

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT FOR SEPTEMBER 22, 2011

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 *

Sharon Ferris *

John Hutchens *

Justin Mullarkey *

Linda Rich X

Bill Fleming *

Wanda Harrington X

Wiley Carraway X

Tom Taft, Jr. *

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

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

OTHERS PRESENT: Mr. Mike Dail, Planner
Mr. Wayne Harrison, Planner
Ms. Valerie Paul, Secretary
Mr. Bill Little, Assistant City Attorney
Mr. Jonathan Edwards, Communications Technician

Chairman Shook advised the applicant that since there were only six members present they would not be able to sustain a negative vote and that they had the option of postponing their hearing until the next month so that they could present to a full Board and be able to sustain one negative vote.

The applicant chose to proceed with the hearing rather than postpone.

Ms. Ferris came in and made it a full Board.

MINUTES

Mr. Ewing made a motion to approve the minutes as presented, Mr. Hutchens seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY POPE JOHN PAUL II HIGH SCHOOL

The applicant, Hisham Alakhal, desires a special use permit to operate a hookah lounge (personal service not otherwise listed) pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 821 Dickinson Avenue. The property is further identified as being tax parcel numbers 19448 and 36920.

Mr. Dail delineated the area on the map. He said that the property is located at 821 Dickinson Avenue and is zoned CDF (Downtown Commercial Fringe).

Surrounding Zoning:

North: CDF (Downtown Commercial Fringe)

South: CDF (Downtown Commercial Fringe) & I (Industry)

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

Surrounding Development:

North: St. Jude Missionary Baptist Church, Pool Table Shop
South: Tonys Automotive, Pollard and Son Heating and Air, Building Hope Community Life Center
East: East Carolina Labor, Frame Makers
West: Vacant, Food Bank of Eastern North Carolina

Description of Property:

The property (parcel #19448) contains a 3,800 square foot commercial building and has approximately 92 feet of frontage along Dickinson Avenue with a total lot area of 0.21 acres. The southernmost parcel (#36920, 0.33 acres) contains an automotive repair shop (Tonys Automotive) and will be used for parking purposes only.

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 September 8, 2011. Notice of the public hearing was published in the Daily Reflector on September 12, 2011 and September 19, 2011.

Staff Recommended Conditions:

Shall not be a place of entertainment, shall not offer floor shows or dancing area.

Shall not offer live entertainment or amplified audio entertainment. Amplified audio entertainment shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment.

No loitering or outdoor activities permitted.

Shall not operate between the hours of 2:00 am and 6:00 am

The special use permit will be reviewed by the Board of Adjustment one (1) year from the date of approval to ascertain whether all of the criteria necessary for issuance of special use permit and any approved additional conditions are being met.

Other Comments:

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

Chairman Shook asked if the review date would be similar to the process that certain bars and nightclubs go through where it would be just a review and not another public hearing.

Mr. Dail answered that he was correct.

Chairman Shook called for the applicant to come forward and address the Board.

The applicant, Mr. Hisham Alakhil, came forward to address the Board. He said that he used to be here in Greenville four years ago. He started his business seven years ago in Raleigh; it's doing well and he has a large base of customers and followers.

Mr. Fleming asked the applicant to explain what a hookah bar is.

Mr. Alakhil answered that it is not the type of bar that you would come and drink at, but it is a bar where you would come and smoke the hookah.

Mr. Fleming asked if there would be a cover charge.

Mr. Alakhil answered that patrons would pay to smoke the different flavors and they would provide the pipes.

Mr. Fleming asked if they would sell food.

Mr. Alakhil answered that said that State regulations prohibit the sale of food inside any bars or smoking shops.

Mr. Fleming asked if their profit would come solely from patrons smoking hookah.

Mr. Alakhil answered that it would.

Mr. Ewen noted that there is a kitchen in the floor plan.

Mr. Alakhil said that would be the area that they store the flavors away from heat and humidity.

Mr. Ewen asked if he was affiliated with Hookalicious on Fifth Street.

Mr. Alakhil answered that he is affiliated with every hookah bar in North Carolina. He clarified that he knows the owners, but he is not in business with them.

Chairman Shook asked what the hours of operation would be.

Mr. Alakhil answered that they would like to be able to have flexible hours. They would like to be able to operate from 5 p.m. – 5 a.m. if the Board would let them, or at least be permitted to operate 2 extra hours after 2 a.m. on Friday and Saturday.

Mr. Fleming asked if he had 22 of these bars in North Carolina.

Mr. Alakhal answered that he does not have 22 bars but there are 22 bars in North Carolina. He said that he was in Greenville a few years ago and he is glad to be back.

Mr. Mullarkey asked if he has ever had any issues or calls with the police.

Mr. Alakhal answered that he never had to call the police when he was at his downtown location. He had been checked by Code Enforcement and the Fire Department. He said that he was checked by the ALE and they asked him why he did not serve beer or liquor to which he answered that the law does not allow you to serve beer or liquor unless you are set up for private memberships.

Mr. Mullarkey asked if there were any age restrictions that would prohibit minors from entering his business.

Mr. Alakhal answered that they would allow minors to come in, but the patron would have to be at least 18 to purchase the product or smoke it.

Mr. Fleming asked if they are smoking regular tobacco.

Mr. Alakhal answered that it is not tobacco. He said that it is classified by the FDA under the category of tobacco, but it is made from fruit.

With there being no questions from the Board for the applicant, Chairman Shook called for other speakers in support of the application to come forward.

Mr. Logan Guinn, Mr. Alakhal's business partner, spoke in favor of the application. He said that their business would stimulate foot traffic and business in the area. He said that they wanted to offer a place where patrons that have been drinking can come rather than have them driving around; he said that it will be a quiet and relaxing place where they can socialize and do homework.

Mr. James Carraway spoke on behalf of the applicant. He said that he runs Tony's Automotive which is right beside the proposed location. He said that he had researched hookah bars on the web and he did not see anything wrong with it. He said that he would rather that this business come in rather than another church.

Chairman Shook asked Mr. Carraway owns the property or if he rents it.

Mr. Carraway answered that he owns it.

Mr. Brooks Eakes spoke in favor of the application. He owns the pool shop and he said that he did not have a problem with the proposed business.

Mr. Nicholas Santucci spoke in favor of the application. He said that it could possibly stimulate business in the City.

Mr. Thomas Dewitt spoke in favor of the application. He said that it would increase foot traffic in the area and give college students a safe place to hang out.

With there being no further speakers in favor of the application, Chairman Shook called for those in opposition to come forward and address the Board.

Ms. Stacy Jarrell spoke in opposition to the application. She and her husband own the building next door and they rent out the upstairs as apartments and the downstairs to businesses. She said that the area needs more daytime businesses, not night time businesses. Mrs. Jarrell said that they had made a significant investment in the area. She noted that this would be the applicants third location in Greenville so she thinks that they need to do more research on where they are setting up and how they may be perceived. She said that her residents are concerned about security, noise, parking; she feels that the increased foot traffic will decrease security. She read sections on pages 5 & 6 in the Comprehensive Plan; she said that the proposed business would be against the intensity of the adjoining facilities because none of the existing businesses operate at night. She said that it would be a detriment to her property because she would have tenants that would move out.

Mr. Hutchens asked for the basis of her claim that her tenants would move out.

Ms. Jarrell answered that she feels that it will be noisy and disruptive to the area because you have tenants going to sleep when the business is opening and because the applicant said that the business anticipates drawing patrons who are already intoxicated.

Mr. Hutchens asked her why she believed that it would be noisy.

Ms. Jarrell answered that she was aware that they could not have live music or amplified music, but she believed that there would be an increase because of cars and because of the extra people being there.

Mr. John Bullard spoke against the application. He has been a tenant of the building next door for a year and a half. He had noticed the advertisements for the hookah bar and was alarmed because he goes in early and he likes to be in bed before 11 p.m.; he advised his landlords, Greg and Stacey Jarrell, that he would have to move. He said he is not against the business itself, but he is concerned about people being out in the alley.

Mr. Nick Creech spoke against the application. He said that he works 8 am – 5 pm and he does not want to go outside and be concerned about the people that could be out there with this new building.

Mr. Scott Shook asked if he lived in the buildings.

Mr. Creech answered that he lived in one of the buildings. He said that the neighborhood is kind of scary and one of his friends was actually stabbed in the stomach. He said there are some sketchy people walking on Dickinson.

Mr. Ewen noted that the violence happened before the hookah bar so it is not related.

Mr. Creech agreed that it is not related, but the alley is very dark and he feels that they would need to put some lights out there. He told the Board about an incident where someone was staring into his apartment and he said that security is the only real issue for him.

Mr. Fleming asked if his apartment was on the first floor.

Mr. Creech answered that he lived on the second floor. He explained that he lives in the front and people that

frequent the Hookah Haze will be able to look into his apartment from the ground.

Mr. Alakhal spoke in rebuttal. He said that he knows that there are some concerns, but his customers will be inside - none of them will be outside. He said that they are lucky because it is a free standing building and it is brick so you will not be able to hear the noise inside. Mr. Alakhal said that his clientele is glad to have him back in the area and when he was downtown he never had any citations for fighting; he admitted that he had an issue before with littering, but they did work to clean it up.

Chairman Shook asked if he was aware of the staff recommended conditions since they had stated that they wanted to stay open later.

Mr. Alakhal answered that he was aware of the conditions and he was just stating that they wished that they would be allowed to stay open at least an extra hour and a half on Fridays and Saturdays.

Mr. Hutchens asked the applicant how he would feel about an earlier closing.

Mr. Alakhal said that it would be okay and he would ask Tony about putting up lights because he is also concerned about his own safety. He said that they would try to control their crowd.

Mr. Fleming asked how long he had his place on Tenth Street.

Mr. Alakhal answered that he was there for four months.

Mr. Fleming asked why he left that location.

Mr. Alakhal said that he was one of the seven owners that moved because the electricity is \$5,000 a month. He said that the building is old and Greenville Utilities could not fix it.

Mr. Fleming asked him why he left his downtown location.

Mr. Alakhal answered that was his first location and he was renting it, but then the owner sold the building.

Mr. Mullarkey asked if they had moved because of operational issues.

Mr. Alakhal answered that they had not; business was good, but the owner had sold the building. He said that he was proud that they were the #1 hookah bar because they never received any citations.

Mr. Hutchens asked about closing the bar at 11 p.m. and requiring lighting for the alley way.

Mr. Alakhal said that 11 p.m. would be too early for them.

Attorney Little advised that based on proper findings, the Board could impose additional conditions to staff recommended conditions, such as proper lighting or making the sure the area is cleaned up. They could alter hours of operation if there was material and substantial evidence that would prove that this business versus other businesses would create a nuisance or a hazard. He reminded them of the staff conditions which were to give it a chance and to have the business come back in a year for a review; if they find that there have been complaints, then

the Board can hold a hearing to determine if the special use permit will need to be revoked due to violations of conditions or failure to comply with conditions.

Mr. Fleming asked if the City had policies regarding the hours of operation for businesses, nightclubs, and bars.

Attorney Little answered that the hours of operation for bars are set by State requirements that outline when you have to stop the sale of alcohol and when you have to have it removed; most bars and alcohol establishments do not see the need to stay open once the alcohol has been removed.

Mr. Fleming asked if the City could impose stricter penalties than the state.

Attorney Little answered that state laws would override the City when it comes to alcohol regulations.

Mr. Fleming asked if the Board would be able to receive a police report on the two previous locations.

Attorney Little explained the routing process of special use permit applications and he said that it would be routed to the Police Department; from there, the Police Department would submit a report showing that there were incidents or there were not any incidents. He asked the Board to remember that when the Police get a call for service, the address given is a point of reference so it is not specific system; you would have to do a manual search if you wanted to be more specific.

Mr. Fleming asked Attorney Little what his experiences were with these past two locations.

Attorney Little answered that he has not issued any nuisance citation notices at either location.

Chairman Shook called for staff recommendation.

Mr. Dail answered that with the recommended conditions, staff did not have any objections.

Ms. Ferris asked if anything was known about the previous tenants of the property and what their hours of operations were.

Mr. Carraway answered that it was a martial arts studio that opened up at 5 or 6 p.m. and closed at about 10 or 11 p.m.

Ms. Ferris said that they had later hours. She asked if there were any issues with that tenant.

Attorney Little said that he did not recollect sending any nuisance notices.

Mr. Mullarkey asked if there had been any calls in this area for assaults or anything like that.

Attorney Little answered that there has been nothing reported that hasn't already been reported in other areas. In his opinion it does not stand out as being a problem versus any other location.

Mr. Fleming asked what the capacity would be.

Mr. Dail answered that the building capacity would be determined by the building inspector at the time of their

inspection.

Mr. Mullarkey said that he noticed a patio area and he asked if there would be any exterior patrons.

Mr. Guinn answered that it is more of an emergency exit.

Mr. Mullarkey asked the applicant to confirm that their patrons would not be outside.

Mr. Guinn answered that their patrons would not use the patio area.

Attorney Little said that one of the staff recommendations state that there be no outdoor activities.

Mr. Mullarkey said that he had his concerns and he would recommend the exterior lighting the alley or completely fencing it off, neutral colored signage, no loitering outside after 9 p.m. and exterior trashcans. He also asked that the Board be made aware if there are any calls for public nuisances or issues with trash, debris or at the applicants review with the Board.

Ms. Ferris explained the review process. She said that at that time, it is simply a review, but if the Board finds that there have been issues, then they can schedule a public hearing to decide whether or not they are compliant with staff recommendations and whether or not they will need to revoke the special use permit.

Chairman Shook read the criteria and he called for a motion to accept the finding of fact with the conditions.

Ms. Ferris asked him to clarify which conditions.

Attorney Little answered that it would be staff recommendations in addition to the recommendations that Mr. Mullarkey suggested, which were: have an exterior garbage can; have the area monitored the next day to make sure that the area had been picked up; and neutral signage. He suggested that Mr. Mullarkey explained what he meant by neutral signage.

Mr. Mullarkey said that he was not sure if it would be in the City's jurisdiction, but he thought that it would not be appropriate to have psychedelic-type signs beside the signs of the other businesses that have tried to revitalize their buildings.

Mr. Taft asked if there was a sign ordinance in downtown Greenville.

Mr. Dail answered that there is a sign ordinance for all of Greenville, but not one strictly for that area.

Mr. Taft noted that the condition would not fall under the ordinance since you would be able to have a neon sign in the City.

Mr. Mullarkey asked if there are any size requirements.

Mr. Dail answered that there would be size requirements.

Mr. Hutchens asked Mr. Mullarkey if he was suggesting that they do not use neon signs.

Mr. Mullarkey answered that he was not really suggesting that, but he was concerned that it would be an eyesore for the City; he would like to see it more uniform with the existing businesses.

Chairman Shook said that he was not really sure how they would be able to limit them beyond the existing sign ordinance and he said that he was concerned about the exterior lighting because it might shine in somebody's bedroom.

Mr. Mullarkey suggested directional exterior lighting.

Mr. Hutchens said that the hours of operation bothered him.

Chairman Shook said that the hours in the conditions allow them to remain open until 2 a.m. and it excludes the hours between 2 a.m. – 6 a.m.

Mr. Dail clarified that the alley way that they want to add lighting to is the railroad right of way between the two buildings.

Mr. Ewen said that he was not sure how they could impose any hourly limits other than what has been recommended. He is aware that bad things happen after midnight, but he did not know how they could limit one business.

Mr. Mullarkey said that he was worried that it would hurt their business if the Board were to impose limits on their hours.

Ms. Ferris said they could schedule a review in six months rather than one year.

Attorney Little said that at the review, the Board would have the option to reduce their hours if they find that there are issues, or they can move their hours forward if they find that there are no issues.

Chairman Shook said that they could modify conditions at a six-month review. He asked if they would need to have a public hearing to do that.

Attorney Little said that they would first review and based upon what they found based on staff reports, they could determine if they would need to have a public hearing and the Board would be able to limit the scope of the public hearing to just the conditions.

Mr. Hutchens proposed that they add a six-month review to the conditions.

Chairman Shook said that the Finding of Fact would include the Board recommended conditions of exterior lighting to illuminate the alley way and a six-month review in addition to staff recommended conditions. He called for a motion to approve the application with the conditions.

Mr. Ewen made a motion to approve, Ms. Ferris seconded and the motion passed unanimously.

Based on the facts found by the Board and the evidence presented, the Board orders that this permit be granted and

subject to full compliance with all of the specific requirements stated in the Zoning Ordinance of the City of Greenville for the proposed use.

With no further discussion, motion was made and properly seconded to adjourn at 8:10 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner