

MINUTES
BREVARD BOARD OF ADJUSTMENT – REGULAR MEETING
Tuesday, June 6, 2017– 3:00 PM – Council Chambers

The Brevard Board of Adjustment met in regular session on Tuesday, June 6, 2017 at 3:00 PM in Council Chambers of City Hall.

Members Present: Judith A. Mathews, Chair
 Kevin Jones
 Coty Ferguson
 Tad Fogel
 Paul Welch

Members Absent: Tom Tartt, Vice Chair
 Allen Delzell
 Mike Young (resigned by email June 6, 2017)

Staff Present: Daniel Cobb, Planning Director
 Janice H. Pinson, Board Secretary
 Brian Gulden, Board Attorney

Others: Jackson Wine, Applicant

I. Welcome and Introduction of Board Members

Chair, J. Mathews called the meeting to order at 3:00 PM. The Board introduced themselves. The Chair, J. Mathews certified that a quorum of the Board was present and that Kevin Jones, City Alternate and Coty Ferguson, County Alternate, would be the voting members.

II. Approval of Agenda

J. Mathews requested a motion to approve the agenda. T. Fogel moved to approve, seconded by K. Jones, unanimously carried.

III. Approval of Minutes

J. Mathews requested a motion to approve the Minutes of the April 4, 2017 meeting. Motion by P. Welch to accept the minutes as presented, seconded by T. Fogel unanimously carried.

IV. New Business

a. Request of Applicant, Jackson Wine, seeking amendments to the existing Special Use Permits SUP-11-009, SUP 11-009A, SUP12-090 and SUP-12-390 by terminating the conditions set forth therein. The property is located in the Neighborhood Mixed Use zoning district (NMX) with the legal address, 185 King Street, within the corporate limits of the City of Brevard, further identified by PIN 8586-42-5466-000.

J. Mathews opened the hearing and polled the Board as to conflicts of interest and ex parte communications, there were none.

The following were sworn: Daniel Cobb, Planning Director, and Jackson Wine, Applicant.

D. Cobb stated that the hearing was properly advertised, property posted and neighbors were notified. He presented his staff report and gave a history of the case. Staff Report is attached and labeled, Exhibit "A".

D. Cobb explained that all of the conditions set forth in Mr. Wine's special use permit have been complied with, but have been challenging and that Mr. Wine is requesting to remove some of them in order to have a level playing field with his neighbors. He further explained, that his classification as a bar, nightclub or tavern has the same basic definition in a zoning perspective, but does not in other matters.

D. Cobb explained that Mr. Wine had one complaint for noise, but has had no other complaints and is in good standing.

D. Cobb explained that Mr. Wine's request for relief from the special use permit as to hours of operation presents no concerns to Staff. Mr. Wine has stated that he would like to follow NC law and be able to serve alcohol after midnight.

D. Cobb further drew the Board's attention to "Attachment C" in the staff report, an email from Gerald Grose, Transylvania County Fire Marshal, which is attached hereto and labeled, "Exhibit B".

Jackson Wine, Applicant, testified that he started his business at 185 King Street approximately 6 years ago. That at the time the Planning Staff had concerns about a nightclub operating in a neighborhood mixed use zoning district. That at the time, the area was more of a neighborhood use, but has since evolved into more of a mixed use environment with more event space and restaurant uses.

He explained that the noise complaint was for noise exterior to the building, and that at the time the City of Brevard had not established a noise ordinance.

He stated that no one showed up for the neighborhood meeting and he felt this was an indication that he has been a good neighbor.

J. Wine explained that he is classified as a nightclub and that his occupancy cannot exceed more than 99 people without the installation of a sprinkler system. If he could be classified as a bar instead of a nightclub his occupancy could be no more 299, and still not require the installation of a sprinkler system. He stated that because of his limited occupancy requirements and because he now has more competing businesses that serve alcohol, he has lost events that he formerly held at his business because of occupancy and other requirements imposed upon his business and he just wants to level the playing field.

He explained that he had a meeting with Gerald Grose, Transylvania County Fire Marshall, and that he would need to add some exit signs, change the swing of a door and add additional fire extinguishers to accommodate a larger occupancy, but that he would have no problem taking care of the required items.

J. Wine explained that he just wants to be able to accommodate larger events, have the similar rights that his neighbors have, and that he is not requesting any change to the parking requirements imposed upon him in his prior special use permit.

After questions by the Board, D. Cobb explained that the Board did not need to establish hours of operation. They would be automatic with the change from nightclub to bar if the special use permit was approved. It was established that the Planning Department did not hear from any of the neighbors and that Jackson Wine's request was to be classified as a bar, and not a nightclub and to remove hours of operation restrictions imposed by the previous special use permit to allow him to operate under the current NC laws regulating alcohol sales.

D. Cobb explained that Jackson Wine was correct in that at the time of the noise complaint the City of Brevard did not have a noise ordinance, and that it was determined that the requirement that there be no noise external to the building was unreasonable. He was later required to abide by the City's noise ordinance.

Brian Gulden, Board Attorney, explained to the Board that his request needed to meet the requirements of a special use permit.

J. Mathews closed the hearing.

The Board discussed the findings of fact:

- a) *The use meets all requirements and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit;*

The neighborhood has changed and is now more of a mixed use environment.

- b) *The proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible with the surrounding area; and*

The neighborhood has changed and is now more of a mixed use environment.

- c) *The proposed use or structure will not be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses.*

The neighborhood has changed and is now more of a mixed use environment.

P. Welch made a motion to approve the special use permit to allow the property to change the use designation to a bar, and that the hours of operation would then be required to comply with NC State laws as to hours of operation and alcohol sales, seconded by K. Jones, unanimously approved.

P. Welch further clarified with the applicant that the cultural community facility use part of the application had been withdrawn. Jackson Wine agreed that he had withdrawn that portion of the application and went on to explain; that after he met with Daniel Cobb and Brian Gulden about his application, he determined that his best choice would be to amend the existing special use permit.

VI. Unfinished Business

After a discussion, a quorum of the Board will not be available to meet in July, the regularly scheduled meeting date would be July 4th, a holiday. P. Welch made a motion to cancel the July meeting, seconded by K. Jones, upon vote, P. Welch, T. Fogel, J. Mathews, K. Jones voted in favor and C. Ferguson voted nay. The July meeting was cancelled.

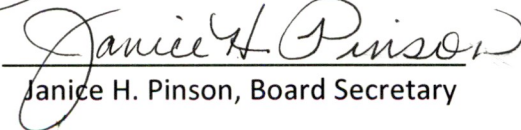
VII. Remarks

T. Fogel commended Jackson Wine on the publicity that he has brought to Brevard and the great public relations he has created.

VIII. Adjourn

Motion to adjourn by K. Jones, seconded by C. Ferguson, unanimously carried and meeting adjourned at 3:46 PM.


Judith A. Mathews, Chairman


Janice H. Pinson, Board Secretary



The City of
Brevard
North Carolina

BOARD OF ADJUSTMENT STAFF REPORT

June 6, 2017

TITLE: Special Use Permit Request 17-000001
SPEAKER: Daniel P. Cobb, AICP, CFM, CZO – Planning Director
PREPARED BY: Daniel P. Cobb, AICP, CFM, CZO – Planning Director

Executive Summary

The Board will hear a request by Jackson Wine to amend an existing Special Use Permit (SUP) by modifying the conditions associated with the original approval.

Applicant: Jackson Wine
185 King Street
Brevard, NC 28712

Meeting Date: June 6, 2017 – 3:00PM

Proposed Use: Bar

Project Site: 185 King Street
Brevard, NC 28712

Background

Mr. Wine received approval to operate a bar/tavern/nightclub in March of 2011. An SUP was required because the underlying zoning district – Neighborhood Mixed-Use – only allows this use with the granting of a SUP. Since opening Mr. Wine has operated his nightclub as described and in accordance with the conditions associated with his approval.

Subsequent to this original approval were a number of amendments including Case No. 11-009A, Case No. 12-090, and Case No. 12-390. Each of these amendments modified the conditions associated with the operation of the private nightclub established with SUP Case No. 11-009.

The original approval required Mr. Wine to provide four off-street parking areas across the street from his facility at 185 King Street. This condition was later amended to allow the four spaces to be located on a strip of pavement approximately 300 feet from 185 King Street. Mr. Wine now owns property next door to 185 King Street which he did not own in 2011. This allows him to provide the required four spaces on his property and eliminates the need for the leased spaces on Railroad Avenue.

Special Use Permits

Special uses are generally compatible with the land uses permitted by right in a zoning district, but require individual review of their location, design, and configuration so as to evaluate the potential for adverse impacts on adjacent property and uses. Special uses ensure the appropriateness of the use at a particular location within a given zoning district.

Only those uses enumerated as Special Uses in a zoning district, including but not limited to hours of operation, height, and bulk, mass, intensity of use, etc. shall be authorized by the BOA.

The evaluation and approval of the Special Use Permit shall be based upon the sworn testimony and evidence presented at the hearing relevant to the following findings of fact:

- a) The use meets all requirements and specifications of the Ordinance and any adopted land use plans and is in harmony with the general purpose and intent and preserves its spirit; and
- b) The proposed use or structure will, if developed according to the plan submitted and approved, be visually and functionally compatible to the surrounding area; and
- c) The proposed use or structure will not be injurious to the public health, safety, and welfare, and will not be detrimental to the value of adjoining property and associated uses.

In approving an application for a Special Use Permit, the BOA may attach fair and reasonable conditions which support the required Findings of Fact. The BOA may not require the landowner to waive a vested right as a condition of the Special Use Permit approval. The burden of proof of producing evidence to support these Findings and to overcome any challenges that approval of the plan would be contrary to one or more of these Findings shall rest entirely with the applicant or landowner.

Discussion

SUP Case No. 12-390 includes the most recent conditions associated with the operation of 185 King Street. Mr. Wine is requesting the Board consider an additional amendment which will clarify his use and remove the remaining conditions.

According to Mr. Wine and the Transylvania County Fire Marshal's office the designation of a "nightclub" limits his maximum occupancy. This has proven detrimental to his business because neighboring businesses are not classified as a bar/tavern/nightclub and therefore can support larger crowds. The City's zoning ordinance defines bar/tavern/nightclub as:

Bar/tavern/nightclub: A business where alcoholic beverages are sold for on-site consumption, which are not part of a larger restaurant. This term includes bars, taverns, pubs, and similar establishments where any food service is subordinate to the sale of

alcoholic beverages. It may also include beer brewing as part of a microbrewery and other beverage tasting facilities. Entertainment including live music, and/or dancing, comedy, etc. may also be included

This is clearly the most accurate classification for Mr. Wine's establishment. However, for clarity purposes Staff recommends the Board consider designating 185 King Street as a *bar* in its motion and final Order. From a zoning standpoint this has no bearing on the case. The three uses are synonymous and are used in one definition.

A reclassification as a cultural or community facility is not suggested because it would limit alcohol sales to one-time special events. Mr. Wine has explained to Staff that alcohol sales are a primary use within this facility. Several times a week they also have music or live performances.

The other conditions associated with Mr. Wine's permit are the hours of operation. Currently Mr. Wine must operate 185 King Street according to the following schedule:

Sunday-Thursday: 3PM – 11PM
Friday: 3PM – 12 Midnight
Saturday: 12 Noon – 12 Midnight

Mr. Wine would like to remove these hours and only be required to follow North Carolina law as it relates to serving alcohol.

With the exception of one incident in October of 2012 there have been no complaints regarding Mr. Wine's property. The incident in 2012 was a violation of the original condition that sound *never* exit the facility. Subsequent to the October 2012 violation the City passed a noise ordinance which resulted in a revised condition that Mr. Wine simply comply with those standards. This resulted in removing the condition that sound *never* leave the facility from the original SUP.

Summary

Bar/taverns/nightclubs are allowable uses in a Neighborhood Mixed-Use zoning district. Mr. Wine has a valid SUP and would like clarification of his use designation from bar/tavern/nightclub to simply a bar. As stated above, from a zoning standpoint these three uses are synonymous.

The Planning Department received an application from Jackson Wine on May 2, 2017 to modify the conditions associated with his valid SUP (Case No. 12-390) which included a request to reclassify his existing use of a bar/tavern/nightclub to that of a cultural or community facility.



Vicinity Map



Site Map

From: Gerald Grose
To: [Daniel Cobb](#)
Subject: 185 King
Date: Wednesday, May 31, 2017 4:29:35 PM

Good Afternoon Daniel,

I meet with Jackson Wine this afternoon to discuss a change in his occupancy classification from "Night Club" to Tavern or Bar. I'm not sure what is involved in changing a special use permit, but it seems that this will be the only way to increase his occupant load for his establishment. Other building codes will come into play but these are items I feel that can be accomplished. Thanks.

If I can, I'll do my best to sit in on the meeting Tuesday afternoon.

Gerald M. Grose, Fire Marshal
Transylvania County Emergency Services
155 Public Safety Way
Brevard, North Carolina 28712
Phone: 828-884-3108
Cell: 828-553-9792
Email: Gerald.grose@transylvaniacounty.org