

Sumter City-County Board of Zoning Appeals

July 11, 2012
Revised August 8, 2012

BOA-12-32, 941 E. Liberty St. (City)

The applicant is requesting Special Exception approval for an
Adult Club, under SIC Code 7299.



Appeals - Variance - Special Exception

Sumter City-County Board of Appeals

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BOA-12-32, 941 E. Liberty St. Adult Club (City)

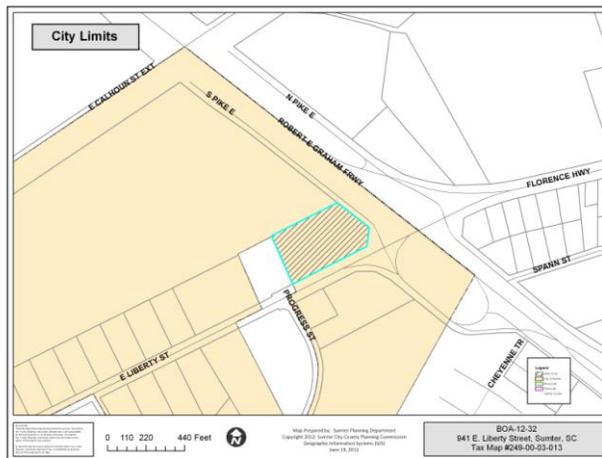
I. THE REQUEST

Applicant: Terry Land

Status of the Applicant: Business Owner

Request: Special Exception approval for an Adult Club, under SIC Code 7299.

Location: 941 E. Liberty St.



Present Use/Zoning: Undeveloped Parcel/General Commercial (GC)

Tax Map Reference: 249-00-03-013

II. BACKGROUND

The applicant desires to open an Adult Use—an Adult Gentlemen’s Club, more commonly referred to as a “strip club”—to be located in the City on a 3.3 acre undeveloped parcel at the intersection of E. Liberty St. and S. Pike East/U.S. 378. On the Application form, the Applicant has described the use as “Adult Use Gentlemen’s Club.” This use is specifically defined in the Zoning Ordinance as an Adult Use under Section 3.i.4.g. and Section 5.b.3.g, corresponding to SIC Code 7299. The use is designated as a Special Exception in the GC zoning district. Special Exceptions are to be evaluated in accordance with Article 1, Section 1.h.4.c and Article 3,

Section 3.i.4.g. and in accordance with Article 5, Section 5.b.3.g. in the Sumter City Zoning & Development Standards Ordinance.

The Applicant has submitted a site plan dated July 2012, prepared by Shaffer Design Group. This site plan was not available to the BZA in the initial Staff Report, and was provided to them at the public hearing.

On July 11, 2012, this application was deferred by the BZA, after conducting a public hearing on the matter. The Board directed Staff to review the site plan and revise the Staff report as appropriate, including a summary of the citizen public hearing comment. The site plan is attached to the Staff Report.

Public Hearing Comment Summary

Note: A complete digital recording is available at the City County Planning Department and is a part of the public record

This application caused a lot of interest as the hearing room was filled to capacity. Sixteen (16) members of the public spoke in opposition to request; none spoke in favor, excepting the Applicant. Opposition comments included the following points:

- Too close to the neighborhood just north of the by-pass
- Too close to the William Thomas Academy
- Use does not reflect the goals and aspirations of the community
- There will be negative impacts such as “drinking and carousing” on a stable nearby community
- There is Church property across Hwy. 76 and behind the Youngs Food Store where the Unity Universal Baptist Church hopes to build a Church
- Too many children will have to drive by the location
- Opens the door to other negative uses in the community
- A strip club will bring trouble and an increased burden for law enforcement resources
- These uses should not be placed in low income neighborhoods
- The use is in contrary to the strong value system Sumter is trying to foster
- The use will be a disruptive force
- Concerns about highway advertising on 378 and 95 and the image of Sumter
- The Longway Drive subdivision is too close and this will be an eyesore
- The use will negatively affect nearby businesses in the commercial corridor
- The location is at a major entrance to the City

III. ZONING ORDINANCE REVIEW

Article 5 Section 5.b.3.g. Adult Uses (SIC 7299):

2¹. The referenced use shall not be located within one-thousand (1,000 ft) feet of a residential use, church or religious institution, public or private schools and/or

¹ Section 5.b.3.g.1. is not referenced in this Staff Report as it is a Statement of Intent with no corresponding measurement

educational facilities; public parks and recreational facilities, and any other sexually oriented business.

Using GIS mapping technology Staff measured the distance to the nearest residential unit from the proposed building location. This measurement was based on a “structure to structure” distance. Staff has determined that the use, as depicted on the site plan, is located greater than 1,000 ft. from the nearest conflicting use. It appears to meet this provision. However, if the request is approved by the BZA, we strongly recommend a condition which requires field verification of the distance between the structure and nearest house by a certified surveyor and prior to the pouring of any foundation.

Article 1 Section 1.h.4.c Special Exceptions:

1. *Special exceptions are subject to the terms and conditions for the use set forth for such uses in the Zoning Ordinance.*

After reviewing the site plan, we find it generally conforms to the requirements of the Zoning Ordinance. A full site plan application and review is required for review by planning staff under separate application. Final parking, landscaping and other details are evaluated at that time, owing to normal practice.

2. *Permits for Special Exceptions shall be evaluated by the Board of Zoning Appeals on the basis of the following criteria:*
 - a. *That the Special Exception complies with all applicable development standards contained elsewhere in this Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements.*

After reviewing the site plan, we find it generally conforms to the applicable standards the Zoning Ordinance. A full site plan application and review is required for review by planning staff under separate application. Final parking, landscaping and other details are evaluated at that time, owing to normal practice.

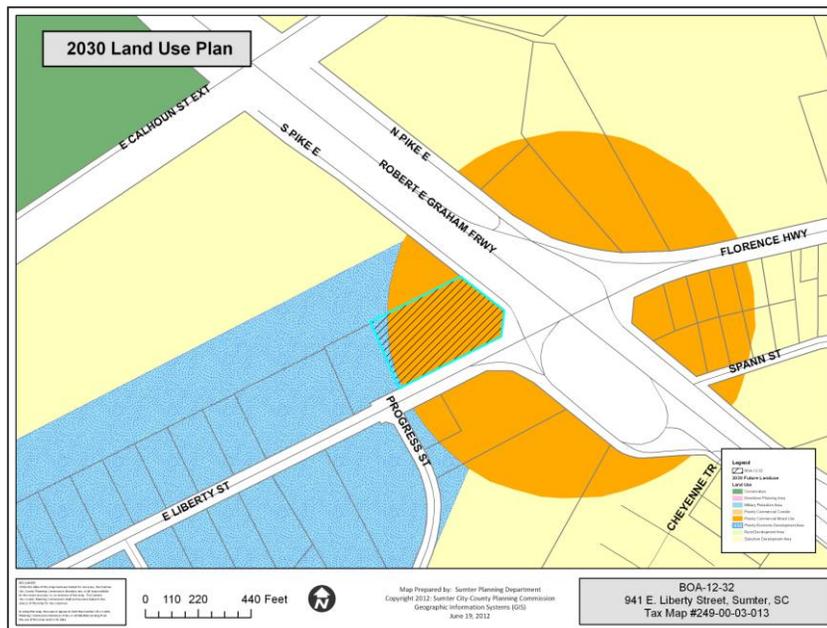
- b. *That the special exception will be in substantial harmony with the area in which it is located.*

Sexually oriented businesses such as this do carry certain 1st Amendment Constitutional protections. For this reason, we must reject broader, more generalized community opposition to sexually oriented businesses. Some public comment centered on keeping this use and other similar uses out of Sumter entirely. These sentiments should not be factored in to any decision-making equation. However, the 1st Amendment Protection does not mean that local review is forfeit.

It is entirely appropriate to review each use on a CASE BY-CASE basis, applying equally the standards of this section. The local community has the right, through the

BZA special exception process, to determine whether or not those standards are met. In this case, we find that the proposed Adult Club is not in substantial harmony with the area in which it is proposed to locate for the following reasons:

- 1. The area to the south of the proposed site is a gritty commercial corridor with numerous businesses. The area to the north includes a school and residential neighborhoods. In fact, the immediate area is designated by the 2030 *Comprehensive Plan* as a Priority Mixed-Use/Commercial Area, areas intended to redevelop over time with higher and better uses. This is an area (map shown below) where the City, through land use policy, desires to direct “high quality commercial and mixed-use development.” These priority locations are “designated for protection against undesirable uses” (p. LU 15). An Adult Club is not compatible with the City’s policy of encouraging high quality mixed use development in this area. Citizen testimony supports this claim as one member of the public identified this corridor as an important one when entering the City of Sumter.**



- 2. Surrounding area residents and business owners provided testimony related to the character of the area, demonstrating that the proposed use was not in substantial harmony with the area. Residents from the neighborhoods to the north of the property (across the bypass), a business owner to the south, and a property owner to the east all cited potential negative impacts such as increased crime, loitering, drinking, and public safety issues as reasons for the proposed use not meeting this substantial harmony test. We find these arguments compelling as reflections on whether or not the proposed use is compatible, or fits into the surrounding area.**

- c. *That the special exception will not discourage or negate the use of surrounding property for use(s) permitted by right.*

The Board of Zoning Appeals is also asked to conclude, in approving the use; that the use will not discourage or negate the use of surrounding property for uses permitted by right. Staff cannot support a finding such as this. For the secondary impacts—for example, increased crime, drinking, late hours of operation, etc.—we find that the use will likely discourage the use of surrounding property. This conclusion is supported by the public testimony.

Surrounding property is zoned General Commercial, Light Industrial, Agricultural Conservation and General Residential within a 1,000 ft. radius of the property in question. Locating an Adult Club here directly conflicts with the community’s plans for directing quality mixed use to this node at Hwy. 76 and US 378. It is reasonable to suggest that it will be difficult for the community to achieve this goal if an Adult Use were to locate on this property. To transform this entrance corridor to meet the aspirational policies of the City, uses not compatible with this higher quality standard should be redirected elsewhere.

Moreover, the Applicant has offered no compelling evidence that the proposed Adult Use will not discourage or negate the use of surrounding properties. On the contrary, we have heard from residents, businesses, and property owners that they suspect it will do just that. Staff finds no reasonable justification to substitute an alternative conclusion to that of the surrounding property owners and citizens.

IV. STAFF RECOMMENDATION

Staff recommends denial of the proposed Adult Club as set forth in the Staff Report above, the public testimony offered, and as memorialized in the Draft Order, Exhibit 1, attached.

V. DRAFT MOTIONS

- A. I move that the Sumter Board of Appeals deny BOA-12-32 based upon the findings of fact and conclusions of law set forth in Exhibit 1.
- B. I move that the Sumter Board of Appeals approve BOA-12-32 on the following findings of fact and conclusions:
- C. I move that the Zoning Board of Appeals enter an alternative motion for BOA-12-32.

VI. BOARD OF ZONING APPEALS – JULY 11, 2012

The Sumter City-County Board of Appeals at its meeting on Wednesday, July 11, 2012, voted to defer this request pending the review of the complete site plan and all attendant documentation to determine if the request meets zoning requirements. The BZA also directed Staff to compile and summarize public hearing comments.

VII. BOARD OF ZONING APPEALS – AUGUST 8, 2012

The Sumter City-County Board of Appeals at its meeting on Wednesday, August 8, 2012, voted to deny this request based upon the findings of fact and conclusions of law set forth in Exhibit 1.

Exhibit 1
Order on Special Exception and Application
Sumter Board of Appeals

BOA-12-32, 941 E. Liberty St., Sumter, SC
August 8, 2012

Date Filed: August 8, 2012

Permit Case No. BOA-12-32

The Board of Zoning Appeals held a public hearing on Wednesday, August 8, 2012 to consider the request of Terry Land, the Applicant for a special exception which may be permitted by the Board pursuant to Sections 3.i.4.g and 5.b.3.g of the Sumter City Zoning & Development Standards Ordinance as set forth on Form 4 for the property described on Form 1 to be used for: an Adult Club (SIC Code 7299).

After the consideration of the evidence and arguments presented, the Board makes the following findings of fact and conclusions.

1. The Board concludes that the standards in Sections 5.b.3.g of the Sumter City Zoning & Development Standards Ordinance which are applicable to the proposed special exception of the Zoning Ordinance **have** - **have not** been met based on the following findings of fact:
 - a. Using GIS mapping technology Staff measured the distance to the nearest residential unit from the proposed building location. This measurement was based on a “structure to structure” distance. Staff has determined that the use, as depicted on the site plan, is located greater than 1,000 ft. from the nearest conflicting use. It appears to meet this provision.

2. The Board concludes that the special exception **does** - **does not** comply with all applicable development standards contained elsewhere in the Sumter County Zoning Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements based on the following findings of fact:
 - a. After reviewing the site plan, we find it generally conforms to the requirements of the Zoning Ordinance. A full site plan application and review is required for review by planning staff under separate application. Final parking, landscaping and other details are evaluated at that time, owing to normal practice.

3. The Board concludes that the proposed special exception **will** - **will not** be in substantial harmony with the area in which it is located based on the following findings of fact:

- a. The area to the south of the proposed site is a gritty commercial corridor with numerous businesses. The area to the north includes a school and residential neighborhoods. In fact, the immediate area is designated by the 2030 Comprehensive Plan as a Priority Mixed-Use/Commercial Area, areas intended to redevelop over time with higher and better uses. This is an area where the City, through land use policy, desires to direct “high quality commercial and mixed-use development.” These priority locations are “designated for protection against undesirable uses” (p. LU 15). An Adult Club is not compatible with the City’s policy of encouraging high quality mixed use development in this area. Citizen testimony supports this claim as one member of the public identified this corridor as an important one when entering the City of Sumter.
 - b. Surrounding area residents and business owners provided testimony related to the character of the area, demonstrating that the proposed use was not in substantial harmony with the area. Residents from the neighborhoods to the north of the property (across the bypass), a business owner to the south, and a property owner to the east all cited potential negative impacts such as increased crime, loitering, drinking, and public safety issues as reasons for the proposed use not meeting this substantial harmony test. We find these arguments compelling as reflections on whether or not the proposed use is compatible, or fits into the surrounding area.
4. The Board concludes the special exception **will** - **will not** discourage or negate the use of surrounding property for uses(s) permitted by right based on the following findings of fact:
- a. The Board of Zoning Appeals is also asked to conclude, in approving the use that the use will not discourage or negate the use of surrounding property for uses permitted by right. The Board of Zoning Appeals cannot support a finding such as this. For the secondary impacts—for example, increased crime, drinking, late hours of operation, etc.—we find that the use will likely discourage the use of surrounding property. This conclusion is supported by the public testimony.
 - b. Surrounding property is zoned General Commercial, Light Industrial, Agricultural Conservation and General Residential within a 1,000 ft. radius of the property in question. Locating an Adult Club here directly conflicts with the community’s plans for directing quality mixed use to this node at Hwy. 76 and US 378. The request is contrary to the Land Use policy of the 2030 Comprehensive Plan. It is reasonable to suggest that it will be difficult for the community to achieve these goals if an Adult Use were to locate on this property. To transform this entrance corridor to meet the aspirational policies of the City, uses not compatible with this higher quality standard should be redirected elsewhere.
 - c. The Applicant has offered no compelling evidence that the proposed Adult Use will not discourage or negate the use of surrounding properties. On the contrary, we have heard from residents, businesses, and property owners that they suspect it will do just that. The Board of Zoning Appeals finds no reasonable justification to

substitute an alternative conclusion to that of the surrounding property owners and citizens. To do so would contradict the intent of the Zoning Ordinance when reviewing Special Exceptions.

THE BOARD, THEREFORE, ORDERS that the special exception is **DENIED** –
 GRANTED

Approved by the Board by majority vote.

Date issued: _____

Chairman

Date mailed to parties in interest: _____

Secretary

Notice of appeal to Circuit Court must be filed within 30 days after date this Order was mailed.
