

Zoning Board of Appeals

City of Rock Hill, South Carolina

October 26, 2021

A public hearing of the Zoning Board of Appeals was held Tuesday, October 26, 2021, at 6 p.m. in City Council Chambers at City Hall, 155 Johnston Street, Rock Hill SC.

MEMBERS PRESENT: Matt Crawford, Keith Sutton, Stacey Reeves, Rodney Cullum, Chad Williams, James Hawthorne, Charlotte Brown

MEMBERS ABSENT: None

STAFF PRESENT: Melody Kearse, Shana Marshburn, Eric Hawkins, Janice E Miller

Legal notices of the public hearing were published in *The Herald*, Friday, October 8, 2021. 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 September 28, 2021, meeting.

Vice Chair Keith Sutton made the motion to approve the minutes as submitted. Mr. Chad Williams seconded, and the motion carried unanimously by a vote of 7-0.

3. Approval of Orders of the September 28, 2021, meeting.

Vice Chair Sutton made the motion to approve the orders as submitted. Mrs. Stacey Reeves seconded, and the motion carried unanimously by a vote of 7-0.

4. Appeal Z-2021-48: Request by Gary Runions of Progressive AE for a variance from the setbacks for an order box/window for a drive-through restaurant use at 1109 Cherry Road, which is zoned General Commercial (GC). Tax map number 631-07-03-010.

Staff member Melody Kearse presented the staff report.

Vice Chair Sutton asked if the applicant would build at this location if there was no drive-through. Ms. Kearse stated it would not.

Mr. Rodney Cullum referred to finding one in the staff report, asking when the regulations changed requiring a 100' separation from residential structures. Ms. Kearse stated she was not certain but most this most likely part of the Zoning Ordinance adopted in 2006.

Vice Chair Sutton stated he had worked at the location in the 1970s when the building was a Hardee's restaurant. Ms. Kearse stated research indicated that the Hardee's had not been in operation at that location for at least 21-22 years.

Chair Crawford asked the difference between the staff report stating it was 25' measured from the pickup window to the residentially zoned property, whereas the staff presented information that the order window was 33' from the order window. Ms. Kearse replied that staff had used the original measurements provided by the applicant, and staff had remeasured the site after the report had been sent to the Board members.

Chair Crawford referred to the 8' wall requested by the neighbors, asking if a variance would be required. Ms. Kearse stated a variance for this height was not required in commercial zoning

districts.

Backyard Burgers' representative, Mr. Ryan Doherty, 1477 Maloa Way, commented the company wanted to bring the current building up to current standards with updated aesthetics in order for it to become an amenity in the area. He stated both the restaurant and drive-through uses were allowed by right, that the request for a variance was due to the size restrictions of the lot. He noted that the Starbucks nearby had been newly constructed and received a variance for an order box location, adding that the wall constructed was seen to have had a negative impact on the adjacent residential properties. He stated the applicant was proposing a 10' landscape buffer and fence along the property line as well as leaving the tree area buffer in the back to lessen any impact on the neighboring properties. He added that he believed the objections were to the restaurant itself and not the drive-through, but that a restaurant could be located there regardless.

Ms. Charlotte Brown asked the hours of operation. Mr. Doherty stated other locations were open from 10:30 a.m. until 10 p.m., that hours had not been established for this particular location but that they would comply with the City's regulations.

Ms. Brown asked where the other locations were. Mr. Doherty stated there was one in Harrisburg, NC. Mr. Cannon Cory, 2504 Maybank Drive, Charlotte, responded that there were currently three locations in Charlotte, one in Gastonia, and most in the Tennessee area. He added that the company was under a new ownership group.

Mr. Chad Williams asked about the previous restaurants that had been in Rock Hill and Fort Mill. Mr. Cory stated he was not sure of those locations.

Mr. Cullum asked if the three conditions suggested by staff were an issue. Mr. Cory replied that they did not see a functional difference between the requested wall and a privacy fence, noting there was a significant cost between the two options. He added that once they knew what the proposal would look like, they may not move forward.

Chair Crawford asked the type of privacy fence. Mr. Cory stated they were flexible on the design but that it would be 8' in height. Mr. Doherty added that they were amenable to moving the dumpster and restricting the hours of operation.

Mr. James Hawthorne indicated the site plan, asking if there was an issue with merging the lanes. Mr. Cory stated he did not understand staff's comments regarding the separation of the lanes as opposed to merging them together as this was a common design at other locations.

Mr. Hawthorne asked if there would be a line that would allow for cars to pass through rather than waiting in line to exit the site. Mr. Doherty replied that this had been discussed and they would minimize some of the curb.

Chair Crawford asked if a condition requiring hours of 10:30 a.m. to 10 p.m. were suitable. Mr. Cory stated he thought there would not be an issue with this, that although they were not able to get a Backyard Burgers representative to attend the meeting, these hours should be suitable given that other locations operated within this same timeframe. Mr. Doherty asked if other restaurants had restrictions on hours of operation. Ms. Kearse stated it depended on the type of restaurant and provided information on the types and hours of operation.

Mr. Cory asked for confirmation that the outdoor dining area was required to close at 10 p.m. Ms. Kearse stated this was correct.

Mr. Williams asked if they were proposing to sell alcohol. Mr. Cory stated this had been discussed but was unlikely to occur.

Mr. Leslie Moore and his son, Mr. Will Moore, 1022 Richmond Drive, spoke in opposition to the request, specifically noting that the headlights of cars coming through the drive-through would shine directly into the bedroom of the house, especially as the proposed operating hours would be 10:30 a.m. to 10 p.m., seven days a week. He expressed concern over the effect on property values along with the existing dumpster and associated vermin. He stated the difference between the existing restaurant use and a fast-food restaurant was that the current restaurant was busiest during lunch and dinner, while a fast-food restaurant would be busy all day and would create a grease smell that would permeate the area. He reiterated the request to install a concrete wall to separate the residential and restaurant uses, although he did request that the Board deny the variance.

Ms. Kearse read an email in opposition submitted by Ms. Adrienne Queller, 1030 Richmond Drive.

Ms. Nancy Moore, 190 Lake Commons Drive, part owner of 1006 Richmond Drive, spoke in opposition to the request, specifically that the property at 1006 Richmond Drive was not designed to be a buffer and would eventually be developed as residential. She expressed concerns over the noise and odor a fast-food restaurant would generate, especially as cars lined up to receive orders. She noted the negative impact on property values.

Ms. Brown asked Ms. Moore if she would be satisfied if the restaurant was built without a drive-through. Ms. Moore stated this would be fine, that the issue was with the drive-through, adding that a fence would not absorb the noise like a wall would, such as the one located behind the Starbucks nearby.

Chair Crawford allowed for the applicant to respond to these issues.

Mr. Doherty stated that while the neighbor concerns were understandable, the drive-through was allowed in the zoning district. He noted the original Hardee's was built in 1964 and the neighbors at that time knew of the restaurant. He added that while the applicant did not want to demolish and build a new building, they were willing to help reduce any concerns.

Mr. Cory added that the business model for this particular company was reliant on drive-through as its main business and that it would not work if the drive-through was not approved.

Chair Crawford asked if the window and order box could be reoriented to the other side of the building. Mr. Doherty stated this would not work, adding that a business model of a drive-through only restaurant could locate there without a variance. He noted that the applicant was proposing ways to mitigate any impacts to the neighboring residences.

Chair Crawford asked how far back the end of the fence would be located. Mr. Doherty stated the fence would be up to the wood line, approximately 100' back, adding that they did not want to remove any trees in order to place a fence where there would be no impact.

Chair Crawford closed the floor for Board discussion.

Vice Chair Sutton made the motion to approve the variance from the setbacks for an order box/window as proposed, with no conditions set for approval. Mrs. Reeves seconded.

Discussion by the Board focused on the Board adding the condition to set the hours of operation, and expressed concerns over the fence, hours of operation, landscaping, noise, odors, lights from vehicles encroaching on nearby residences, noise from the order box, and the Board's ability to make finding four whereby the granting of the variance would not create a detrimental impact on adjacent properties.

Vice Chair Sutton made a friendly motion to his motion to add the condition to limit the hours of

operation to 10:30 a.m. to 10 p.m. Chair Crawford seconded, and the motion for the amendment passed unanimously by a vote of 7-0.

Mr. Cullum commented that while the Board was looking at a variance for the order box and window, there were other factors that needed to be considered in order for the Board to make its final decision. Ms. Kearsse stated that the 100' setback was in order to protect neighboring properties from negative impacts.

The Board had further discussion over several concerns, including the fence and landscaping.

There being no further discussion, Chair Crawford called for a vote. The motion failed by a vote of 3 to 4, with Vice Chair Sutton, Mrs. Reeves, and Mr. Cullum voting in favor of the motion, and Chair Crawford, Mr. Williams, Mr. Hawthorne, and Ms. Brown voting against.

5. Appeal Z-2021-49: Request by Sean Barker of Penske Truck for a special exception to establish a commercial truck rental use at 860 Heckle Boulevard, which is zoned General Commercial (GC). Tax map number 597-04-01-052.

Staff member Shana Marshburn presented the staff report. She noted that in the staff report sent to the Board members, one of the conditions of approval was the removal of the metal storage shed. She stated this shed had been removed.

Mr. Williams referred to the photos provided during staff's presentation and asked how many trucks were currently on the site. Ms. Marshburn stated none currently, and that the applicant had originally asked for 19, adding that this was more than shown on the photographs presented.

Chair Crawford asked if 19 spaces would leave enough parking for other uses on the site. Ms. Marshburn stated it would not, that the maximum number of spaces for use by the applicant would be 18.

Mr. Hawthorne asked if this was the only location in Rock Hill. Ms. Marshburn stated she did not know that the applicant could best answer that question.

Chair Crawford observed that the parking of the trucks in the two recommended parallel spots and along Heckle Boulevard appeared to create a yellow wall. Ms. Marshburn agreed, adding that staff's recommendation for eight trucks included the two parallel spaces and six along the side of the building, and not allowing any along Heckle Boulevard.

Mr. Williams asked if there was enough of an overhang for six trucks to be parked along the side of the building. Ms. Marshburn stated the applicant had not provided any dimensions for the parking spaces, noting that if the spaces were 18' deep they could only park trucks that would not be longer to overhang into the drive aisle.

Mr. Cullum referred to the diagram, asking if multi-family apartments were going to be built on the adjacent site. Ms. Marshburn stated it had been approved for multi-family development.

The applicant, Mr. Sean Barker, stated he did not have any issues with staff's proposals regarding the parking, noting that the parking on the side of the building did not allow for pedestrians much less cars. He added that he did need to have vehicles ready on site to meet reservation pickups, asking if the Board would allow for overflow parking of trucks along the western end of the building. He stated this would eliminate the yellow wall and allow for overflow parking, adding that they could do pick up by appointment only. He noted the existing fuel station would not be impacted by the truck rental business, and that he would make certain that the right size trucks were parked in like size spaces.

Chair Crawford asked the proposed location for the overflow parking. Mr. Barker stated the

angled parking spaces on the western side, adding that the owner was okay with this.

Chair Crawford asked how many more vehicles they would like to request. Mr. Barker stated an additional five would be sufficient, for a total of 13 on the site.

Chair Crawford asked if these five would be considered the overflow trucks. Mr. Barker replied this was correct.

Chair Crawford asked the percentage of time the overflow parking would be in use. Mr. Barker stated this was difficult to answer, that the chances of having more than five on site at one time was slim, that there may be only as many as three.

Ms. Brown asked if there were any other businesses at the site. Ms. Marshburn stated all the other spaces had tenants, that the applicant was proposing to lease the only empty space.

Mr. Williams expressed concern on how the overflow was spread out over the site. Mr. Barker stated they would not have after hour drop off of vehicles, that their office would be open seven days a week to move the trucks as needed.

Mr. Hawthorne asked how after hour drop off rules were enforced. Mr. Barker stated if someone was determined to drop off a vehicle after hours they would, but most people followed the drop off rules explained in the rental agreement.

Mr. Matthew Rummage, 212 Tilden Drive, Lexington NC, representing the applicant, provided additional information to the Board on the drop off of multiple vehicles at one time and how these would be handled. He added that it would be beneficial if the Board could allow for a condition that the overflow parking be used for less than 48 hours of vehicle storage, adding that they had the ability to move trucks around fairly quickly.

Dr. Pradeep Singh, 3368 Lake Wylie Road, owner of the property, provided a brief history of his ownership. He stated the parking lot was almost always empty, with most vehicles located under the fuel canopy or parked in front of the businesses in the building.

Chair Crawford closed the floor for Board discussion.

Discussion by the Board centered around the number and location of the parking spaces required for the trucks, enforcement of the 48-hour condition if put into place, reasonability of limiting the number of vehicles on site, the appearance of the number of trucks, where the overflow parking would be located, the parking of trucks along Heckle Boulevard, and concern over the movement of trucks from one side of the site to the other.

Mr. Cullum commented on the number of truck rentals approved along Anderson Road, noting that this site would be busy and that he didn't see that 13 trucks would be an issue. He added that the owner of the site did not seem to have an issue with the parking of trucks.

Mr. Williams made a motion to grant the special exception for a commercial truck rental use as presented by staff, with the condition that the applicant only uses the two parallel parking spaces and the six spaces to the side of the building, and if those eight spaces are occupied the five additional spaces on the other side of the building can be used for overflow parking. Mr. Hawthorne seconded, and the motion carried unanimously by a vote of 7-0.

Mr. Williams presented the findings, specifically noting that the use was compatible with the surrounding uses, a site plan had been submitted, and the condition for eight spaces and five overflow spaces should meet the intent of reducing the visual impact of the trucks.

6. Appeal Z-2021-50: Request by Ronald Resh for a special exception to establish a short-term rental use at 144 Brookwood Lane, which is zoned Single-Family Residential-

3 (SF-3), Tax map number 593-03-01-012.

Staff member Melody Kearse presented the staff report.

The applicant, Mr. Ronald Resh, 144 Brookwood Lane, provided information about the site, specifically noting that there was a second entrance along the breezeway, he had refreshed the gravel for parking, and that there was room for five cars to park.

Mr. Cullum asked if his experience with short-term rentals had been positive. Mr. Resh stated it had, that most of the guests had been quiet. He added that his listing had been active since February, and in that time, he had seen only three or four guests.

Chair Crawford asked the number of nights per month the unit was rented. Mr. Resh replied around 10 each month.

Chair Crawford closed the floor for Board discussion.

Discussion by the Board centered around lack of traffic issues, the owner living on site, and that the neighbors were unaware of the rental use until the public hearing notices were posted.

Ms. Brown made the motion to approve the special exception for a short-term rental use as presented by staff. Mr. Hawthorne seconded, and the motion carried unanimously by a vote of 7-0.

Ms. Brown presented the findings, specifically noting the existence of single-family residential units in the area and that the host had agreed to meet all City regulations stipulated for short-term rental uses.

7. Other Business.

a. 2022 meeting calendar.

Ms. Kearse provided the Board with a draft 2022 meeting calendar and asked that they review prior to adoption at the November meeting.

b. Holiday dinner.

Ms. Kearse asked if the Board would prefer to have a holiday dinner together in person or a gift card. Most of the Board preferred the dinner option. Ms. Kearse stated she would send out suggested dates and locations.

c. Other items.

Vice Chair Sutton asked the progress on the retail store that was proposed for Heckle Boulevard. Planning & Zoning Manager Eric Hawkins stated staff had not seen any plans submitted.

Vice Chair Sutton asked about the Taking the City Ministry signs located on West Main Street the Board considered previously. Ms. Kearse stated the church appealed to City Council on these signs and it was determined that the signs could remain provided they were removed from the right-of-way.

Vice Chair Sutton noted the American Legion on Heckle Boulevard appeared to have installed more storage sheds on the site. Ms. Kearse stated she would look into this.

8. Adjourn.

There being no further business, Vice Chair Sutton made a motion to adjourn. Mrs. Reeves seconded, and the motion carried unanimously by a vote of 7-0. The meeting adjourned at 7:54 p.m.

Kearse, Melody

From: cbwll4@aol.com
Sent: Tuesday, October 26, 2021 11:05 AM
To: Kearse, Melody
Subject: Back Yard Burgers

Follow Up Flag: Follow up
Flag Status: Flagged

CAUTION: not from City of Rock Hill...from Unknown Source...Beware, proceed with CAUTION

Good morning, Melody ~

I read this morning in THE HERALD that a Back Yard Burgers restaurant may be planned for the site where Tequila is presently located on Cherry Road.

As a resident of Beaty Estates, I am opposed to this redevelopment plan. I understand the site is zoned as commercial property. However, a drive-through would bring additional noise from the order microphone/receiver all day, every day, and into the evening (especially as this is a burger place). There would be additional bright lighting and non-stop harmful fumes from cars waiting in the drive-through line.

Although I do not take issue with this site remaining a restaurant, please know that, for the benefit of our entire neighborhood, I object to a restaurant with a drive-through window.

Thank you for passing this information along to whomever needs to register citizen opinion.

Catherine Williams
1244 Marydale Lane
Rock Hill, SC 29732
803-324-3879

Kearse, Melody

From: Matthew Wimberley <wimanew210@gmail.com>
Sent: Tuesday, October 26, 2021 5:05 PM
To: Kearse, Melody
Subject: Rezoning of Tequila resturant on Cherry Road

CAUTION: not from City of Rock Hill...from Unknown Source...Beware, proceed with CAUTION

Good evening,

I read a story about this proposition and shared it in a 'Rock Hill Eats' group on Facebook.

A lot of folks were not happy to hear that a resturant is closing to be replaced by a previous failed resturant that will add a ton of traffic to John St behind it.

Please save Tequila!

Thank you

Mat Wimberley