



**City of Greenville**  
**Board of Zoning Appeals**  
**Minutes of the June 10<sup>th</sup>, 2021 Regular Meeting**  
**Greenville Convention Center - 4:00 PM**  
**Meeting Notice Posted on May 26<sup>th</sup>, 2021**  
Minutes prepared by Matt Lonnerstater and Sharon Key

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Members Present: Chris Price (Chair), Seph Wunder (Vice-Chair), Stephanie Gates, Ken Betsch

Members Absent: Frederick Turner

Staff Present: Kristopher Kurjiaka, Senior Development Planner; Leigh Paoletti, Assistant City Attorney; Jonathan Graham, Planning Director; Courtney Powell, Planning Administrator; Matthew Lonnerstater, Development Planner; Harold Evangelista, Development Planner; Ross Zelenske, Development Planner; Jordan Harris, Associate Planner; Shannon Lavrin, Assistant City Manager.

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**NOTICE OF MEETING:** Pursuant to Section 30-4-80 of the S.C. Code of Laws, annual notice of this Board's Meetings was provided on January 1, 2020 via the Greenville City Website. The Agenda for this Meeting was posted outside the meeting place (City Council Chambers in City Hall) and was emailed to all persons, organizations, and news media requesting notice. In addition, notice for public hearings was published in the Greenville News, posted on the properties subject of public hearing(s), mailed to all surrounding property owners, and emailed to all persons, organizations, and news media requesting notice pursuant to Section 6-29-760 of the S.C. Code of Laws and Section 19-2.2.9 of the Code of the City of Greenville.

**CALL TO ORDER:** Chairperson Price called the meeting to order at 4:18 PM.

**APPROVAL OF MINUTES:** The Board approved the minutes for the May 11<sup>th</sup>, 2021 Agenda Workshop and May 13<sup>th</sup>, 2021 Regular Meeting and Public Hearing.

**PUBLIC NOTICE AFFIDAVITS:** In order

**ACCEPTANCE OF AGENDA:** The Board approved the June 10<sup>th</sup>, 2021 agenda as presented.

**CONFLICT OF INTEREST:** None stated.

**NEW BUSINESS:**

**A. S 21-343**

Application by Roger Carlton dba Four Aces for a **SPECIAL EXCEPTION** to establish a restaurant with a drive-through/pick-up window at **115 PELHAM RD., STE 1** (TM# 027900-01-01000).

Staff report presented by Matthew Lonnerstater

- Note: Full staff report is on file at the Planning Office and at [www.greenvillesc.gov/agendacenter](http://www.greenvillesc.gov/agendacenter)
- **Staff Recommendation: Approval with conditions.**

Applicant presentation:

- The applicant was not present for comment.

Public comments:

- No one from the public spoke in favor or against the application.

Board Discussion

**\*Motion: Ken Betsch made a motion to approve special exception S 21-343 for a restaurant with a drive-through window at 115 Pelham Rd., Ste. 1, based on the findings outlined in the Staff Report and the content of the application, with the following conditions: 1) Approval shall be limited to a pick-up window. Features typically associated with a full-scale drive-through service, such as but not limited to menu boards and speaker boxes, shall not be permitted on-site; 2) the applicant shall submit a revised site plan permit application for review and approval denoting the layout of the pick-up window and queuing area; 3) required fire access shall be maintained to the building and entrances; and 4) the operation of the establishment shall substantially conform to the testimony of the Applicant and the content of the application.**

**Seph Wunder seconded the motion.**

**The motion was approved by a vote of 4-0.**

**B. S 21-379**

Application by Marty Price/Pendleton Street Baptist Church for a **SPECIAL EXCEPTION** to establish a religious institution (church) at **123 ARLINGTON AVE.** (TMs # 008200-02-01000; 008200-02-00800; and 008200-02-00801).

Staff report presented by Matt Lonnerstater

- Note: Full staff report is on file at the Planning Office and at [www.greenvillesc.gov/agendacenter](http://www.greenvillesc.gov/agendacenter)
- **Staff Recommendation: Approval, with conditions.**
- Ken Betsch asked staff to clarify the extent of the recommended masonry screen wall. Planner Lonnerstater clarified that staff recommends the wall follow around the southwestern and southeastern edge of the parking lot.

Applicant presentation:

- Ron Geyer, project architect, 312 Summer Place Way – Greer, provided information regarding the congregation and the proposed improvements. The hardscape is arranged on-site so that there will be parking available for weekday events.
- Ken Betsch asked the applicant to clarify the intent for the playground area. Mr. Geyer responded that the playground is associated with the adjacent nursery and preschool classroom. Mr. Geyer stated that the landscape buffer will comply with Ordinance requirements.
- Ken Betsch asked how the shuttle service would be monitored. Mr. Marty Price, applicant, 123 Arlington Ave – Greenville, stated that two vans would be provided on Sunday mornings.

Public comments:

- No one from the public spoke in favor or against the application.

Board Discussion

- Stephanie Gates stated that the masonry wall requirement should reflect current Ordinance requirements for site plan approval rather than proposed Ordinance language that may or may not be approved.
- Ken Betsch stated that a condition should require screening along the east property boundary in addition to the south property boundary.

**\*Motion: Ken Betsch made a motion to approve special exception request S 21-379 for a religious institution (church) at 123 Arlington Ave. based on the findings outlined in the Staff Report and the testimony of the applicant, with the following conditions: 1) the applicant shall construct a masonry screen wall to protect surrounding residential areas from the parking/drop-off area; 2) at the time of site permit application submittal, the applicant shall submit a written and recorded agreement for off-site parking and shuttle service per Section 19-6.1.9 (B) of the Land Management Ordinance; 3) per Section 19-4.3.2 (F), any new building or addition on-site shall be reviewed as a special exception; and 4) the operation of the establishment shall substantially conform to the testimony of the Applicant and the content of the application.**

**Seph Wunder seconded the motion.**

**The motion was approved by a vote of 4-0.**

**C. A 21-413**

Application by Jacob Billingsly for an **APPEAL** of the administrator's decision to revoke a Special Exception Permit located at **11 FALLS PARK DR.** (TM# 007000-01-02400)

Staff report presented by Matt Lonnerstater

- Note: Full staff report is on file at the Planning Office and at [www.greenvillesc.gov/agendacenter](http://www.greenvillesc.gov/agendacenter)
- Staff offers the following findings:
  - Staff finds that the Board of Zoning Appeals approved Special Exception permit # S 13-51 to operate a restaurant and bar past midnight with the condition that the operation of the establishment shall substantially conform to the testimony of the Special Exception applicant and the content of the Special Exception application, and that modification of the facility's operation shall require a modification of the Special Exception permit; and
  - Staff finds that the content of the Special Exception application #S 13-51 explicitly states that the establishment (Gringo's) will be a full-service restaurant with kitchen hours from 11:30 a.m. until close; and
  - Staff finds that, to-date, the business owner or a representative of the business owner has not sought a modification to Special Exception permit #S 13-51 to reflect modified food service operations; and
  - Staff finds that a plain-clothes officer of the Greenville Police Department was informed by Gringo's staff that food sales were not available during normal business hours, thereby conflicting with the testimony of the applicant and the content of Special Exception application #S 13-51; and
  - Staff finds that the Zoning Code Enforcement Officer issued a letter on May 19<sup>th</sup>, 2021 thereby revoking Special Exception permit #S 13-51 for the establishment's failure to substantially conform to the testimony of the Special Exception applicant and content of the Special Exception application; specifically, the failure to operate as a full-service restaurant with kitchen hours until close of business; and
  - Staff finds that, in issuing the revocation letter, the Zoning Code Enforcement Officer appropriately exercised his right to revoke a permit as permitted in Section 19-10.6.1(C) of the Land Management Ordinance in that there was a failure to comply with the approved conditions required under the permit approval; and
  - Staff finds that the appellant has not offered evidence or documentation to support his claim that the administrator erred in issuing the revocation letter.

- **Based on these findings, staff recommends that that the Board of Zoning Appeals affirm the administrator’s decision to revoke Special Exception permit # S 13-51.**

**Staff Recommendation: Affirm the administrator’s decision to revoke Permit # S 13-51**

Appellant presentation:

- Matt Johnson, attorney, 336 West Earle Street, presented on behalf of Mr. Jacob Billingsley (appellant), Dean White (Conklin & White) and Cory Starcher (General Manager of Gringos).
  - Mr. Johnson claimed that notice was posted on May 26<sup>th</sup> which he states was not 15 days prior to hearing. Mr. Johnson stated that the appellant, as well as Mr. Starcher, believed the case would be heard at the July public hearing and not the June public hearing. As such, Mr. Johnson requested a deferral to the July meeting.
  - Mr. Johnson stated that the business was in substantial compliance with the Special Exception permit and claims that the 2013 Special Exception staff report, Technical Advisory Committee (TAC) report, and approved Special Exception permit did not contain specific requirements regarding food sales.
  - Mr. Johnson stated that there is a debate as to what “until close” means; the appellants interpret this to mean when the kitchen closes, not lights out at end of day. Mr. Johnson concluded that the operation of the establishment substantially conformed to testimony and content of application, and that Mr. Billingsley, in the original Special Exception application, did not explicitly state that kitchen would serve food until 2 a.m. The appellants request a deferral to the July meeting to allow time to work with staff.
- Mr. Dean White, Conklin & White, 227 Haas Street, St. Augustine, FL, presented on behalf of Mr. Jacob Billingsley (appellant).
  - Mr. White stated that he took over management of Gringos in 2018 and claimed that the number of issues with City enforcement has been greatly reduced since 2018.
  - Mr. White stated that he had read the Special Exception permit when he took over management and claimed that Gringos exceeds the minimum requirements. Mr. White listed efforts to exceed minimum permit requirements, including minimum age 21+ after 10 o’clock, 3 SLED security officers, patio closure at midnight, and front door security.
  - Mr. White stated that Gringos actively tries to be good neighbors and realizes the business is in a residential area. Mr. White claimed that the approved Special Exception permit does not mention food sales; the restaurant closes between 11-12 pm typically. It is unprofitable for the restaurant to stay open until 2 am.
  - Mr. White stated that COVID required adjustments to the business, and that these efforts have helped to keep staff employed.
  - Ken Betsch asked Mr. White to clarify what concessions have been made? Mr. White responded that changes to the business operation have evolved over time based on changing circumstances; Gringos is trying to keep noise down.
  - Ken Betsch asked what was being done regarding the large number of complaints. Mr White responded that Jacob Billingsley offered to meet with the neighboring condo association but was denied a meeting and that it has been difficult to meet City’s expectations.
  - Seph Wunder asked if food was being served when the plain clothes officers went in? Mr. White responded that food was not being served at that time but was being served prior.

Public comments:

- Lance Renault, 155 Riverplace, spoke in favor of affirming the administrator’s decision. Mr. Renault is on the board of the condominium which has received significant complaints regarding noise from Gringos. Gringos has the ambiance of a loud, noisy nightclub. Mr. Renault stated that the business has transformed form a restaurant to a nightclub.

- Joe Ranalletta, 121 Rhett St., spoke in favor of affirming the administrator’s decision. Mr. Ranalletta stated that he has a bird’s eye view of Gringos. Mr. Ranalletta stated that he notified the City that it has been at least six months since food has been served at Gringos. The use has converted into a nightclub. There is no proactive enforcement of the conditions of the Special Exception permit and there is a lack of security. Mr. Ranalletta claims that Mr. Billingsley is not actively involved in the operation of the establishment.
- Cory Starcher, acting manager of Gringos, rebutted that the last Cisco food order came in last week. Mr. Starcher stated that Gringos has gone to a limited food menu. Three security guards are on duty for late night service. Mr. Starcher stated that the patio is closed at midnight and that he has a decibel reader and takes periodic noise measurements.
- Terry Poepping, 121 Rhett St., stated that she lives directly behind Gringos. Ms. Poepping stated that she saw a farewell goodbye to the cooks around Thanksgiving, 2020 and that there has been no food service or food preparation recently. Ms. Poepping stated that she has seen guests enter and exit from the deck.
- Joseph Smith, 121 Rhett St., asked for clarification about the purpose of the appeal. Chairman Price clarified that the appeal relates to the City’s observation that food was not served past a certain hour which was in violation of the Special Exception permit. Mr. Smith stated that the Gringo’s website lists many food items as, “out of stock.”
- Johnny Iona, 155 River Place, stated that he is a neighbor of Gringos and has had no issues with the operation. Mr. Iona has seen the food menu on the door.
- Kenneth Jones, 121 Rhett St., stated that the establishment operates as a nightclub and not as a restaurant; the restaurant has been shut down for a while. Mr. Jones stated that the Special Exception permit does reference conditions relating to noise and sound, and that the bouncers serve as police checkers to run and shut doors/turn sound down when police are spotted.

#### Appellant Rebuttal

- Matt Johnson, attorney on behalf of Gringos, acknowledged that food was not being served when the police officers requested food. However, Mr. Johnson claims that the operation of the establishment was still in substantial compliance with the conditions of the Special Exception permit.
- Mr. Johnson stated that if the revocation holds, it will substantially affect Gringos’ business. Mr. Johnson stated that there are a lot of unknowns, including only one police report and a lack of detail about the number of guests in the building. Mr. Johnson believes that the revocation should be overturned or that the appellants should be given time to work with staff.
- Seph Wunder stated that Mr. Billingsley, in the original application, stated that kitchen hours would be 11:30 am until close with projected revenue 75% food and 25% alcohol. Seph Wunder asked what the appellants understanding was of the “until close” provision.
  - Mr. Johnson replied that there was nothing in the original special exception permit that implied that the kitchen needed to remain open until 2 a.m., and that the kitchen just needed to remain open until, “it closed.”
- Chairman Price asked if Mr. Johnson disputed whether the intent of the original special exception permit application was for the business to close a 2 a.m.
  - Mr. Johnson did not dispute this fact but stated that there are other gray areas in the approved permit.
- Ken Betsch stated that the written statements provided in the Special Exception permit application contradict the current statements of the appellant. The Special Exception application stated that the hours of operation shall be 11:30 am until close with option to stay open until 2 a.m. 7 days a week; kitchen hours will be 11:30 am until close. Mr. Betsch asked why there was no response from City Staff if the intent is to work with them to resolve this issue?
  - Mr. Johnson replied that he was retained yesterday and is doing his best to respond.
- Chairman Price stated that the Special Exception allowed the operation of a restaurant with alcohol service with extended hours. If the organization intends to operate as a bar, the City has a process in place.
  - Mr. Johnson replied that the only evidence/facts that the City has provided was that one officer did not receive food.

### Board Discussion

- Chairman Price asked staff to clarify who was responsible for posting the Public Notice sign. Planner Lonnerstater stated that staff posted the sign 15 days prior to the public hearing.
- Ken Betsch stated that the appellants had an opportunity to provide additional data which could have supported their appeal.
- Seph Wunder clarified that the BZA is a quasi-judicial board, but that he does not question the veracity of the police report.

**\*MOTION: Seph Wunder made a motion to affirm the administrator's decision based upon the evidence provided in the record by the Appellant and at the hearing, and upon finding that the restaurant use, as of the date listed on the police incident report, did not substantially comply with the conditions of the approved special exception permit S-13-51.**

**Ken Betsch seconded the motion.**

**The motion was approved by a vote of 4-0.**

**OTHER BUSINESS: None**

Meeting adjourned at 5:48 PM