the applicant to come forward and address the Board.

Ken Malpass spoke on behalf of the applicant. He said that they have one user and this medical supply company would not have fit into that one office so it had to be rezoned to MO. They have hospital beds and wheelchairs which would not have been permissible and that is why they are coming before the Board.

Ms. Anderson asked him to explain what the buffer would encompass.

Mr. Malpass answered that it would encompass complete screening against the residential neighborhood with evergreen trees.

Ms. Anderson asked if it would be in compliance with the other buildings that are there as far as the height of the trees go.

Mr. Malpass said that it would depend on the type of evergreen tree that was selected, but it would be a complete screening.

With there being no further speakers for or against the request, Chairman Wubneh asked for staff's recommendation.

Mr. Dail said that staff had no objections to this request.

Chairman Wubneh closed the public hearing and called for Board discussion. Hearing none, read the criteria and called for a motion to approve the finding of facts.

Motion to approve the Finding of Fact was made by Ms. Safford-White, seconded by Ms. Rich, and the motion carried unanimously.

Motion to approve the petition was made by Ms. Ferris, seconded by Ms. Safford-White, and the motion carried unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY CAPITAL FOOD GROUP, LLC

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

Chairman Wubneh called for all those wishing to speak for or against the case to come forward and be sworn in.

Mr. Dail asked the Board to note that this request is not for a restaurant per-se, but it is just for the regulated outdoor activities.

Mr. Dail delineated the area on the map. He said the property is located along Charles Boulevard west of Brook Road and it is zoned 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 property is a portion of the larger Greenville Mall parcel and has approximately 250 feet of frontage along Charles Boulevard with a total lot area of 0.78 acres.

**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 January 13, 2011. Notice of the public hearing was published in the Daily Reflector on January 17, 2011 and January 24, 2011.

**Staff Recommend Conditions:**

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.

**Other Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy. Comments from the Police Department had also been attached to each Board member's packet.

Mr. Ewen asked if the walkway leading out from the covered patio to the sidewalk would be considered the open area.

Mr. Dail said that would not be necessary since there is a condition that the outdoor area would have to be fenced in such a manner that it would prevent access.

Mr. Ewen asked if it would then go away.

Mr. Dail answered that he believed that it would.

Ms. Ferris asked there would be an emergency exit.

Mr. Dail answered that an emergency exit would be required by building codes.

With there being no further questions from the Board for Mr. Dail, Chairman Wubneh called for the applicant to come forward and address the Board.

Reid Fogelman, with Capital Food Group, spoke in favor of the petition. He said that their plan is to go into construction sometime in May or June and be open in November or December of this year.

Ms. Safford-White asked that Mr. Fogelman explain the setup of their outdoor bar.

Mr. Fogelman said that it would be underneath the covered patio. It would have an area for people to sit at, but it would not be as big as the one indoors. The main purpose would be to service the customers on the outdoor patio.

Ms. Safford-White asked for their outdoor count.

Mr. Fogelman answered that it would be approximately 79 people.

Mr. Ewen said that most of the Mellow Mushrooms that he has eaten at have been in old buildings downtown. He asked why they chose that particular location.

Mr. Fogelman said that they had looked at places in Greenville for about a year. They had looked at a few places downtown, but the number one patrons of their restaurant are families and he could not see families coming out on weeknight to eat downtown. He said that they felt that they would be able to generate more business at the location on Charles Boulevard because they would be closer to the families.

Mr. Shook asked if their open patio would use a trellis top or if it would be wide open.

Mr. Fogelman said that the open patio part would probably be wide open, but they are still looking at options depending on requirements from City staff. He said that they have not decided how it will look.

Mr. Shook asked if the setbacks are going to be on a berm.

Mr. Brian Ketchum answered that there are no plans to berm any noticeable amount on that side of the building. He said that their intention is to create that screen and vertical block with opaque planning standards that had been discussed with Mr. Dail. He said that the site doesn't really need it and they want to do as little destruction as possible.

Mr. Shook asked how far back does the shrubbery begin off of the road.

Mr. Ketchum said that the landscape areas are shown between the setback and buildings. The building is not right on the buffer line at this point though it could shift a little once the architecture is done and the parking layout is finished, but they are not trying to cram it to the setback and then force the plantings on top of the sidewalk.

Mr. Shook said that he sees that there is 20 ft. of setback and he asked if that is from the road or the sidewalk.

Mr. Ketchum answered that it is from the right-of-way line which is behind the sidewalk.

Mr. Shook asked if the 20 ft. of setback is on the other side of the sidewalk.

Mr. Ketchum answered that he is correct.

Mr. Ewen asked what type of outdoor music they would have.

Mr. Fogelman answered that their plan at the moment is to have some properly placed outdoor speakers and that would be all. He said that he would follow the recommendations of the City and he did not see them having a band there because they understand that there is a neighborhood across the street.

Ms. Rich asked for the hours of operation.

Mr. Fogelman answered that most Mellow Mushrooms are open from 11 AM – 11 PM on weeknights; 11 AM – 12 AM on Thursday; 11 AM – 1 AM Friday and Saturdays.

Mr. Shook asked if there would be a fence around the patio.

Mr. Fogelman answered that they would have a gated fence around the patio. He said that their main point of entry will be the front door.

Ms. Safford-White said that there could be 123 people at one given time out there.

Mr. Fogelman answered that she was correct if it were to be a full night.

Chairman Wubneh asked if the total capacity would be 285 people.

Mr. Fogelman answered that he was correct, but they are looking at slimming that number down. He said that the number may go down, but it would not go up.

Mr. Shook asked if he was considering a wrought-iron fence or a wooden fence.

Mr. Fogelman said that a wrought iron fence would be nice.

Mr. Mullarkey asked if they would have the front of the restaurant face Charles Boulevard and have the covered patio face the mall.

Mr. Fogelman answered that the covered patio would face the mall and the pecan growth. He said that they think that it is better that the patrons on the patio not see cars go back and forth.

Mr. Mullarkey said that he has been to a few Mellow Mushrooms and he knows that they put a lot into their ambience. He said that the average ticket would be about \$60.

Mr. Fogelman said that they are trying to engage the University because they are a big part of their work force, but their ideal clients are families.

Mr. Shook asked if they would still have a bar inside if they did not receive this permit.

Mr. Fogelman answered that he was correct.

With there being no further speakers for or against the request, Chairman Wubneh asked for staff's recommendation.

Mr. Dail said that staff had no objections with the recommended conditions being in place.

Chairman Wubneh closed the public hearing and called for Board discussion. He said that it would be an appropriate time to discuss the note written by Deputy-Chief Bartlett.

Ms. Safford-White said that she did have concerns with the memo that they received from Deputy-Chief Bartlett with regards to quality of life. She said that while she understands that the Deputy-Chief does not have enough information to provide specific details, she feels that they need to take his note into consideration when you look at the possibility of there being 123 people in that patio area.

Deputy-Chief Bartlett asked the Board to note that when he first received the permit he was not familiar with the Mellow Mushroom chain so he based his comments on what was on the application and historical perspective on other restaurants and businesses that they have had dealings with. He said that traditionally if a restaurant closes at 12 AM, then that lessens the potential for problems and when you have 120 people in a confined area outside, then you have a potential for crowd noise and vehicle noise.

Mr. Shook asked if he could name any of the restaurants or businesses with outdoor sounds that there were issues with.

Deputy-Chief Bartlett said that the most recent one was a nightclub on 10<sup>th</sup> Street where they received complaints from the residents from the College View area; they also had some complaints about Ham's, though they are closed now, from the neighborhood that is to the east of it.

Mr. Shook asked if he had ever heard of any complaints about the University Chophouse.

Deputy-Chief Bartlett said that he had not.

Mr. Mullarkey asked if there had been any complaints about Moe's or Uncle Yammy's.

Deputy-Chief Bartlett answered that there had been a couple of complaints about Moe's, but nothing recent.

Ms. Safford-White asked if he knew the capacity for the patio areas of the businesses that he had listed.

Deputy-Chief Bartlett said that he did not.

Ms. Safford-White asked if anyone on the Board knew.

Deputy-Chief Bartlett clarified that the complaints about the business on 10<sup>th</sup> Street was about crowd noise and vehicle noise from the parking lot and not from their patio area. He said that he was not sure about the capacity for Ham's.

Mr. Mullarkey said that it did not seem like a fair comparison, because he had been in the building on 10<sup>th</sup> Street recently and it was a tear-down and he feels that Ham's was set up to be a designated drinking area. He felt that it was like comparing apples and oranges.

Ms. Rich asked Deputy-Chief Bartlett what his opinion was now that he has heard details about the application.



Deputy-Chief Bartlett said that with the discussions about the restrictions and the type of clientele it sounds like they have everything covered.

Chairman Wubneh asked him if he felt comfortable with it.

Deputy-Chief Bartlett answered that he felt comfortable with it but the great unknown is telling other people how to behave, but that would be the case anywhere.

Mr. Ewen asked if this would come back before the Board in a year.

Chairman Wubneh said that it would not because it is a restaurant.

Attorney Little said that if the Board approves the application, they could add as a condition that a review of the outdoor operation at the end of year to see if any other restrictions are needed.

Chairman Wubneh said that he was not sure if there are any conditions that the Board wants to add. He said that if there were property owners from across the street that were concerned, then it would be appropriate to add the condition, but he would leave the decision to the Board.

Attorney Little said the conditions that staff had recommended would have to be adopted as part of the findings of fact and as part of the approval process, so the conditions would become restrictions on them.

Chairman Wubneh asked the Board if they had any additional conditions to add to the petition.

Mr. Shook asked Deputy-Chief Bartlett what are the main points of concern from a law enforcement perspective about late night businesses.

Deputy-Chief Bartlett said that generally speaking, a late-night establishment that is open until 2:00 AM, it becomes a drinking establishment. He said that with drinking establishments the issue is generally the patrons and not the business itself.

Mr. Shook asked Deputy-Chief Bartlett if they did not see those issues with restaurants that close at 10 PM – 12 AM.

Deputy-Chief Bartlett answered that he was correct.

Ms. Safford-White asked for the hours of operation.

Mr. Shook said that they patio would have to stop at midnight.

Ms. Safford-White asked for the hours of the entire establishment.

Ms. Rich said that the hours are 11 AM – 11 PM for weeknights, 11 AM – 12 PM on Thursdays, 11 AM – 1 AM on Friday and Saturday.

Mr. Shook said that it is not an issue about alcohol because they have their alcohol permit. He said that if they did

not have an outdoor establishment then they could potentially choose to expand the indoor area and have all activities take place there without a special use permit or conditions.

Chairman Wubneh asked Mr. Dail to confirm that they there are no instruments to measure the noise and it would be based on human sense of hearing.

Mr. Dail answered that he was correct in regards to amplified sound.

Chairman Wubneh said that it is part of conditions recommended by staff and he is fairly sure that the Board will agree with him and they will make it part of the conditions that will be included in the document.

Mr. Shook said that no food or beverage may be consumed outside at midnight, so it seems like you cannot be serving food at 11:59 and expect them to be gone by midnight.

Mr. Dail answered that the intent of the condition is to have the area cleared by midnight.

Mr. Mullarkey made a motion to approve the petition.

Chairman Wubneh said that they have to approve the findings of fact first.

Chairman Wubneh read the criteria and called for a motion to approve the findings of fact with the conditions stated by staff.

Ms. Rich made the motion, Mr. Shook seconded and the motion passed unanimously.

Mr. Mullarkey made a motion to approve the petition with the added conditions, Mr. Ewen seconded the motion and it passed unanimously.

With no further discussion, motion was made and properly seconded to adjourn at 7:57 p.m.