Sumter City-County Board of Zoning Appeals

November 13, 2013

<u>BOA-13-19, 377 Rast Street (City)</u>

The applicant is requesting Special Exception approval for a tattoo parlor, under SIC Code 7299.

Sumter
SOUTH CAROLINA

Appeals - Variance - Special Exception

Sumter City-County Board of Appeals

November 13, 2013

BOA-13-19, Tattoo Parlor, 377 Rast St. (City)

I. THE REQUEST

Applicant:	Stan Hudgins
Status of the Applicant:	Business Owner
Request:	Special Exception approval for a Tattoo Parlor, under SIC Code 7299.
Location:	377 Rast St.
Present Use/Zoning:	Commercial Strip Center/GC
Tax Map Reference:	230-16-03-023

II. BACKGROUND

Special Exception approval, for a Tattoo Parlor, was given by the Board of Appeals back in July, 2007 (BOA 07-09) for 393 Rast St. The applicant was currently operating his business at this address which is three tenant spaces down from 377 Rast Street.

The applicant's lease was not renewed this year by the property owner and a new tenant with a tattoo parlor business has now occupied that space at 393 Rast Street. The Special Exception approval is good for this tenant space unless it is vacant for a 6 month time period per *Section 1.i.8 Expiration of Special Exception of the City Zoning Ordinance.* There has been business activity and a business license for this space within the last 6 months so the Special Exception has not expired.

Therefore, the applicant now wishes to relocate his tattoo parlor business within the same existing small commercial strip center located behind Jessamine Mall at 377 Rast Street.

Above: Photo of the tenant space (377 Rast St.) where the proposed tattoo parlor is to be located.

Above: Commercial Center showing Five Aces Tattoo at 393 Rast St. and the Applicant's proposed location on the right end of the building

The change of location is required to be reviewed and approved by the Board of Appeals even though it is in the same building.

Tattoo Parlors (SIC Code 7299) are required to be reviewed and approved as a Special Exception. Special Exceptions are to be evaluated in accordance with Article 1, Section 1.h.4.c ; Article 3, Section 3.i.4.g and in accordance with Article 5, Section 5.b.3.j in the Sumter City Zoning & Development Standards Ordinance.

Article 5 Section 5.b.3.j *<u>Tattoo Parlors:</u>*

1. *This referenced use shall not be located within five hundred (500 ft.) feet [measure from property line to property line] of a residential use, church or religious institution, public or private school, public park or playground, or any other tattoo parlor.*

This new location does not meet the 500 ft. separation requirement from a residential use measured parcel to parcel, because of four residential dwellings in Cascade Subdivision located behind this commercial center. Also, the proposed location does not meet the 500 foot separation requirement from another Tattoo Parlor because there is one (Five Acres Custom Tattoo) located at 393 Rast Street only approximately 100 feet away in the same building. This was measured from door to door. (Shown in previous photo above).

Photo of 500 foot Buffer and Cascade Subdivision

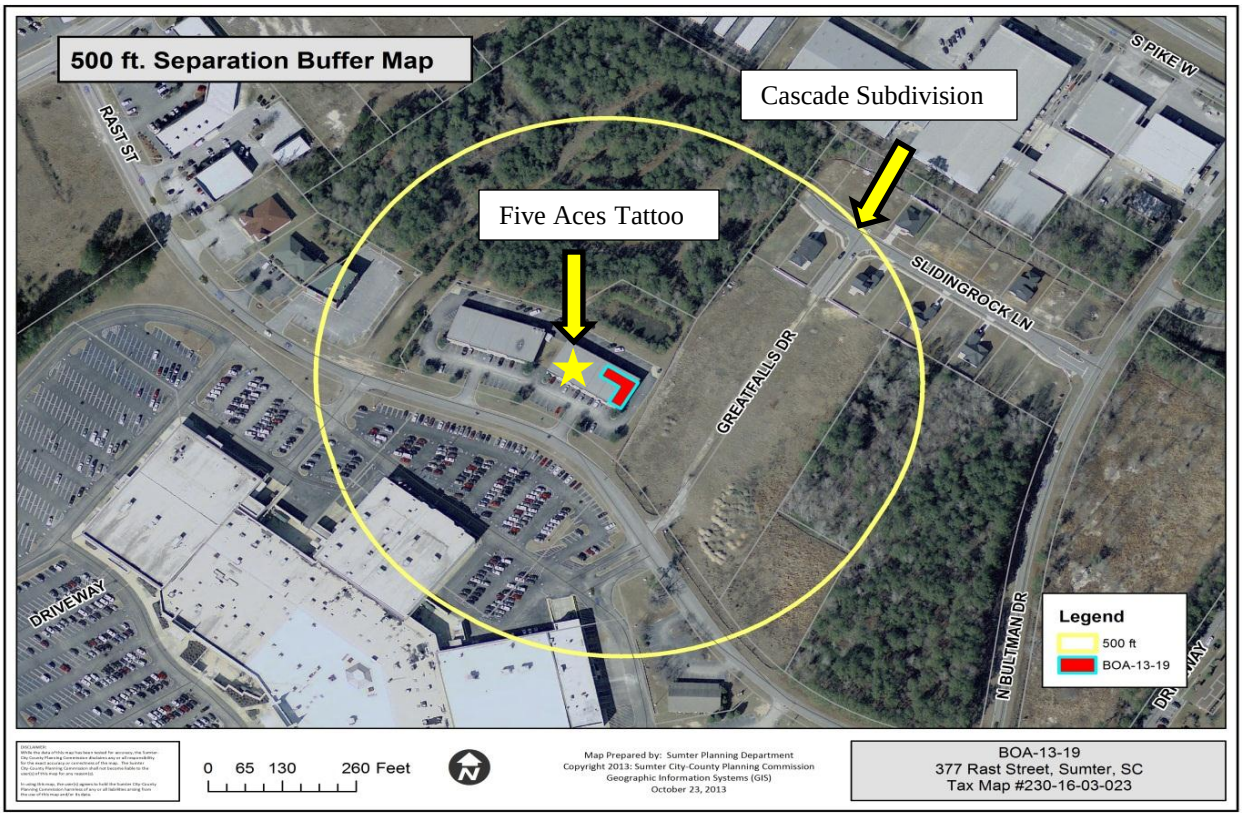

Photo of Cascade Subdivision behind Commercial Center

Commercial Center in distance viewed from inside Cascade Subdivision

Pictures of Houses in Cascade Subdivision

Houses within the 500 Separation Requirment

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.*

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.*

    This proposed tenant space is situated within an existing commercial center which has established parking area, access and landscaping.

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

    The request does not meet the minimum 500 ft. separation requirement from Cascade Subdivision which is a residential use.

These specific distances are set up for businesses of this type and others and should be adhered to because of potential adverse impacts on residential neighborhoods. Adverse impacts often include the following: noise, light intrusion, increased traffic through the neighborhoods, decreased property values.

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

The tenant space located at 393 Rast St. a couple of doors down has already received Special Exception approval in 2007 and is assured that use approval unless the tenant space is vacant of this type use for 6 months. This business use is permitted by right and use was established there first. If this Special Exception is approved then the business at 393 Rast Street will become a nonconforming site and will not comply with distance requirements as it currently does.

Also, tattoo parlors should be separated from residential neighborhoods because these uses can often have negative impacts on neighborhoods. Past studies and research have shown that these uses can cause noise, nuisances, lighting intrusion, and increased traffic to sensitive residential uses.

The distance requirement offers a transition zone from the commercial to the residential which discourages the unraveling of the boundary of an established neighborhood and the growth of a new subdivision. It helps prevent too much encroachment upon the residential areas and avoids off site impacts from the commercial. The distance provides a buffer zone to help mitigate the possible negative impacts to the more sensitive residential land uses.

The distance requirement from other existing tattoo parlors prevents a concentration of the use in one area.

III. STAFF RECOMMENDATION

Staff recommends denial of this application because it does not meet the distance requirements from a residence nor from another tattoo parlor.

IV. BOARD OF ZONING APPEALS – NOVEMBER 13, 2013

The Sumter City-County Board of Appeals at its meeting on Wednesday, November 13, 2013, voted to defer this request, until the next meeting, in order to further research and review the matter. This request will return before the board on December 11, 2013 at 3:00 p.m.

Exhibit 1
Order on Special Exception Application
Sumter Board of Appeals

BOA-13-19, 377 Rast St., Sumter, SC.
November 13, 2013

Date Filed: November 13, 2013 Permit Case No. BOA-13-19

The Board of Zoning Appeals held a public hearing on Wednesday, November 13, 2013 to consider the request of Stan Hudgins, 377 Rast Street, Sumter, SC for a special exception which may be permitted by the Board pursuant to Sections 1.h.4.c, 3.i.4.g, and 5.b.3.j 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: a Tattoo Parlor (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.j 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. The Board finds the location of the proposed Tattoo Parlor does not meet the Ordinance separation requirement of 500 ft. from parcel to parcel of a residential use nor from another tattoo parlor.

2. The Board concludes that the special exception ☑ **does** - ☐ **does not** comply with all other applicable development standards contained elsewhere in the Sumter City Zoning Ordinance, including landscaping and bufferyards, off-street parking, and dimensional requirements based on the following findings of fact:

    a. The property owner is not required to upgrade the site or submit a site plan as the location is in an occupied shopping center;

    b. There is adequate access to the parcel from a major thoroughfare, and the parking lot is large enough to accommodate the additional number of parking spaces that will be generated by the proposed use;

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 request does not meet the minimum 500 ft. separation requirement from Cascade Subdivision which is a residential use. These specific distances are set up for businesses of this type and others and should be adhered to because of potential adverse impacts on residential neighborhoods. Adverse impacts often include the following: noise, light intrusion, increased traffic through the neighborhoods, decreased property values.

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. This request does not meet separation criteria for residential. It also does not meet separation from the existing approved tattoo parlor.

b. Also, tattoo parlors should be separated from residential neighborhoods because these uses can often have negative impacts on neighborhoods. Past studies and research have shown that these uses can cause noise, nuisances, lighting intrusion, increased traffic to sensitive residential uses.

c. The distance requirement offers a transition zone from the commercial to the residential which discourages the unraveling of the boundary of an established neighborhood and the growth of a new subdivision. It helps prevent too much encroachment upon the residential areas and avoids off site impacts from the commercial. The distance provides a buffer zone to help mitigate the possible negative impacts to the more sensitive residential land uses.

d. The distance requirement from other existing tattoo parlors prevents a concentration of the use in one area.

THE BOARD, THEREFORE, ORDERS that the special exception is ☑ **DENIED –**
☐ **GRANTED with the following conditions:**

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.