

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
July 23, 2015

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 *
Kevin Faison *
Justin Mullarkey *
Jim Watts *
Jeremy Spengeman *

Claye Frank *
Thomas Taft, Jr. *
Bill Johnson *
Rich Winkler *

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

VOTING MEMBERS: Shook, Ewen, Faison, Mullarkey, Frank, Taft, Spengeman

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney
Mr. Michael Dail, Planner
Mr. Scott Godefroy, City Engineer
Ms. Amy Nunez, Secretary
Mr. Jonathan Edwards, Communications Technician

MINUTES

Mr. Ewen made a motion to approve the June 25, 2015 minutes as presented, Mr. Frank seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR SPECIAL USE PERMIT BY NORTH OVERLOOK PARTNERS, LLC- APPROVED

The applicants, North Overlook Partners, LLC, desire a special use permit to operate a dining and entertainment establishment pursuant to Appendix A, Use (6)m(1). of the Greenville City Code. The proposed use is located at 703 Dickinson Avenue. The property is further identified as being tax parcel number 12632.

Mr. Dail delineated the area on the map. He stated that the property is located in the central portion of the City’s jurisdiction. The property is in the same building as the microbrewery Longleaf Brewery.

Zoning of Property: CD (Downtown Commercial)

Surrounding Zoning:

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

Surrounding Development:

North: Cabinets Plus, Vacant Commercial, Greenville Times, Church
South: Cupola Building (Taff Office), UNX Chemicals
East: Law Offices
West: Future Go Science Center

Description of Property:

The subject property is 0.47 acres in size, has approximately 137 feet of frontage along Dickinson Avenue and contains a 6,060 square foot commercial building with multiple units, that is currently under renovation. Once renovations are complete, Longleaf Brewery will also be located in the building.

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 July 9, 2015. Notice of the public hearing was published in the Daily Reflector on July 13, 2015 and July 20, 2015.

Related Zoning Ordinance Regulations:

Definition: *Dining and entertainment establishment.*

An eating and entertainment establishment open to the general public and which meets all of the following:

- (1) May require a membership, cover or minimum charge for admittance or service during special periods of operation in accordance with this chapter;
- (2) Has sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
 - (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishments kitchen and served as a meal to be consumed on the premises or as a takeout order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.
 - (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including

the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.

- (c) A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state. For purposes of determining compliance under this subsection (2), the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the state;
- (3) Does provide sit-down dining area(s);
- (4) May provide food attendant (waiter/waitress) table ordering and busboy services;
- (5) May offer food in disposable containers;
- (6) May offer carry-out and/or off-site delivery services;
- (7) Does not offer drive-in attendant services;
- (8) May exhibit one but not both of the following operational functions or characteristics:
 - (a) Drive-through service; or
 - (b) Over the counter service. For purposes of this section, the term over the counter service shall include both customer ordering and the receipt of food, excepting beverages, condiments, utensils and the like, from an order/delivery station or counter remote to the on-site place of consumption.
- (9) May have one or more of the following activities or services, which is open to the establishments patrons and general public and is limited to the hours of operation of complete food services including regular menu food ordering, food preparation and on-premises food consumption, except as otherwise provided in this subsection (9): full service bar, live or recorded amplified music, floor show and dancing area. Complete food services including regular menu food ordering, food preparation and on-premises food consumption services may be suspended at the option of the owner/operator not less than one hour prior to the close of business each evening. For purposes of interpretation of this section, when a dining and entertainment establishment closes for business at 12:00 a.m. (midnight) complete restaurant services including regular menu food ordering, food preparation and on-premises food consumption shall be provided until not less than 11:00 p.m. of the same day;
- (10) Shall be limited to a maximum mechanically conditioned floor area requirement and shall comply with a minimum separation and security requirement as specified under sections 9-4-86 and 9-4-103;
- (11) Does not qualify under the definition of restaurant, fast food or restaurant, conventional as contained herein; and

- (12) Any dining and entertainment establishment that does not meet the aforesaid requirements shall be classified as a public or private club for purposes of zoning regulation.

Specific Criteria: *Dining and entertainment establishments.*

- (1) (a) A special use permit for a dining and entertainment establishment is subject to revocation in accordance with the provisions of this subsection (F)1. Nothing herein shall prohibit or restrict the authority of the Board of Adjustment to rescind or revoke a special use permit for a dining and entertainment establishment in accordance with the provisions of section 9-4-83.
- (b) An annual review shall be conducted by the Director of Community Development or his or her authorized representative of a dining and entertainment establishment which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the Director of Community Development or his or her authorized representative as a result of this annual review shall be compiled in a written staff report.
- (c) At a meeting of the Board of Adjustment, the Director of Community Development or his or her authorized representative shall present to the Board of Adjustment the staff report of a dining and entertainment establishment for which the annual review includes a finding of one or more instances of noncompliance with applicable laws, codes, and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (F)1.(4) below shall be provided notice of the meeting and a copy of the staff report.
- (d) Based on the staff report, the Board of Adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit.
1. An order for a rehearing shall be based upon a determination by the Board of Adjustment that either:
- a. The use of the property is inconsistent with the approved application;
 - b. The use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code;
 - c. The use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard; or

- d. The use is not compliant with any additional conditions of approval established by the Board and set out in the order granting the permit.
2. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the Board of Adjustment may grant a special use permit with conditions imposed pursuant to this subsection (F)1. and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the Board of Adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a dining and entertainment establishment.
- (e) The requirements and standards set forth in this subsection (F)1. are in addition to other available remedies, and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots.
 - (3) In addition to subsection (F)1.(2) above, the Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
 - (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a dining and entertainment establishment, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the Director of Community Development an acknowledgment of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgment shall be made on forms provided by the planning office.
 - (5) May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation.
 - (6) Weekdays. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 11:00 p.m. each Monday, Tuesday, Wednesday, and Thursday night and before 11:00 a.m. of the next day. For purposes of this section, 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.

(7) Weekends. Except as further provided under subsection (F)l.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 a.m. each Friday and Saturday night and before 11:00 a.m. of the next day, and shall not have amplified audio entertainment after 11:00 p.m. each Sunday night and before 11:00 a.m. of the next day. For purposes of this section, 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.

(8) Provisions for extended hours of operation for amplified audio entertainment.

(a) The allowable period for amplified audio entertainment for any dining and entertainment establishment in any zoning district may be extended, at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above to not later than 2:00 a.m. the following day on December 31 (New Year's Eve).

(b) The allowable period for amplified audio entertainment for any dining and entertainment establishment that meets the separation requirements as specified under subsection (F)l.(8)(d) below may be extended at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above on each Thursday night to no later than 2:00 a.m. the following day.

(c) The allowable period for amplified audio entertainment for any dining and entertainment establishment that meets the separation requirements as specified under subsection (F)l.(8)(d) below may be extended, at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above to no later than 2:00 a.m. the following day on March 17 (St. Patrick's Day), May 5 (Cinco de Mayo); July 4 (Independence Day) and October 31 (Halloween).

(d) To qualify for extended hours of operation for amplified audio entertainment as provided in subsections (F)l.(8)(b) and (F)l.(8)(c) above, the dining and entertainment establishment shall not be located within a 500-foot radius, including street rights-of-way, of (i) a conforming use single-family dwelling located in any district, or (ii) any single-family residential zoning district. The required measurement shall be from the building or structure containing the dining and entertainment establishment to the nearest single-family dwelling lot line or single-family residential zoning district boundary line. For purpose of this subsection, the term "single-family residential zoning district" shall include any RA20; R15S; R9S; R6S; and MRS district.

(e) In no event shall the noise generated by amplified audio entertainment exceed the noise control provisions as provided in Title 12, Chapter 5, of the Greenville City Code.

(9) Shall have sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.

(a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishments kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.

(b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.

(c) A membership, cover or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state.

(d) For purposes of determining compliance under this subsection, the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.

- (10) Records related to the sale of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be maintained on premises for not less than one year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the Zoning Enforcement Officer. The Zoning Enforcement Officer may view the records on the premises of the establishment or may request copies of the written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (F)1.(9) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the Zoning Enforcement Officer shall constitute a violation of the zoning regulations.
- (11) A lighting plan shall be submitted to the Director of Community Development or authorized agent for review and approval, and lighting fixtures shall be installed and maintained pursuant to the approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the Director of Community Development, or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104.
- (12) A parking plan which conforms to the provisions of Article O shall be submitted to the Director of Community Development or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(B) shall not apply to a dining and entertainment establishment, and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote

parking facility in accordance with section 9-4-250.

- (13) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall contain more than 7,000 total square feet of mechanically conditioned floor area, including but not limited to any activity area, kitchen, restroom, interior walk-in storage room, hallway, foyer, bar and serving station, seating area, dance floor and sound stage.
- (14) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall be located within a 200-foot radius of an existing or approved dining and entertainment establishment located within any CN (Neighborhood Commercial) District as measured from the nearest lot line.
- (15) When a dining and entertainment establishment both: is located within a 500-foot radius, including street rights-of-way, of a residential zoning district as measured from the building or structure containing a dining and entertainment establishment to the nearest residential zoning district boundary; and the establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 p.m. on any day, the establishment shall be subject to a security requirement during and after such period of amplified audio entertainment as follows:
 - (a) Establishments that have an approved occupancy above 50 but less than 200 total persons as determined by the Building Inspector shall employ not less than one uniformed off-duty law enforcement officer, or not less than one uniformed security guard provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
 - (b) Establishments that have an approved occupancy of 200 or more total persons as determined by the Building Inspector shall employ not less than two uniformed off-duty law enforcement officers, or not less than two uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
 - (c) For purposes of this section, the term residential zoning district shall include the following districts: RA-20, R-6MH, R-6, R-6A, R-6A-RU, R-6N, R-6S, R9, R9S, R-15S, PUD, MR and MRS.

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.

The applicant, Brad Hufford, spoke in favor of the request. He stated he is a partner of North Overlook. He has helped make Christy's Europub a success. They also have a special use and have had no issues. They plan to open their new business by mid September.

The applicant, Tandi Mahn, spoke in favor of the request. She stated she is also a partner of North Overlook. Christy's Europub received their special use permit in 2009 and has been successful without any problems.

Mr. Ewen stated he likes that Christy's Europub is doing good. He asked when they would open the new place.

Ms. Mahn stated a soft opening is scheduled for early to mid September and serve just dinner the first 30 days. Their hours would be 5pm-11pm Tuesday through Thursday and 5pm to midnight Friday and Saturday. Once they see how things go, they would like to incorporate lunch from 11am to 2pm on the same days. After the first year they would like to have lunch, dinner, and Sunday brunch from 11am to 2:30 pm.

Chairman Shook asked about entertainment.

Mr. Hufford stated there is a stage in the building. If they are successfully they would like to have a once a month after hours live performance and acoustic jazz.

Mr. Spengeman asked about parking.

Mr. Hufford stated there is parking on the right side and around to the back of the building with about 30 spots. There is also on-street parking and a city-owned parking lot within walking distance.

Mr. Watts asked about the ABC permits.

Ms. Mahn stated they don't have them yet since the building is not finished. The building should be finished by August 3rd and it only takes two weeks to receive the permits. She stated she has all the ABC permits for Christy's Europub.

Mr. Ewen asked about their relationship with the microbrewery.

Ms. Mahn stated they hope to have a symbiotic relationship. The plan is for the brewery to provide them with a special brew to be sold only in their restaurant. They would like to have a takeout menu at the brewery. Also maybe

a joint summer party.

No one spoke in opposition of the request.

Chairman asked for the Staff Recommendation.

Mr. Dail stated staff has no objection.

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

Chairman Shook asked Staff if there were any issues with the special use permit for Christy's Europub.

Mr. Dail stated not that he was aware of.

Mr. Mullarkey stated it sounds like a good operation. He is a patron of Christy's Europub and that is a good business.

Mr. Ewen stated this would be a great addition to the Dickinson revitalization.

Chairman Shook read the required findings criteria. No objections.

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

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

With no further business, Mr. Ewen made a motion to adjourn, Mr. Spengeman seconded, and it passed unanimously. Meeting adjourned at 7:11p.m.

Respectfully Submitted,

Michael R. Dail, II
Planner