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MINUTES

FEBRUARY 1, 2018
7:00PM

BOARD OF ADJUSTMENT

YOUNGSVILLE COMMUNITY HOUSE

Chairman Fonzie Flowers called the meeting of the Town of Youngsville Board of Adjustment to order at 7:00 pm. Chairman Flowers initiated a roll call. In attendance were Chairman Fonzie Flowers, Zoning Administrators Andrew Thomas Jr and Bob Clark, Members Terry Hedlund, Joseph Johnson, Larry Wiggins, Graham Stallings, and Catherine Redd, Town Attorney Edward Bartholomew, and Town Clerk Emily Hurd.

The first item on the agenda was to approve the minutes from the May 4, 2017 Board of Adjustment Meeting.

MOTION: TO APPROVE THE MINUTES FROM THE MAY 4, 2017 BOARD OF ADJUSTMENT MEETING

The motion was made by Member Redd and was seconded by Member Wiggins. The motion passed unanimously.

The next item on the Agenda was Old Business. There was no Old Business.

The next item on the Agenda was New Business.

Attorney Bartholomew outlined the evidentiary and conduct guidelines for Board of Adjustment Hearings. He explained that the Board of Adjustment sits as a panel of judges and can only hear relevant testimony presented on actual knowledge of facts or opinions of experts. Hearsay is not allowed and should be disregarded. All testimony should be under oath which includes Staff, the applicant or their agent, and neighbors to the property at issue. Witnesses who are not neighbors should not be able to testify unless that witness can show that the decision would actually affect their property and not just that they are opposed or supportive of the application. Cross examinations and rebuttals are allowed. After all of the evidence has been presented, the Board will then deliberate.

The first item under New Business was a Conditional Use Permit Application from City of Dreams Internet Café, LLC for 100 Holden Road, Suite G.

Thomas gave a preliminary statement to describe the case before the Board. He gave a brief summary of the Staff Findings. Surrounding land uses in the South, East, and West are all Commercial (C) and to the North is commercial with one residential dwelling unit. Thomas stated that the applicant, Daniel Kang, is applying for a skilled internet café and the surrounding

property is used predominately for commercial. It will be located within an existing building that includes existing drives and parking.

Thomas stated that the application was filed on December 22, 2017 by Daniel Kang, DBA City of Dreams Internet Café, LLC for a skilled internet café. The subject property is located at 100 Holden Road, Suite G. Thomas reiterated that the surrounding property was primarily commercial. He noted that the parcel was 2.14 acres on a peak fronting both Holden Road and US 1A South. Thomas stated that the building was developed into suites that include Diamond Pizza, State Farm Insurance, Motion Fitness, Subway, Living Hope Christian Church, a Sunglass Shop, and Triangle Comprehensive Health Services. He explained that the Fire Marshall will determine occupancy. Thomas stated that the applicant has indicated that operating hours are open to discussion. He stated that Staff recommends retaining existing trees / shrubbery which maintains a buffer in accordance with the Zoning Ordinance. Staff also recommends some consideration for the reduction of hours during regularly designated church services, maintaining the existing light near the door, and to comply with the current Sign Ordinance.

Town Clerk Hurd swore in those wishing to testify; Bob Clark, Andrew Thomas, Jr., Jerry Ellisberg, and Daniel Kang.

Attorney Bartholomew polled the Board as to any conflicts of interest or bias. The Board answered no, unanimously, to not having a fixed opinion prior to hearing the matter that is not susceptible to change. Attorney Bartholomew asked the Board if there had been any undisclosed ex parte communications and the Board answered no, unanimously. The Board answered no, unanimously, to having a close familial, business, or other associational relationship with an affected person or entity; or a financial interest in the outcome of the matter.

Attorney Bartholomew opened the floor for the applicants to present evidence for their application. Daniel Kang, owner of City of Dreams Internet Café, LLC, stated that he desired to bring a skilled internet café to Youngsville. He stated that they would comply with all Ordinances and rules. Mr. Kang explained that per the Zoning Ordinance, he had to apply for the Conditional Use Permit.

Attorney Bartholomew opened the floor to ask questions of the applicant. He asked that anyone speaking identify themselves and their relationship to the property. There were no questions.

Attorney Bartholomew opened the floor to any persons in support of the application that would like to present evidence. Jerry Ellsberg, owner of 5-Points Plaza, explained that he had researched internet cafes and noted that there were others operating in Franklin County that were doing very well. He stated that he felt it would bring business to the area. Mr. Ellsberg agreed that reasonable restrictions could be placed on the business and noted that there was adequate parking available. He stated that the applicant was willing to work with the Board concerning hours of operation but he felt that there would not be a lot of noise or foot traffic.

Chairman Flowers noted that Thomas had presented the Staff Findings during his preliminary statement.

Attorney Bartholomew opened the floor for questions of the Staff. Clark wanted to clarify the preferred hours of operation and Mr. Kang stated they wanted to open 10am until midnight on weekdays, 10am until 2am Friday and Saturdays, and would be closed on Sundays. Mr. Kang noted that he was open to discussion on the hours if the Board wished.

Clark asked if there would be an onsite ABC Permit and Mr. Kang answered no, there will be no alcohol served onsite.

Member Redd asked where the signage would be located and Mr. Ellsberg stated that they would have a sign on the back side of the building and one on the monument sign in the front of the building. Chairman Flowers asked if it would be the same for the other businesses and Mr. Ellsberg stated yes, though they may request a corner sign at some point. Clark stated that the Sign Ordinance has rules that will be followed. He noted that he had already spoken with the applicant concerning temporary signs. Member Wiggins asked what the Sign Ordinance said about signs for complexes and Clark explained that they would be allowed a wall sign and a monument sign. He stated that it was flexible on the location of the wall sign but they would only be allowed the one wall sign. When asked, Clark stated that sizes allowed were addressed in the Sign Ordinance. Clark mentioned that directional driveway signs were also allowed.

Member Stallings asked what was the capacity and Mr. Ellsberg stated that they were unsure at this time and it would be set by the Fire Marshall. Member Stallings asked how many units they were planning on installing and Mr. Kang explained that they would have eight to ten computers on six to eight tables. Member Stallings asked if the parking would be adequate and Mr. Kang explained that they figured on fifty or less people at most and there were fifty-eight parking spaces for the complex. Member Stallings asked what the Town would get out of allowing this and Clark stated that it would bring in customers to Youngsville like any other retail or service business. Member Wiggins noted that it would bring in tax revenue and Mr. Ellsberg stated that internet cafes do bring in people that will visit other businesses in the area.

Chairman Flowers asked why they chose this particular area and Mr. Kang explained that other areas were congested with internet cafes and felt this provided the best opportunity. Mayor Flowers expressed concerns about the back side of the complex as it looked to be more of a loading area with no hand rails and bad lighting. He stated that he was concerned about liability. Mr. Ellsberg stated that there was already one area light that was well lit at night but would be willing to add more lighting if necessary. Member Wiggins also expressed concerns about handicap accessibility and Mr. Ellsberg explained that the handicap parking was located around the corner and was accessible by the sidewalks that wrapped around.

Member Stallings wanted to confirm that there would be no alcohol and both Mr. Ellsberg and Mr. Kang stated that it would not be allowed.

Member Hedlund asked what the latest hours were for current downtown businesses and Clark stated that there are no restrictions. It was noted that Speedway was open twenty-four hours. Member Redd asked if there was a complaint about the hours, would there be anything we could do after the Conditional Use Permit (CUP) was issued and Clark stated that in past experience, it was possible to conduct a hearing to review the CUP to make sure that they comply with the

conditions and Ordinances. Member Redd expressed concerns over the internet café operating during church hours and Member Johnson stated that the ABC Store was also open during Church hours as well.

As there was not further discussion, Hurd asked that the application by Daniel Kang for City of Dreams Internet Café, LLC be entered into evidence as Youngsville #1.

MOTION: TO ACCEPT THE APPLICATION BY DANIEL KANG, CITY OF DREAMS INTERNET CAFÉ, LLC AS EXHIBIT YOUNGSVILLE #1

The motion was made by Member Johnson and was seconded by Member Stallings. The motion passed unanimously.

Hurd then requested that Staff Findings be entered into evidence as Youngsville #2.

MOTION: TO ACCEPT STAFF FINDINGS AS EXHIBIT YOUNGSVILLE #2

The motion was made by Member Johnson and was seconded by Member Redd. The motion passed unanimously.

Attorney Bartholomew opened the floor to any persons opposed to granting the application that would like to present any evidence. There were no comments

Attorney Bartholomew opened the floor for rebuttals to opposing testimony. There were no comments.

Attorney Bartholomew gave a brief summary of the evidence.

Chairman Flowers asked if there was any more discussion or questions and the Board stated that there were not.

MOTION: TO CLOSE THE COLLECTION OF EVIDENCE PORTION OF THE HEARING.

The motion was made by Member Redd and was seconded by Member Johnson. It passed unanimously.

Chairman Flowers opened up the deliberation section of the Hearing for the Board.

710.2 Any additional negotiated conditions. Attorney Bartholomew explained that based on previous cases, we have switched the proposed conditions to come before the Findings of Fact.

Member Redd expressed concerns that the operating hours may become an issue after the CUP has been approved. After a brief discussion, the following motion was proposed.

MOTION: CONDITION #1: SHOULD ANY ISSUE COME UP INVOLVING ANY TYPE OF OVERUSE OF THE PROPERTY, OR ILLEGAL ACTIVITIES AT THE PROPERTY, THE BOARD, AT ITS DISCRETION, SHALL SET A REVIEW HEARING OF THE CONDITIONAL USE PERMIT

The motion was made by Member Redd and was seconded by Member Stallings. The motion passed unanimously.

Attorney Bartholomew explained that the Board would vote on each Finding of Fact. If the answer is yes/true then we can proceed to the next Finding. If the answer is no/false, then the Board can add additional conditions after the first round of voting, if acceptable to the applicant, and revote to see if the answer changes to yes/true.

Attorney Bartholomew read through the Findings of Fact.

1. 710.1.1 The proposed use will comply with all of the dimensional and other standards which this ordinance applies to all users? 5 ayes / 0 nays
2. 710.1.2 Access roads or entrance and exit drives are or will be suitable in size and properly located to ensure automotive and pedestrian friendly safety and convenience, traffic flow, and control and access in case of fire or other emergency. 5 ayes / 0 nays
3. 710.1.3 Off-street parking, loading, refuse, and other service areas are located so as to be safe, convenient, allow for access in case of emergency, and to minimize economic glare, odor, and other impacts on adjoining properties in the general neighborhood. 5 ayes / 0 nays
4. 710.1.4 Utilities, schools, fire, police and other public and private facilities and service will be adequate to handle the proposed use. 5 ayes / 0 nays
5. 710.1.5 The location and arrangement of the use of the site, screening, buffering, landscaping, and pedestrian ways harmonize with adjoining properties and the general area and minimize adverse impacts. 5 ayes / 0 nays
6. 710.1.6 The type, size and intensity of the proposed use, including such consideration as hours of operation and number of people who are likely to utilize or be attracted to use, will not have significant adverse impact on adjoining properties or the neighborhood. 3 ayes / 2 nays

Attorney Bartholomew stated that the Conditional Use Permit for Daniel Kang, DBA City of Dreams Internet Café, LLC has been approved with one condition regarding a possible Review Hearing. When asked, Clark clarified that CUP's only require a majority vote.

The next item on the agenda was Reports and Other Business. Chairman Flowers reminded the Board that there would be another Hearing on March 1, 2018 for a Special Use Permit.

The meeting adjourned at 7:45 pm.