

Zoning Board of Appeals

City of Rock Hill, South Carolina

December 15, 2020

A public hearing of the Zoning Board of Appeals was held Tuesday, December 15, 2020, at 6 p.m. in City Council Chambers at City Hall, 155 Johnston Street, Rock Hill SC.

MEMBERS PRESENT: Matt Crawford, Keith Sutton, Michael Smith, Stacey Reeves, Randy Sturgis, Chad Williams

MEMBERS ABSENT: Rodney Cullum

STAFF PRESENT: Dennis Fields, Shana Marshburn, Melody Kearse, Janice E Miller, Leah Youngblood

Legal notice of the public hearing was published in *The Herald*, Friday, November 27, 2020. Notice was posted on all property considered. Adjacent property owners and tenants were notified in writing.

1. Call to Order

Chair Matt Crawford called the meeting to order at 6:00 p.m.

2. Approval of Minutes of the November 17, 2020, meeting.

Vice Chair Keith Sutton presented the motion to approve the minutes as presented. Mr. Michael Smith seconded, and the motion carried unanimously by a vote of 6-0 (Cullum absent).

3. Approval of Orders of the November 17, 2020, meeting.

Mr. Smith presented the motion to approve the orders as presented. Mr. Randy Sturgis seconded, and the motion carried unanimously by a vote of 6-0 (Cullum absent).

4. Appeal Z-2020-28: Request by Charlie Robinson with VFW Post No. 3746 for a special exception for an event venue use and a request to reduce the required separation from a residential use at 1404 Crawford Road, which is zoned Office and Institutional (OI). Tax map number 599-02-01-002.

Staff member Melody Kearse presented the staff report.

Vice Chair Sutton observed that the special exception and variance were tied together, that if the variance was not approved the special exception could not be approved. Ms. Kearse stated this was correct.

The applicant, Charlie Robinson, 2085 Cavendale Drive, provided a brief history of VFW Post No. 3746.

Mr. Melvin Poole, Senior Vice Commander, VFW Post No. 3746, 1634 Crestdale Road, detailed future plans for the Post to provide for the community in addition to the facility being used for social events, including veterans' support services, youth programs, neighborhood meetings, and community outreach.

Chair Crawford asked if the applicants were agreeable to the conditions recommended by staff. Mr. Robinson stated they were.

Mr. Lawrence Sanders, 604 ½ Saluda Street, spoke in support of the application.

Chair Crawford closed the floor for Board discussion.

Mr. Sturgis presented the motion to approve the special exception with the conditions outlined by staff:

- A member of Post No. 3746 must attend every event that is not hosted by the Post itself.
- All events must end no later than midnight, and the facility must be vacated completely by 1 a.m.
- Event rentals are not allowed to hold activities outside. Only events held by the Post itself can take place outdoors.
- The primary use of the site must be by a nationally recognized fraternal organization in order for the rental use to be allowed.
- The approval is for this application only. Any similar application for this property in the future that is not for the VFW must be re-evaluated through a new special exception process before the Zoning Board of Appeals and otherwise must be based on whatever standards are in place in the Zoning Ordinance at that time.

Mr. Smith seconded, and the motion carried unanimously by a vote of 6-0 (Cullum absent).

Mr. Sturgis presented the findings, specifically noting the impact plan submitted and conditions for approval alleviated concerns over the diminished separation between uses. He added that the use would comply with the use specific standards as outlined, the use would not be a bar or nightclub, a Post member would be in attendance at all events, the roads were able to handle the use, and the use would not injure neighboring lands. He also extended his thanks to all the Post members for their military service.

5. Appeal Z-2020-31: Request by Magloire Lubika of Green Box Market for a modification to an existing special exception to extend the trial period for the reestablishment of a non-conforming convenience store use at 455 Green Street, which is zoned Single-Family Residential-4 (SF-4). Tax map number 600-02-03-037.

Staff member Shana Marshburn presented the staff report.

Vice Chair Sutton asked for clarification as to whether the extension was to begin from the current meeting date or the initial date of approval in December 2019, or if it would end in June 2021 or June 2022. Ms. Marshburn stated her understanding was the request was for 18 months from the current meeting date but the date for the extension was at the Board's discretion.

Vice Chair Sutton asked if staff had any issues with either date being decided. Ms. Marshburn stated they did not.

Chair Crawford observed that the police calls for this location occurred when the store was not open. Ms. Marshburn stated that this was correct.

The applicant, Magloire Lubika, 6304 Trevor Simpson Drive, Indian Trail NC, stated the request for a time extension was due to issues obtaining funding from banks due to the pandemic. He noted that he has been able to secure funding and will begin construction as soon as possible. He also shared a text from Rich Bridwell, Bridwell Homes, the builder of the new residence built on the adjacent property in support for the request.

Chair Crawford asked when they were proposed to open. Mr. Lubika stated the plan was to open in the summer of 2021 and provided a timeline for the project.

Chair Crawford asked if one year would be enough time to be in operation. Mr. Lubika stated

it would.

Chair Crawford asked if the Board could tie the one year to opening in case of a delay in construction. Ms. Kearse stated the time frame could be tied into the Certificate of Occupancy. Chair Crawford asked Mr. Lubika if this was agreeable. Mr. Lubika stated it was.

Mr. Lawrence Sanders, 604 ½ Saluda Street, spoke in support of the request, noting the store would be good for the community overall and would have positive economic impact on the area.

Mr. Lonnie Sims, 467 Green Street, spoke in opposition to the request, specifically noting that the neighborhood had worked hard to improve the neighborhood. He added there had been a significant amount of trash that had not been picked up over a six-month timeframe and that the only way the store could make money was through the sale of alcohol. He stated he had difficulty backing out of his driveway and that traffic was a constant issue as the road did not have enough room to accommodate two cars. Referring to Mr. Lubika's business plan, he stated the income of the area was not the reported \$55-75,000 per year. He added that he had offered to support Mr. Lubika's request if he would sign an agreement that they would not sell alcohol for 25 years, but that Mr. Lubika would not sign.

Ms. Mary Ann Brown, 462 Green Street, spoke in opposition to the request, stating there was not enough road space to accommodate too much traffic and that while the speed limit was 35 mph, many cars drove faster. She added there was concern over the store being open until 11 p.m., adding that many residents will continue to go to the Dollar General and Food Lion on a regular basis. She stated she had seen other projects being constructed in spite of the pandemic. She reiterated her concern for safety and trespassers as a single woman and mother living directly in front of the store.

Chair Crawford allowed Mr. Lubika rebuttal time. Mr. Lubika stated that the store would close at 9 p.m. instead of 11. He referred to Mr. Sims' comments on the trash, stating that he had not had a crew on site so the trash on site was not possible. He added that the City would have notified him if the trash were an issue. He noted that he was an investor with a vision as to how the neighborhood could be improved and become a pocket neighborhood with local services available to the residents.

Chair Crawford asked the proposed hours of operation. Mr. Lubika stated 8 a.m. to 9 p.m.

Chair Crawford asked for clarification on the bank not providing funding because of COVID-19. Mr. Lubika replied that the bank stopped the process due to the pandemic.

Chair Crawford closed the floor for Board discussion.

Mr. Williams presented the motion to approve the extension of the time period as presented by staff. Mr. Sturgis seconded. Discussion centered around when the 18-month time period would begin. Mr. Williams stated that the 18-month period would start upon approval. Mrs. Reeves asked if the hours of operation should be made part of the motion. Chair Crawford stated the motion was only for the time extension. Planning & Development Manager Leah Youngblood stated the hours were not made part of the conditions.

Mr. Williams presented the motion to modify the motion to include the hours of operation as 8 a.m. to 9 p.m. Mr. Sturgis seconded the motion to modify the original motion, and the motion carried unanimously by a vote of 6-0 (Cullum absent).

Chair Crawford called for a vote on the motion to approve the extension of the time period as presented by staff and for the hours of operation to be 8 a.m. to 9 p.m. The motion carried

unanimously by a vote of 6-0 (Cullum absent).

6. Appeal Z-2020-32: Request by Jade Washington for a special exception to establish a non-conforming personal services establishment, type A (spa) use at 324 Pursley Street, which is zoned Single-Family Residential-5 (SF-5). Tax map number 598-02-03-015.

Staff member Melody Kearse presented the staff report.

Vice Chair Sutton asked for definitions of personal services and if the applicant would have to return if she wanted to begin cutting hair. Ms. Kearse provided the definitions and stated she would not have to come back for additional approval as this was under the same use category.

The applicant, Jade Washington, 301 Center Street #7, was available to answer questions. She stated her intent was to serve the Boyd Hill community.

Vice Chair Sutton asked if this was her first business. Ms. Washington stated it was.

Mr. Daryal Mayfield, 1166 Stanley Drive, building owner, spoke in support of the request, specifically noting that this had been built originally as a barbershop for the Boyd Hill community and had become an informal social center for the area. He stated the intention was to allow young entrepreneurs a space to start.

Ms. Timolin McKeever, 3009 Rocket Road, spoke in support of the request, noting that as Ms. Washington's aunt the family was in total support of the business.

Mr. Dwight Walter, 328 Pursley Street, spoke in support of the request and stated he would be the caretaker of the property.

Ms. Floree Hooper, 1108 Constitution Boulevard, asked for clarification on the zoning requirements and if the special exception would apply to any business that opened at that location. Chair Crawford explained that the use could be limited to that application. Ms. Hooper stated her concern that other properties in along Pursley Street would try to evict tenants and open businesses. Chair Crawford stated this use could only be applied to buildings that were constructed as commercial, not residential, adding that if the zoning were to change, it would have to be decided by the Planning Commission and City Council.

Ms. Hooper asked if this closed, would the next person have to come back. Chair Crawford stated if the use was significantly different or if there was a long vacancy, it would have to come back.

Chair Crawford closed the floor for Board discussion.

Chair Crawford commented that the use proposed was the same as the previous use.

Vice Chair Sutton presented the motion to approve the special exception as presented. Mr. Williams seconded, and the motion carried unanimously by a vote of 6-0 (Cullum absent).

Vice Chair Sutton presented the findings, specifically noting the use was compatible with the area, the building had previously been used as a barbershop, there was adequate parking to serve the site, the hours of operation would conform to Neighborhood Commercial (NC) zoning, and there would be no harm to the adjacent properties.

7. Appeal Z-2020-33: Request by Jeff Miller on behalf of the Ballet of York County for a special exception to establish an indoor recreational use greater than 3000 square feet and for a variance from the side buffer yard requirements at 420 Dave Lyle Boulevard, which is zoned Neighborhood Office (NO). Tax map number 627-11-01-028.

Staff member Dennis Fields presented the staff report.

Chair Crawford referred to the two site plans submitted with the staff report, asking if the one staff prepared was the preferred option. Mr. Fields stated staff would, and that it was optimal for the applicant as they were only required to patch the existing lot and restripe.

The applicant, Jeff Miller, 1084 Market Street, Fort Mill, building owner, stated he was excited to get started and saw the Ballet of York County as a great tenant that he hoped would be in the building for a long time.

Ms. Leslie Cooper, 2300 Sparrow Court, provided a history of the York County Ballet that had had to shut down earlier in the year due to COVID-19, adding that the Ballet of York County was formed to continue classical ballet in York County. She stated the goal was to expand the arts district in the downtown area. She added they had been able to practice twice a week at two separate facilities but that they needed a permanent location and looked forward to being able to hold public performances once again.

Chair Crawford referred to the York County Ballet location at 325 Oakland Avenue, asking if the site would be able to accommodate the number of cars that may need to be on the site at one time for pick up. Ms. Cooper stated there was more parking available at this site and that parents would follow whatever parking arrangements were needed for the site.

Mr. Aaron Reel, 1234 Cedar Grove Road, Clover, Ballet of York County non-profit director, referred to the site plan prepared by staff, noting it was a more user-friendly design for parking.

Chair Crawford closed the floor for Board discussion.

Mr. Sturgis asked if a motion was necessary for each item or if one motion could be presented. Chair Crawford stated that one motion could be made.

Mr. Sturgis presented the motion to approve both the special exception and variance as presented by staff. Mr. Williams seconded.

Mr. Williams commented that the use would help improve the building. Chair Crawford stated there were many excited to see the ballet program restart.

Chair Crawford called for a vote and the motion carried unanimously by a vote of 6-0 (Cullum absent).

Mr. Williams presented the findings, specifically noting for the special exception that the use would comply with the use specific standards, the design presented would minimize any adverse impacts, the use was compatible to the area, and would not injure the property values of adjacent properties. a motion was required for each item. With respect to the variance, Mr. Williams noted that the variance would assist in improving the appearance of the site and would not be detrimental to the surrounding area.

8. Appeal Z-2020-34: Request by Joseph Stokes for a special exception to establish a residential infill use 1046 Ebenezer Avenue Extension, which is zoned Multi-Family-15 (MF-15). Tax map number 596-03-05-010.

The applicant has asked to defer until spring. No action was taken on this item.

9. Appeal Z-2020-35: Appeal by Mary Victoria Beam, Jameson's Lounge, of Director's decision to revoke zoning approval of an extended hours restaurant serving alcohol located at 524 & 522 N Anderson Road, which is zoned General Commercial (GC). Tax map number 630-04-01-016 & -017.

Planning & Zoning Manager, Leah Youngblood, presented the City's case, and showed several

related documents and videos to the Board.

Captain Rod Stinson, Rock Hill Police Department, provided a summary of the calls for service and explained the Police Department's concerns about the establishment. He stated that issues had begun to occur in June at the establishment with promoted parties and possible adult entertainment activities. He stated that he had reached out to Ms. Beam to speak with her about the promoted parties and encouraged her to do business the right way in accordance with the City's regulations. He also explained to her that the business needed to stay in compliance with its approved zoning and that she could not have promoted parties or operate her business like a night club. He noted that at this point she did not have a state alcohol license yet. Capt. Stinson stated that over the following weeks and months, the Police Department continued to receive information about promoted parties, and the business continued to operate like a club. He continued to have officers monitor the business, and he continually reminded Ms. Beam to operate the business in the way she was licensed to operate.

Capt. Stinson stated on June 19, officers responded to a call of shots being fired at Jameson's. Upon arrival and after investigation, the officers located a number of shell casings in the rear parking lot and near the entrance door to the business. He stated that no one was injured in this incident; however, some vehicles were struck by stray bullets. He stated that even after that event, Jameson's continued to have promoted parties, and police officers continued to speak with Ms. Beam regarding how the business should operate. He added that promoted parties tend to have higher incidences of violence. He also added that officers noted the existence of a VIP room with a stripper pole inside Jameson's, which may have been used for adult entertainment purposes.

Capt. Stinson further stated that on two separate occasions, officers arrived at the business and were unable to enter because the doors were locked, including the videoed incident on June 26. The officers were not able to get answers as to why the doors were locked but were able to speak with the manager on duty about the activities occurring on the premises. In October, officers performed property checks of the business at night during its operational hours, and noted that the business appeared to have a club atmosphere, and again that the doors were locked.

Capt. Stinson stated that on October 17, after the Police Department received notice of a promoted party, he ordered patrol officers to keep check on the business. At around midnight another shooting occurred, with five persons injured. When police arrived at the premises, four of the injured people had been transported to two separate hospitals, but police were able to administer aid to the fifth victim, who was still on scene and had been shot in the shoulder. Officers secured the scene and located multiple shell casings, including a number on Anderson Road itself, which required that the road be closed during the investigation. Capt. Stinson stated that following this event, he received an email from Ms. Beam stating that the business would no longer operate as a bar but would begin holding church services.

Capt. Stinson stated that Jameson's posted promoted party fliers for a party on November 6th to the Instagram social media site. These videos indicated that the business had more of a club atmosphere than that of a restaurant. He stated that police officers held several conversations with Ms. Beam and the manager, Mr. Cran Neely, during which they continued to advise them about how the business cannot operate as a bar. He added that in the interest of public safety and to prevent another violent incident, the Police Department is asking the Zoning Board to affirm the decision of the Planning & Development Director to revoke the zoning approval for the business.

Chairman Matt Crawford asked how many times officers had gone to the business since June. Capt. Stinson stated there had been between 8 and 10 calls for service, either as 911 calls or for the shooting events, but added that several other visits had been proactive on the part of the officers due to the history of the business.

Mr. Randy Sturgis asked whether the Police Department viewed Jameson's as being operated as a restaurant, as the videos shown by staff did not make it look as if it were being run as a restaurant. Capt. Stinson stated that the Police Department did not view it as a restaurant, as it did not present itself as a restaurant.

Ms. Youngblood continued staff's presentation.

Ms. Maria McKee, City of Rock Hill Collections Supervisor, provided information on the collection of hospitality tax on small restaurants in the City. She stated that over a five-month period, restaurants of a similar size to Jameson's had paid between \$100 to 350 per month in taxes, while Jameson's had only paid \$4 to \$10 per month in taxes. There was a brief discussion on how these taxes were calculated.

Ms. Youngblood further explained the revocation process and the role of the Zoning Board in that process.

Ms. Mary Victoria Beam, appellant, provided testimony regarding her business, stating that the way it had been presented was not the way she had operated it. She stated that the photography offered at Jameson's was a way to make money and was not meant to be seen as offering photos of an adult entertainment nature, adding that the only photography session she was able to book was for a baby shower.

Ms. Beam stated that she had referred to the business as a bar but was 100% aware that she was not to have promoted parties, commenting that the fliers presented by the City staff were old. She said that no more parties had been held after the shooting, and she had hired four security guards to protect her customers, adding that the shooting had occurred due to a fight that had started elsewhere.

She reiterated that Jameson's was a restaurant open all day with families and customers coming daily and on a regular basis. She stated the restaurant had received good reviews on several social media sites and that one of her chefs had posted instructional videos about cooking on Instagram on a regular basis. She added that she could provide invoices from the companies where she had purchased the restaurant's food.

Ms. Beam noted that she was not aware of any restrictions on how she should run her business, and stated that she would follow the rules if given another chance. She stated that she wanted for Jameson's to be a good place for people to come to with their families.

She said that she was aware of the Governor's Order that drinks could not be sold after 11 p.m. but not that they could not be held onto by customers after that time, and she promised to have that activity stop. She added that her bartender was soft spoken and not assertive enough to get people to throw out their drinks at 11 p.m.

She reiterated to the Board that she intends to follow the rules as required if she is allowed to remain open.

Mr. Mike Smith expressed concerns about how Ms. Beam had not brought proof of the positive aspects of her business, as well as the possible underpayment of required taxes, and the lack of her knowledge of the regulations that the City had in place. Ms. Beam stated she had evidence of positive aspects of the business on her personal cell phone.

Mr. Smith asked why she had not paid as much in taxes as other businesses. Ms. Beam stated that the other restaurants may have been in business longer than Jameson's and that she just got her alcohol license.

Mr. Randy Sturgis asked why she believed the City wanted to shut her down, since her success would be in the best interest of everyone. Ms. Beam stated that the police officers did not shut her down and instead that it was other City departments that shut her down.

Ms. Stacey Reeves asked for confirmation that the business had been open past 11 p.m. Ms. Beam stated that it had been. Ms. Reeves asked the operating hours. Ms. Beam stated she thought they could stay open until 2 a.m. and serve alcohol until 11 p.m. Ms. Reeves asked if she was open past 11 p.m. Ms. Beam stated she was and that she had to stop serving liquor at 11 p.m., but she stated that she was not told to close by that time. Ms. Reeves asked why the business remained open with the Governor's Order in effect. Ms. Beam stated her understanding was that she had to stop serving at 11 p.m. but could stay open until 2 a.m.

Mr. Sturgis observed that Jameson's had been licensed as a restaurant but that a restaurant atmosphere was not evident in the videos presented by staff. Ms. Beam stated that Jameson's was licensed to stay open until 2 a.m. and that it served food until that time, adding that if she'd been told not to have lights or music in the evening, she would not have them.

Ms. Brittany Brady, attorney representing the appellant, stated the real question for the Board it would give her a chance to keep the business open. She noted that Ms. Beam may not have been aware as to the City's definitions of a bar, a nightclub, or an extended hours restaurant serving alcohol, and that her statements indicated as much. She stated that Ms. Beam was trying to make money during COVID-19, and agreed that she probably did underreport her revenue for tax purposes. Ms. Brady reiterated that the business had a number of social media posts and reviews of food served in the restaurant and provided a delivery service of food for customers. She stated Ms. Beam earned more from the sale of food than alcohol and was simply asking for another chance now that she knows the difference in classifications. She added that security had been hired in order to keep events from escalating.

Mr. Smith observed that obtaining a liquor license was not an easy feat and was considered sacred in this business. Ms. Beam agreed. She added that she had been informed that the only difference between a lounge and restaurant was having a DJ and promoted parties.

Ms. Reeves asked why she had hired security guards as most restaurants don't require security of this type. Ms. Beam stated that she was scared following the shootings and wanted to protect her employees and customers.

Ms. Reeves asked about the hours the security guards worked. Ms. Beam replied they guards worked only on the weekends.

Mr. Smith asked how the locked doors kept everyone safe. Ms. Beam stated the building had different entrances and exits, and the exits were locked so that people could exit only from those, not enter. She added the building had a number of doors.

Ms. Reeves asked whether the exit doors were locked all the time. Ms. Beam stated they were automatically locked but allowed for exit only. Ms. Reeves asked if they locked from the inside or outside. Ms. Beam stated from the inside but allowed people to exit. Ms. Reeves asked for clarification that the doors were never locked to keep people inside. Ms. Beam stated the doors were never locked to keep police out or to lock anyone inside.

Mr. Smith asked about the restaurant's Google reviews. Ms. Beam stated they were almost 5 stars, adding that Jameson's also was also highly rated on Facebook and Rock Hill Eats

Facebook page. Mr. Williams stated the reviews were at 3.9. Ms. Beam noted the restaurant had received an “A” rating from DHEC.

Vice Chair Keith Sutton asked whether Ms. Beam lived in Rock Hill. Ms. Beam stated that she did not.

Ms. Reeves asked whether she worked at the business at all. Ms. Beam stated that she did not.

Chair Crawford asked how often she was on site. Ms. Beam said she used to go there often but not as much recently, adding that she was not aware of what was going on at the business.

Mr. Sutton asked what she did during the day if the business was her only form of income. Ms. Beam stated that she had a life outside of her business—that she has four children, two of them infants, and that she is trying to save money to open new businesses.

Ms. Reeves asked about the promoted party fliers from October and November. Ms. Beam stated she had told her staff not to hold those events. Ms. Reeves observed that despite what the employees did, these actions were ultimately her responsibility. Ms. Beam agreed but stated she had not been informed.

Chair Crawford asked if she had anything else to add.

Vice Chair Sutton asked her previous work history. Ms. Beam stated she had been an exotic dancer. She added that she had established the non-profit Fighting for Men Foundation in order to fight bias laws against men.

Chair Crawford reminded the Board of its role in the appeal process.

Mr. Williams presented the motion to affirm the Director’s decision revoking the zoning approval of an extended hours restaurant serving alcohol at 524 and 522 N. Anderson Rd. Mr. Smith seconded.

Mr. Williams commented that the adult entertainment and shootings were peripheral to the issue, and that the decision comes down to the fact that the business appears to be more of a bar than a restaurant, and that Ms. Beam stated she was a bar when the police officer asked what type of business she was operating.

Chair Crawford stated that the appellant had been provided with multiple reminders about how to operate and chances to do so within the approved zoning for the location, and that it appeared that she and her staff chose to ignore those opportunities.

Chair Crawford called for a vote and the motion to affirm the Director’s decision was approved unanimously by a vote of 6-0 (Cullum absent).

10. Other Business

Ms. Kearse noted that Mr. Smith would be leaving the Board as he and his wife moved to Georgia within the coming months.

Ms. Kearse distributed thank you cards to all the Board members from the Zoning Staff.

11. Adjourn.

There being no further business, Mr. Smith called for a motion to adjourn. Vice Chair Sutton seconded, and the motion carried unanimously by a vote of 6-0 (Cullum absent). The meeting adjourned at 9:10 p.m.