

## STAFF FINDINGS

March 16, 2010

AGENDA ITEM # 1  
PROJECT #10-00000046

A request by Joel Craig Finch for a Special Use Permit to operate an auto repair facility at 915 Pender Street, S in a B-4 zone.

APPROVED BY ASSISTANT DIRECTOR

STAFF ANALYSIS: In its review of the request, the City Planning Staff made the following “findings of fact” and suggests that the Board, likewise, include these among any specific “findings of fact” that they make regarding this case. Any such “findings of fact” should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

- FACT 1: The property in question is located at 915 Pender Street, S in Wilson County, North Carolina.
- FACT 2: The property is also known as 3721-45-7034.000 (PIN).
- FACT 3: The property is zoned B-4, the “intermediate business” district. The surrounding properties are zoned as follows:

NORTH	Apartments (B-4 & RA-6I)
SOUTH	Commercial (B-4)
EAST	Commercial (B-4)
WEST	Commercial (I-1)

- FACT 4: According to the City of Wilson Utility Customer Service Department this property has a business license for a Mechanic Shop that has been active since July 2004. At some point in time after obtaining the business license, the mechanic shop use ceased. According to our records, we see no evidence that the mechanic shop obtained a Special Use Permit although one was obtained for an auto sales business on October 17, 2000. The Special Use Permit for the auto sales business did not include mechanic work for the general public.

Note: Because we see no evidence a Special Use Permit was obtained for an auto repair facility, staff has assumed the use was either nonconforming or illegal.

- FACT 5: Currently the property is being used as a Furniture/Appliance Store. In order for this property to be used as an auto repair facility a Special Use Permit is required. This use requires a Special Use

Permit due to the fact that is less than  $\frac{3}{4}$  of an acre in size and it is within one hundred fifty (150) of a multi-family residential district.

FACT 6: Section 8.2.A of the City of Wilson Zoning Ordinance includes a "Table of Permitted Uses" for business districts that lists the following use as being permitted in the B-4 district:

Automobile/Motor vehicle sales, service, rental, repair (including body and fender repair), gasoline sales, and/or car wash, subject to Sections 8.2.B (9.10) and (36.10).

FACT 7: Section 8.2.B (9.10) (Automobile/motor sales, services, rental, repair, gasoline sales, and/or car wash) states that:

- A. All repair work shall be conducted entirely within an enclosed structure; car wash activities may be done outside when all requirements of the Stormwater Management Ordinance (Chapter 46 of the City Code) are complied with.
- B. No outside storage of junk vehicles or parts shall be permitted unless a permit for an automobile holding yard is also obtained; an automobile salvage yard as defined in Section 8.2.B (09.20), below, is not permitted.
- C. No vehicles displayed for sale or awaiting work or pick-up shall be located closer than five (5) feet to any adjoining property line.
- D. Intercom/sound systems shall not be audible at or beyond the property line.
- E. Not applicable to this request.
- F. In the B-4 and B-5 districts: All such uses on a parcel, or on adjacent parcels together, of less than three-fourths ( $\frac{3}{4}$ ) acre in size that are adjacent to, or within one hundred fifty (150) feet (including right-of-ways) of, a single-family or multifamily residential district, as described in Section 8.1.A, are subject to a Special Use Permit.
- G. Not applicable to this request.

FACT 8: Section 8.2.B (9.10).A applies to this case. The building has five bays in which auto repair may be conducted. Any car wash activities shall comply with the Stormwater Management Ordinance. Based on the applicant's application, he does not plan to wash cars on the site.

FACT 9: Section 8.2.B (9.10).B applies to this case. The applicant is not requesting an automobile holding yard.

- FACT 10: Section 8.2.B (9.10).C applies to this case.
- FACT 11: Section 8.2.B (9.10).D applies to this case.
- FACT 12: Section 8.2.B (9.10).F applies to this case. See Fact 5.
- FACT 13: Section 8.2.B (36.10) (Gas Pump Island Canopies) does not apply to this request.
- FACT 14: Section 5.5 covers parking requirements. For “auto repair/auto service centers,” the parking requirement is 3 spaces for each service bay or rack.

There are five bays in the building on this lot which would require 15 spaces. On a parking plan submitted by the applicant, 15 off-street parking spaces are shown.

- FACT 15: Construction Standards recommends approval. Construction Standards also states that the improvements to the building conducted as a result of fire damage last year have been inspected and approved.
- FACT 16: The Fire Department recommends approval and stated that the applicant must comply with the NC Fire Prevention Code.
- FACT 17: The Land Development Coordinator recommends approval provided the following items are completed:
1. Remove all trash and debris from the lot
  2. They should conduct no outside repair and should not use the lot as a holding yard for vehicles in multiple stages of repairs that are visible to the public.
- FACT 18: Section 7.B of the Zoning Ordinance, pertaining to the issuance of Special Use Permits, reads as follows:
1. Subject to paragraph 2, below, the Board of Adjustment shall issue the requested permit unless it concludes, based on the facts found and information submitted at the hearing, that:
    - (a) the requested permit is not in its jurisdiction according to the Table of Permitted Uses (Section 8.2.A.), or
    - (b) the application is incomplete, or
    - (c) if completed as proposed in the application, the development will not comply with one or more

requirements of the Zoning Ordinance (not including those the applicant is not required to comply with).

In granting such a permit, the Board of Adjustment shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the requirements of this ordinance.

2. Even if the Board of Adjustment finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based on the facts found and information submitted at the hearing, that if completed as proposed, the development, more probably than not:
  - (a) will materially endanger the public health or safety, or
  - (b) will substantially injure the value of adjoining or abutting property, or
  - (c) will not be in harmony with the area in which it is to be located, or
  - (d) will not be in general conformity with the Wilson Growth Plan, thoroughfare plan, or other plan officially adopted by the City Council.

PROCEDURE: The Board must proceed in accordance with Section 7.B as quoted in FACT 18.

RECOMMENDATION: Staff recommends you proceed as follows:

- Move that Facts 1-18 in the staff findings be adopted as “findings of fact” of the Board (*motion-second-and vote*).
- Move to conclude:
  1. that the requested permit is within the jurisdiction of the Board to issue;
  2. that the application is complete; and
  3. that, if completed as proposed in the application and in compliance with the recommended conditions, the development will comply with the requirements of the Zoning Ordinance.
- Move to grant the Special Use Permit subject to the following conditions:
  1. The applicant and operator of the establishment shall fully comply with all of the requirements of the Order together with any other applicable state or local rules, ordinances, laws and regulations of whatever nature.

2. If any of the conditions affixed to the permit or any part thereof shall be held invalid or void, then the permit shall become void and of no effect.
3. The Special Use Permit is granted for an Auto Repair Facility, ONLY.
4. All repair work shall be conducted entirely within an enclosed structure; any car wash activities must comply with all requirements of the City's Stormwater Management Ordinance (Chapter 46 of the City Code) (contact Daryl Norris, Stormwater Environmental Specialist, at (252) 296-3305 with any questions). No vacuuming may be conducted outside the building.
5. No outside storage of "junked motor vehicles," as defined in Section 3.27.B(3) of the Zoning Ordinance, or parts (including tires) shall be permitted unless a permit for an automobile holding yard is also obtained; an automobile salvage yard as defined in Section 8.23 is not permitted.
6. No vehicles displayed for sale or awaiting work or pick-up shall be located closer than five (5) feet to any adjoining property line.
7. Intercom/sound systems and/or other noise-making equipment shall not be audible at or beyond the property line.
8. Parking meeting the requirements of Section 5 shall be provided at all times.
9. The applicant must comply with the recommendations of the Fire Department and the Land Development Coordinator as noted in Facts 16 and 17.
10. A City of Wilson Privilege License shall be maintained at all times.
11. The area within 100 feet of the establishment shall be policed nightly to see that the area is cleaned up immediately after closing hours.
12. The City noise ordinance shall be complied with at all times.

STAFF FINDINGS  
MARCH 16, 2010

AGENDA ITEM # 2  
PROJECT #10-00000047

ITEM: Request by Joel Craig Finch for a Special Use Permit for an auto repair shop at 113 Pettigrew Street, S in a B-1 zone.

APPROVED BY ASSISTANT DIRECTOR

STAFF ANALYSIS: In its review of the request, the City Planning staff made the following "findings of fact" and suggests that the Board, likewise, include these among any specific "findings of fact" that they make regarding this case. Any such "findings of fact" should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

FACT 1: The property in question is located at 113 Pettigrew Street, S in Wilson, North Carolina.

FACT 2: The property is also known as PIN 3721-49-2332.000.

FACT 3: The property is zoned B-1, the "central business" district. The surrounding properties are zoned and used as follows:

North - B-1 (Business)  
South - B-1 (Business)  
East - B-1 (Business)  
West - B-1 (Business)

FACT 4: Section 8.2.A of the City of Wilson Zoning Ordinance includes a "Table of Permitted Uses" for business districts that lists the following use as being permitted in the B-1 district:

Automobile/Motor vehicle sales, service, rental, repair (including body and fender repair), gasoline sales, and/or car wash, subject to Sections 8.2.B (9.10) and (36.10).

FACT 5: Section 8.2.B (9.10) (Automobile/motor sales, services, rental, repair, gasoline sales, and/or car wash) states that:

A. All repair work shall be conducted entirely within an enclosed structure; car wash activities may be done outside when all requirements of the Stormwater Management Ordinance (Chapter 46 of the City Code) are complied with.

B. No outside storage of junk vehicles or parts shall be permitted unless a permit for an automobile holding yard is also

obtained; an automobile salvage yard as defined in Section 8.2.B (09.20), below, is not permitted.

- C. No vehicles displayed for sale or awaiting work or pick-up shall be located closer than five (5) feet to any adjoining property line.
- D. Intercom/sound systems shall not be audible at or beyond the property line.
- E. Not applicable to this request.
- F. Not applicable to this request.
- G. Not applicable to this request.

FACT 6: Section 8.2.B (36.10) (Gas Pump Island Canopies) is not applicable to this request.

FACT 7: Regarding Section 8.2.B (9.10) A., there is a one-bay shop building in which work is conducted on the property.

FACT 8: The applicant is required to comply with the conditions in Sections 8.2.B (9.10). To staff's knowledge, the business is not in compliance (see FACT 11).

FACT 9: Section 5.5 covers parking requirements. For "auto repair/auto service centers," the parking requirement is 3 spaces for each service bay or rack.

FACT 10: There is one bay in the building on this lot which would require 3 spaces. On an aerial map submitted by the applicant, 5 off-street parking spaces are shown.

FACT 11: Code Compliance has indicated denial based on a zoning inspection on March 4, 2010 at approximately 4:10 pm. The zoning inspection was conducted for the Special Use Permit request on the BOA agenda. It has been discovered that there were two people actively working on cars without a permit to run the auto repair business. There was a car on the lift, and multiple cars on the lot with hoods up. There were multiple tires being stored on the lot that should be removed. The fencing around lot is a point of concern from an appearance standpoint. It is in poor condition with plywood stuck up beside it in the front by the road which should be removed. There are two mobile storage trailers on the lot that need to be removed or a permit granted for them to remain. The business is required to have a bathroom; however current does not. Staff is concerned about the fire barrel inside the building being

utilized to heat the garage area; it is in poor repair. Recommend condition of approval be utilized to correct these measures.

FACT 12: Fire services has indicated approval regarding their areas of concern, provided all applicable codes are complied with.

FACT 13: Inspections has indicated approval regarding their areas of concern, provided that they must have an approved restroom that meets accessibility requirements of the NC State Building Code before it will be occupied.

FACT 14: Section 7.B. of the Zoning Ordinance, pertaining to the issuance of special use permits, reads as follows:

1. Subject to paragraph 2, below, the board of adjustment shall issue the requested permit unless it concludes, based on the facts found and information submitted at the hearing, that:
  - (a) the requested permit is not in its jurisdiction according to the Table of Permitted Uses (Section 8.2.A.), or
  - (b) the application is incomplete, or
  - (c) that, if completed as proposed in the application, the development will not comply with one or more requirements of the Zoning Ordinance (not including those the applicant is not required to comply with).
2. Even if the board of adjustment finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based on the facts found and information submitted at the hearing, that if completed as proposed, the development, more probably than not
  - (a) will materially endanger the public health or safety, or
  - (b) will substantially injure the value of adjoining or abutting property, or
  - (c) will not be in harmony with the area in which it is to be located, or
  - (d) will not be in general conformity with the Wilson Growth Plan, thoroughfare plan, or other plan officially adopted by the City Council.

PROCEDURE: The Board must proceed in accordance with Section 7.B as quoted in FACT 14.

RECOMMENDATION: Staff recommends you proceed as follows:

- Move that Facts 1-14 in the staff findings be adopted as “findings of fact” of the Board (motion-second-and vote).
- Move to conclude:
  1. that the requested permit is with the jurisdiction of the Board to issue;
  2. that the application is complete; and
  3. that, if completed as proposed in the application and in compliance with the recommended conditions, the development will comply with the requirements of the Zoning Ordinance.
- Move to continue Special Use Permit to allow applicant to comply with Code Compliance Specialist items as stated in FACT 11. If not in compliance by next meeting, City staff will recommend denial.

STAFF FINDINGS  
MARCH 16, 2010

AGENDA ITEM # 3  
PROJECT #09-0000043

A request by Chad Sharpe, as agent for QC Hickory, Inc., for a Special Use Permit to operate a pawn shop at 1001 Ward Boulevard in a B-4 zone.

APPROVED BY ASSISTANT DIRECTOR

STAFF ANALYSIS: In its review of the request, the City Planning Staff made the following "findings of fact" and suggests that the Board, likewise, include these among any specific "findings of fact" that they make regarding this case. Any such "findings of fact" should be made by separate motion(s) and vote(s) prior to any motion and vote to grant or deny the permit.

FACT 1: The property in question is located at 1001 Ward Blvd in Wilson County, North Carolina. This building was formerly a McDonald's restaurant.

FACT 2: The property is also known as 3711-67-2856.000 (PIN).

FACT 3: The property is zoned B-4, the "Intermediate Business" district. The surrounding properties are zoned and used as follows:

NORTH - Wilson Plaza Shopping Center (B-4)  
SOUTH - Wilson Plaza Shopping Center (B-4)  
EAST - Single-Family Residential (RA-6)  
WEST - Wilson Plaza Shopping Center (B-4)

FACT 4: Section 8.2.A of the City of Wilson Zoning Ordinance includes a "Table of Permitted Uses" for business districts that lists pawn shops as being permitted in the B-4 district.

FACT 5: There are no specific requirements in the Zoning Ordinance for pawn shops. However, Chapter 28 of the City Code does regulate pawnbrokers as follows:

Chapter 28 PAWNBROKERS\*

Sec. 28-1. Requirements for licensure.

(a) To be eligible for a pawnbroker's license, an applicant must:  
(1) Be of good moral character.

- (2) Not have been convicted of a felony within the last ten (10) years.
- (b) Every person desiring to engage in the business of pawnbroker shall petition the city for a license to conduct such business. Such petitions shall provide:
- (1) The name and address of the person and, in case of a firm or corporation, the names and addresses of the persons composing such firm or of the officers, directors, and stockholders of such corporation, excluding shareholders of publicly traded companies.
  - (2) The name of the business and the street and mailing address where the business is to be operated.
  - (3) A statement indicating the amount of net assets or capital proposed to be used by the petitioner in the operation of the business; this statement shall be accompanied by an unaudited statement from an accountant or certified public accountant verifying the information contained in the accompanying statement.
  - (4) An affidavit by the petitioner that he has not been convicted of a felony.
  - (5) A certificate from the chief of police, or sheriff of the county, or the state bureau of investigation that the petitioner has not been convicted of a felony.
- (c) Licenses shall be granted under this chapter by the city if the pawnshop is to be operated within the corporate limits of the city as defined by G.S. 160A-1.
- (d) Any license granted under this chapter may be revoked by the city, after a hearing, for substantial abuses of this chapter by the licensee.

#### Sec. 28-2. Bond.

- (a) Every person licensed to engage in business as a pawnbroker within the city shall, at the time of receiving such license, file with the mayor a bond payable to the city in the sum of five thousand dollars (\$5,000.00), to be executed by the person so licensed and by two (2) responsible sureties, or a surety company licensed to do business in the state, to be approved by the mayor, which bond shall be for the faithful performance of the requirements and obligations pertaining to the business so licensed.
- (b) The city may sue for forfeiture of the bond upon a breach thereof. Any person who obtains a judgment against a pawnbroker and upon which judgment execution is returned unsatisfied may maintain an action in his own name upon the bond, to satisfy the judgment.

#### Sec. 28-3. Records.

- (a) Every pawnbroker shall keep consecutively numbered records of each and every pawn transaction, which shall correspond in all essential particulars to a detachable pawn ticket or copy thereof attached to the record.
- (b) The pawnbroker shall, at the time of making the pawn or purchase transaction, enter upon the pawn ticket a record of the following information which shall be typed or written in ink and in the English language:
  - (1) A clear and accurate description of the property, including model and serial number if indicated on the property.
  - (2) The name, residence address, phone number, and date of birth of pledgor.
  - (3) Date of the pawn transaction.
  - (4) Type of identification and the identification number accepted from pledgor.
  - (5) Description of the pledgor including approximate height, weight, sex and race.
  - (6) Amount of money advanced.
  - (7) The date due and the amount due.
  - (8) All monthly pawn charges, including interest, annual percentage rate on interest, and total recovery fee.
  - (9) Agreed upon "stated value" between pledgor and pawnbroker in case of loss or destruction of pledged item; unless otherwise noted, "stated value" is the same as the loan value.
- (c) The following shall be printed on all pawn tickets:
  - (1) The statement that "ANY PERSONAL PROPERTY PLEDGED TO A PAWNBROKER WITHIN THIS STATE IS SUBJECT TO SALE OR DISPOSAL WHEN THERE HAS BEEN NO PAYMENT MADE ON THE ACCOUNT FOR A PERIOD OF 60 DAYS PAST MATURITY DATE OF THE ORIGINAL CONTRACT. NO FURTHER NOTICE IS NECESSARY."
  - (2) The statement that "THE PLEDGOR OF THIS ITEM ATTESTS THAT IT IS NOT STOLEN, HAS NO LIENS OR ENCUMBRANCES, AND IS THE PLEDGOR'S TO SELL OR PAWN."
  - (3) The statement that "THE ITEM PAWNED IS REDEEMABLE ONLY BY THE BEARER OF THIS TICKET OR BY IDENTIFICATION OF THE PERSON MAKING THE PAWN."
  - (4) A blank line for the pledgor's signature and the pawnbroker's signature or initials.
- (d) The pledgor shall sign the pawn ticket and shall receive an exact copy of the pawn ticket which shall be signed or initialed by the pawnbroker or any employee of the pawnbroker. These records shall be available for inspection and pickup each regular workday by the chief of police. These records shall be a correct copy of the entries made of the pawn or purchase transaction

and shall be carefully preserved without alteration, and shall be available during regular business hours.

- (e) Except as otherwise provided in this chapter, any person presenting a pawn ticket to a pawnbroker is presumed to be entitled to redeem the pledged goods described on the ticket.

Sec. 28-4. Inspection of records.

The records kept by pawnbrokers shall at all reasonable times be open to the inspection of city officers.

Sec. 28-5. Dealing with minors.

A pawnbroker shall not accept a pledge from a person under the age of eighteen (18) years.

FACT 6: The Code Compliance Specialist recommends approval of the request and states that the building has adequate parking, including handicap accessible parking. Fire Services recommends approval, subject to meeting all the requirements of the NC Fire Prevention Code. Construction Standards recommends approval.

FACT 7: Section 7.B of the Zoning Ordinance, pertaining to the issuance of special use permits, reads as follows:

1. Subject to paragraph 2, below, the board of adjustment shall issue the requested permit unless it concludes, based on the facts found and information submitted at the hearing, that:
  - (a) the requested permit is not in its jurisdiction according to the Table of Permitted Uses (Section 8.2.A.), or
  - (b) the application is incomplete, or
  - (c) if completed as proposed in the application, the development will not comply with one or more requirements of the Zoning Ordinance (not including those the applicant is not required to comply with).

In granting such a permit, the board of adjustment shall designate such conditions in connection therewith as will, in its opinion, assure that the use will conform to the requirements of this ordinance.

2. Even if the board of adjustment finds that the application complies with all other provisions of this ordinance, it may still deny the permit if it concludes, based on the facts found and

information submitted at the hearing, that if completed as proposed, the development, more probably than not:

- (a) will materially endanger the public health or safety, or
- (b) will substantially injure the value of adjoining or abutting property, or
- (c) will not be in harmony with the area in which it is to be located, or
- (d) will not be in general conformity with the Wilson Growth Plan, thoroughfare plan, or other plan officially adopted by the City Council.

PROCEDURE: The Board must proceed in accordance with Section 7.B as quoted in FACT 7.

RECOMMENDATION: Staff recommends you proceed as follows:

- Move that Facts 1-7 in the staff findings be adopted as “findings of fact” of the Board (*motion-second-and vote*).
- Move to conclude:
  - 4. that the requested permit is within the jurisdiction of the Board to issue;
  - 5. that the application is complete; and
  - 6. that, if completed as proposed in the application and in compliance with the recommended conditions, the development will comply with the requirements of the Zoning Ordinance.
- Move to grant the Special Use Permit subject to the following conditions:
  - 1. The applicant and operator of the establishment shall fully comply with all of the requirements of the Order together with any other applicable state or local rules, ordinances, laws and regulations of whatever nature.
  - 2. If any of the conditions affixed to the permit or any part thereof shall be held invalid or void, then the permit shall become void and of no effect.
  - 3. The Special Use Permit is granted for a pawn shop, ONLY.
  - 4. That the applicant complies with Chapter 28 of the City of Wilson Code.
  - 5. Any signs displayed concerning this use shall meet all requirements of the Zoning Ordinance.

6. A City of Wilson Business License shall be maintained at all times.