

March 18, 2008

The Greenville Planning and Zoning Commission met on the above date at 6:30 p.m. in the Council Chambers of City Hall.

Mr. Len Tozer - *	
Mr. Bob Ramey - *	Mr. Dave Gordon - x
Mr. Jim Moye - *	Mr. Tim Randall - *
Mr. Don Baker - *	Mr. James Wilson - *
Mr. Bill Lehman - x	Mr. Porter Stokes - *
Mr. Godfrey Bell, Sr. - *	Ms. Shelley Basnight - *

The members present are denoted by an * and the members absent are denoted by a x.

VOTING MEMBERS: Tozer, Ramey, Moye, Randall, Baker, Wilson, Stokes, Bell and Basnight

PLANNING STAFF: Harry V. Hamilton, Jr., Chief Planner; Chantae Gooby, Planner; Seth Laughlin, Planner; and Sarah Radcliff, Secretary.

OTHERS PRESENT: Dave Holec, City Attorney; Wayne Nottingham, Engineer; Daryl Vreeland, Transportation Engineer.

MINUTES: Motion was made by Mr. Ramey, seconded by Mr. Bell, to accept the February 19, 2008 minutes as presented. Motion carried unanimously.

REQUEST BY JEREMY SPENGE MAN (as amended by applicant)-CONTINUED

Request by Jeremy Spengeman to amend the definition of “conventional restaurant”, for purposes of qualifying as a principal use restaurant under the zoning regulations, to reduce the minimum sales requirement of prepared and/or packaged foods, in a ready-to-consume state, during any month, from more than fifty (50) percent of total gross receipts in all cases to either (i) more than fifty (50) percent of total gross receipts or (ii) more than thirty (30) percent of total gross receipts and such sales are not less than twenty thousand dollars (\$20,000.00), for such establishment for each month, and to include specific criteria for determining which sales can be attributed in the portion of sales of prepared and/or packaged food in a ready to consume state in the definitions for conventional restaurant and fast food restaurant.

This amendment was continued from the February Planning and Zoning meeting. Mr. Hamilton read the substitute amendments for consideration. Mr. Hamilton stated that staff had revised the ordinance and the ordinance amendment report to reflect those changes. Mr. Hamilton stated the following items could be used in determining the portion of sales to be attributed to the sale of foods in a ready-to-consume state: food prepared in the establishment’s kitchen and served as a meal to be consumed on the premises or as a take-out order, packaged foods sold to accompany the meal and non-alcoholic beverages sold to accompany the meal. Mixed alcoholic beverages, including the mixer, any other alcoholic beverages, grocery items not ordered and purchased with the meal, a membership cover or other charge for admittance, and any product, item, entertainment, service or gratuity are not to be

included in the sales. Mr. Hamilton stated the \$20,000 food sales rule was based on an estimated average of food sales per month. Mr. Hamilton gave comparisons to other similar restaurants, noting that the \$20,000 food sales requirement was significantly lower than the food sales of Buffalo Wild Wings and Pirates Pub.

Mr. Randall asked how many seats were in Pirates Pub. Mr. Hamilton stated he did not know exactly how many seats it held; however, it was not as large as Dr. Unk's.

Attorney Phil Dixon, representing the applicant, spoke on behalf of the request.

Mr. Dixon stated the applicant was one of several owners of Dr. Unk's and Basil's restaurants. Mr. Dixon stated that neither restaurant had ever had any ABC citations nor had Basil's had any city citations. He stated that Dr. Unk's had recently received a city citation and promptly paid the \$50 fine. Mr. Dixon stated that the other university cities in North Carolina have the 30% rule that they are proposing. Mr. Dixon clarified that the request was not for \$20,000/month, but for \$250,000/year, of food sales. Mr. Dixon stated that a number of restaurants in the area are not meeting the rule that have not been cited and felt they were being treated unfairly. Mr. Dixon stated that Dr. Unk's was in the top 10 purchasers of Cisco Foods for the Greenville area. Mr. Dixon stated in order to stay in business, they could reduce the cost of alcoholic beverages to meet the 50% rule, but felt that was the opposite of what the city wanted and would encourage people to drink more. Mr. Dixon stated he felt the request was reasonable.

Mr. Baker asked if any complaints had been reported on the restaurant.

Mr. Dixon stated they had not, other than the recent citation from the city regarding the 50% rule.

Mr. Baker asked if Mr. Dixon had met with the city staff since the last meeting.

Mr. Dixon stated he had not, yet he had requested information from Mr. Hamilton and it had been submitted to him.

Mr. Baker asked what percentage of food sales was achieved.

Mr. Spengeman as well as Mr. Hamilton stated it was just over 30%.

Mr. Hamilton stated the city had a formula and it was stated in the ordinance and the existing regulations were included in the report. In order to qualify as a restaurant you must have more than 50% of your total gross receipts from the sale of food. Mr. Hamilton stated that the city's ordinance included language directly from the ABC regulations. Mr. Hamilton also stated that all businesses that sell alcoholic beverages are required to maintain 3 full years of records on the premises and the ABC Commission can check this at any time.

Mr. Ramey asked if Mr. Hamilton considered the current ordinance adequate.

Mr. Hamilton stated he did. He stated that the city did not go out on a monthly basis and check to see if people are meeting the standards unless there was an operational complaint. A number of

restaurants had been checked in the last two years and a significant number had applied for Special Use Permits because they were in zones that allowed public clubs. Mr. Hamilton stated the city had received a number of complaints that Dr. Unk's was charging an admission charge. He stated that the zoning for this restaurant does not allow for the Special Use Permit for the public/private club. Mr. Hamilton stated in staff's opinion this was a zoning issue and this area did not allow this type of use for this zoning. Mr. Hamilton stated the city recommends staying with the 51% rule.

Mr. Tozer asked Mr. Hamilton if he was comfortable with the way the amendment was worded.

Mr. Hamilton stated that the substitute amendment put in the \$20,000 exemption in order to monitor the food sales on a monthly basis.

Mr. Moye stated he felt food sales would fluctuate during certain months due to the city being a university town, which may affect the monthly totals.

Mr. Hamilton stated the city would issue a warning prior to issuing a citation and that being out of compliance for 30 days was not the issue. He stated that Dr. Unk's had been out of the 50% threshold for some time.

Mr. Randall asked if excluding the office and medical districts would be appeasable.

Mr. Hamilton stated that would exclude the restaurants from those districts and would be counterproductive.

Jeremy Spengeman, applicant, spoke in favor of the request. Mr. Spengeman stated he wanted to be responsible and work with the city to resolve the problem and stay in business.

Mr. Wilson asked Mr. Spengeman if he was aware of what could happen when he opened the restaurant in a neighborhood zone.

Mr. Spengeman said he was not, and had he known, he would have contacted an attorney prior to purchasing the property.

Jean Winstead spoke in favor of the request.

Linda Vlahos, business partner to Jeremy Spengeman, spoke in favor of the request.

John Gresham spoke in opposition to the request.

Mr. Baker asked if there had been any complaints with the neighbors.

Mr. Gresham stated that they did have disruptions late at night.

Mrs. Basnight asked what time the restaurant closed.

Mr. Spengeman replied that they closed at 2 a.m.

Chris Mansfield, president of the Tar River University Neighborhood Association, spoke in opposition to the request.

Myron Casper spoke in opposition to the request.

Mr. Dixon spoke in favor in rebuttal. Mr. Dixon stated that the request was for 30% or food sales of \$250,000, not \$20,000/month and stated that the board should be voting on the \$250,000, not the \$20,000/month.

Mr. Wilson asked Mr. Dixon if the city records had been checked.

Mr. Dixon stated they had and no complaints were found.

Mr. Mansfield spoke in opposition in rebuttal.

Mr. Tozer closed the public hearing.

City Attorney Dave Holec stated the amendment was made at \$250,000/year and was translated by the staff to \$20,000/month in order to make it more enforceable. Mr. Holec stated that Mr. Hamilton did send the draft with the \$20,000 exemption to Mr. Dixon several weeks before the meeting and had not heard back from Mr. Dixon. Mr. Holec stated that the board could vote on the \$20,000/month or the \$250,000/year, depending on what the applicant wanted.

Mr. Ramey asked if he was correct in thinking that the board could not change what was presented.

Mr. Holec said that was correct and that is what they were trying to clarify.

Mr. Dixon stated either was acceptable to the applicant.

Mr. Bell asked if the discussion could be tabled.

Mr. Dixon stated he was in favor of tabling the discussion in order to get the wording right.

Mr. Ramey made a motion to carry the request forward for another month. Motion was seconded by Mr. Bell. Motion carried unanimously.

REQUEST BY LAKE KRISTI PROPERTIES, LLC – APPROVED

Rezoning request by Lake Kristi Properties, LLC for 3.5196 acres located between Signature Drive and Bell's Chapel Road and north of The Bellamy Apartments from OR (Office-Residential [High Density Multi-family]) and R6 (Residential [High Density Multi-family]) to CG (General Commercial).

Mr. Laughlin delineated the area on the map. Mr. Laughlin stated the property was located in the southeastern quadrant of the city. The surveyor's plat showed the majority of the parent parcel was

already zoned general commercial and two subject tracts zoned OR and R6. The existing land use map shows vacant land, multi-family; however much of the land that is showing vacant is currently under development. Mr. Laughlin stated there were several multi-family developments in the area. The thoroughfare plan map shows the entire parcel on a gateway corridor, Charles Boulevard, anticipated to accommodate a variety of intensive large scale uses. Mr. Laughlin stated this rezoning could net an increase of 1129 trips, with 90% of them going back towards Greenville. The intended land use plan is to concentrate commercial development in the Bell's Fork area and to prevent a linear strip development along NC Highway 43. Mr. Laughlin stated in staff's opinion, the request is in general compliance with the comprehensive plan and the land use plan map.

Mr. Ken Malpass, Malpass and Associates, representing the applicant, spoke on behalf of the request.

No one spoke in opposition.

Motion was made by Mr. Ramey, seconded by Mr. Randall, to recommend approval of the proposed amendment, to advise that it is consistent with the comprehensive plan and other applicable plans, and to adopt the staff report which addresses plan consistency and other matters. Mr. Wilson voted in opposition. The motion passed with the majority voting in favor of the request.

REQUEST BY ROSEWOOD FARMS, LLC - APPROVED

Rezoning requested by Rosewood Farms, LLC for 3.399 acres located along the eastern right-of-way of Signature Drive and 100± feet north of Bluebill Drive from R6A (Residential [Medium Density Multi-family]) to R6 (Residential [High Density Multi-family]).

Mrs. Gooby delineated the area on the map. The rezoning is located in the southeastern quadrant of the city between NC Highway 43 and County Home Road. Mrs. Gooby stated that a portion of the property is already zoned R6. The subject tract is zoned R6A and is requested to be rezoned to R6. Mrs. Gooby stated that though much of the area was shown as vacant on the map, it is currently under development for several projects. The property has multi-family development on three sides. Mrs. Gooby stated that the proposed street, Signature Drive, will connect to County Home Road at completion. The rezoning could generate a net increase of about 110 trips, with 90% of those trips going back towards Greenville on Highway 43. This property would be able to access Highway 43 through Grey Fox Run or via Signature Drive. Mrs. Gooby stated that this rezoning consists of 14 lots under the Kittrell Farms preliminary plat with only 5 lots where zoning lines do not match property lines. All of the lots can currently be developed as single-family; however if rezoned as R6, they could be developed as duplexes. The intent is to have a transition area along Signature Drive between high density and medium density. Mrs. Gooby stated there is similarly zoned property adjacent to the subject tract. Mrs. Gooby stated in staff's opinion, the request is in general compliance with the comprehensive plan and the land use plan map.

Mr. Steve Janowski, Baldwin & Janowski, representing the applicant, spoke on behalf of the request.

No one spoke in opposition.

Motion was made by Mr. Ramey, seconded by Mr. Randall, to recommend approval of the proposed amendment, to advise that it is consistent with the comprehensive plan and other applicable plans, and to adopt the staff report which addresses plan consistency and other matters. Motion passed unanimously.

There being no other business motion made by and seconded by to adjourn the meeting.

Respectfully submitted,

Merrill Flood
Secretary