

STAFF FINDINGS
APRIL 20, 2010

AGENDA ITEM # 1
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 condition. Recommend condition of approval be utilized to correct these measures.

Update: On Monday April 12, 2010 Code Compliance staff inspected the subject property and found that is has not come into compliance with the issues noted from the previous inspection on March 4, 2010. Staff noted that one of the mobile storage trailers has been removed from the site. However, there are still cars on the lot that have not been removed, tires are still being stored on the property, and fencing around the lot has not been repaired. Staff feels that there has been insufficient progress made for staff to recommend approval of the special use permit.

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 deny Special Use Permit for not being in compliance with issues noted by the Code Compliance Specialist in FACT 11.

Or, if the board wishes to grant the Special Use Permit;

- Move to grant Special Use Permit subject to the following conditions:
 1. The applicant and the 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 automobile repair business, ONLY.
4. All repair work shall be conducted entirely within an enclosed structure; car wash activities must comply with all requirements on 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 3.24.5(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 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 requirements of Section 5 of the Zoning Ordinance shall be provided at all times.
9. All signs shall comply with Section 9 of the Zoning Ordinance.
10. A City Privilege License shall be maintained at all times.
11. The City noise ordinance shall be complied with at all times.
12. Address Code Compliance Specialist comments in FACT 11.
13. Provide a continuous solid planted buffer to be six (6) feet tall within 5 years of planting, or a solid fence adjacent to residential uses.

STAFF FINDINGS
APRIL 20, 2010

AGENDA ITEM #2
PROJECT #10-0000074

ITEM: Request by Bobby Bennett, as agent for Sigma Phi Epsilon fraternity, to renew a Special Use Permit for a fraternity house at 606 Nash Street, NE in an O&R-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 606 Nash Street, NE in Wilson, North Carolina.

FACT 2: The property is also known as 3722-13-7507.000.

FACT 3: The property is zoned O&R-1, an office and residential district. The surrounding properties are zoned as follows:

NORTH	-	Office (O&R-1)
SOUTH	-	Office (O&R-1) and Residential (RA-6I)
EAST	-	Residential (RA-6I)
WEST	-	Office (O&R-1)

FACT 4: Section 3.1 of the City of Wilson Zoning Ordinance is entitled "Definition." It includes the following definition for "fraternity house:"

Fraternity/sorority house. A structure used to provide housing for fraternal or sisterhood organization members while such persons are attending college.

FACT 5: Section 8.2.A of the Zoning Ordinance includes a "Table of Permitted Uses" for office and residential districts. That table lists a "fraternity house," subject to a Special Use Permit and the requirements of Section 8.2.B (33.10), as a permitted use in the O&R-1 zone.

FACT 6: Section 8.2.B (33.10) lists the following requirements for fraternity houses:

A. Minimum lot size is ten thousand (10,000) square feet.

- B. Minimum of two hundred fifty (250) square feet of usable building space per resident.
- C. Minimum of one (1) parking space per resident.
- D. Residential uses shall be limited to one (1) principal building with no residential uses permitted in accessory buildings.
- E. Maximum lot coverage by buildings shall be thirty-five (35) percent.
- F. Where a fraternity/sorority house adjoins a residential district, an existing residential use in an O&R-1 or O&R-2 zone, or is located within a residential district, a continuous planted buffer strip or a solid fence or wall shall be constructed and properly maintained within the required setbacks along all rear and side property lines. Such buffer strip, if planted, shall be composed of and maintained with the healthy plants which possess growth characteristics of such a nature as to produce, within five (5) years, a planting screen not less than six (6) feet high that will obscure objects behind the screen at a distance of fifty (50) feet.
- G. Standards set forth in Chapter 43, "Housing" and Chapter 39, "Abandoned structures," of the City Code shall be met.

FACT 7: "A" of Section 8.2.B (33.10) is applicable. The lot in question is 37,503 square feet according to Wilson County tax office. This will exceed the required 10,000 square feet minimum lot size.

FACT 8: "B" of 8.2.B (33.10) is applicable. According to the Wilson County Tax records, the dwelling is 4,393 square feet. This would allow up to 17 residents.

FACT 9: The applicant submitted an abbreviated site plan on March 13, 2008 that shows the amount of parking available as 17 parking spaces.

FACT 10: "D" of 8.2.B (33.10) is applicable. There are two accessory buildings on the property. Based on the condition granted in 2009 for the property, the accessory buildings should be solely used for storage or auxiliary work space or removed entirely, except that nearest accessory building may be utilized for social activities or similar recreational purposes. In no event shall the accessory buildings be utilized for dwelling and sleeping purposes.

FACT 11: "E" of 8.2.B (33.10) is applicable. Based on a lot area of 37,503 square feet, 13,126 square feet is the maximum lot coverage. The dwelling is 3,619 square feet in area, the accessory buildings are 744 square feet, for a total of 4,363 square feet. This is one-third of the maximum coverage allowed.

- FACT 12: "F" of 8.2.B (33.10) is applicable. The fraternity will have to maintain the required landscaping buffer strip and/or fence needed to comply with requirements of this section. If the landscaping ever needs to be replaced, it must be installed at a height of not less than 36 inches.
- FACT 13: "G" of 8.2.B (33.10) is applicable. All requirements of Chapter 39 and 43 shall be met.
- FACT 14: On May 19, 2009, the Board of Adjustment held a hearing to determine if the fraternity house complied with all the requirements of its special use permit. After conducting the hearing, the Board approved the special use permit and included an expiration date of April 2010.
- FACT 15: Construction Standards within the Inspections Division recommends approval, subject to compliance with the NC Building Code.
- FACT 16: The Fire Department recommends approval, subject to compliance with the NC Fire Prevention Code.
- FACT 17: The Code Compliance Specialist recommends approval, subject to the following:
1. Must comply with all applicable codes and ordinances;
 2. Must have an annual Housing Inspection for compliance;
 3. Any repairs must be made prior to permit being issued;
 4. Must have an annual Fire Inspection for compliance.
- 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) 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 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 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 the case until June. At that time, staff recommends setting up the fraternity with a housing inspection by the City of Wilson Neighborhood Improvement staff, done on an annual basis, and granting a Special Use Permit with no expiration date, 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 shall be granted exclusively for the purpose of the fraternity making use of the property as a fraternity house for the residency of their membership. Any change in this use for other purposes or change in

ownership shall result in reconsideration of the Special Use Permit or revocation of such permit upon review by the Board of Adjustment.

4. Where neighborhood complaints are such that appeals are made to the Board of Adjustment, the Board shall hear such complaints and make necessary findings as to whether or not to revoke the Special Use Permit and/or set forth additional conditions of operation to further ensure or encourage compatibility and non-detrimental impact of the use within the neighborhood.
5. Withstanding emergencies, all vehicular traffic shall utilize the existing entrance/exit drive along Nash Street as shown on the abbreviated site plan (received by staff on March 13, 2008). The fraternity may gain vehicular access through the back alley for special services or uses and other such occasions upon obtaining written permission of adjacent property owners abutting such alley. In addition, all parking necessary to accommodate the residents and visitors shall be accomplished on site, except as granted by written permission of adjacent property owners to utilize such adjacent properties for occasional off-site parking.
6. The accessory buildings within the rear or back yard of the property shall be utilized solely for storage or auxiliary work space or removed entirely, except that the nearest accessory building to the main building may be utilized for purposes of social activities or similar recreational activities.
7. There must be one police officer for every 50 guests, or fraction thereof, for all events held at the fraternity house.
8. Section 43-10 of the Housing Code which sets forth minimal standards applicable to rooming houses shall also be applicable to this fraternity house.
9. The applicant will comply with all Fire and Building Codes.
10. A housing inspection shall be conducted by the City of Wilson Neighborhood Improvement staff for the fraternity in June of every year. The fraternity shall comply with all aspects of the housing inspection within the allotted schedule.
11. The fraternity must maintain the required landscaping buffer strip and/or fence needed to comply with requirements of Section 8.2.B (33.10)F. If the landscaping buffer is determined to be replaced or improved, it must be installed at a height of not less than 36 inches per planting.

STAFF FINDINGS

April 20, 2010

AGENDA ITEM # 3
PROJECT # 10-00000081

A request by Gail Hinnant for a Variance from Section 3.7 to allow the applicant to erect a house on a lot which does not abut a dedicated public street. The property is located at 5333-E NC 58, N in A-1 & I-1 zones.

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 5333-E NC 58, N in Wilson County, North Carolina.
- FACT 2: The property is also known as 3714-08-7326.000 (PIN).
- FACT 3: The property is zoned A-1, an agricultural/single family residential district and the I-1, an industrial district. The surrounding properties are zoned as follows:
- | | | |
|-------|---|----------------------|
| NORTH | - | Single-Family (A-1) |
| SOUTH | - | Rural Homesite (I-1) |
| EAST | - | Rural Homesite (I-1) |
| WEST | - | Vacant (A-1 & I-1) |
- FACT 4: Section 3.7.A (Street Access) of the Zoning Ordinance states that “no building or structures shall be erected on a lot which does not abut a dedicated public street.” The property in question does not abut a dedicated public street.
- FACT 5: The applicant stated to city staff that the property was deeded to her as a gift from her father. Her desire is to build a single-family house and a garage on the property. Currently the property is zoned A-1& I-1 with the majority of the property being zoned I-1. Single-family homes are not allowed in an I-1 zone. The applicant is

aware that she will need to apply for a rezoning and the rezoning will have to be approved by City Council to a district that permits single-family homes prior to any building permits being released.

- FACT 6: The applicant states that an access easement to the property is recorded at the Wilson County Register of Deeds.
- FACT 7: The applicant submitted a statement dated March 16, 2010 from the Silver Lake Fire Department stating that they have examined the right-of-way to the property and has determined it is sufficient for emergency vehicles to gain access.
- FACT 8: In preparing these findings, staff discovered that the square footage of the lot was only 34,424.72. Section 8.3.A requires a lot to have 40,000 square foot in area if served by septic tank or well, or both in an A-1 zone. Staff will make a request to the Board to continue this case.
- FACT 9: Section 20.11(c) lists the conditions necessary for the granting of a Variance and the conditions are listed as follows. To authorize upon appeal in specific cases such variance from the terms of this ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this ordinance will result in undue hardship and so that the spirit of this ordinance shall be observed, public safety and welfare secured, and substantial justice done.
No change in permitted uses may be authorized by variance.
In considering all proposed variances to this ordinance, the board shall first find that all of the following conditions exist in each individual case:
- (1) There are practical difficulties or unnecessary hardships in the way of carrying out the spirit of this ordinance because:
 - i. If the applicant complies with the provisions of this ordinance, the property owner cannot secure a reasonable return from, or make any reasonable use of, his property; and
 - ii. The hardship results from the application of this ordinance; and
 - iii. The hardship is suffered by the applicant's property; and
 - iv. The hardship is not the result of the applicant's own action; and
 - v. The hardship is peculiar to the applicant's property and is due to the particular characteristics of the property because of its size, shape or topography that are not applicable to

other lands or structures in the same neighborhood which may reflect an undue stringency of the Zoning Ordinance itself.

- (2) A variance will be in harmony with the general purpose and intent of this ordinance, will preserve its spirit and will do substantial justice. (Variances which change the district boundaries shown on the official zoning map, or which expand or extend a nonconforming use, or which permit a use forbidden by this ordinance, conflict with the "spirit" of this ordinance.)
- (3) A variance will not impair an adequate supply of light and air to adjacent properties; will not materially increase the public danger of fire and safety; will not materially diminish or impair established property values within the surrounding area; and will not otherwise impair the public health, safety or general welfare.

Appropriate conditions, which must be reasonably related to the condition or circumstance that gives rise to the need for a variance, may be imposed on any approval issued by the board.

A hardship peculiar to the applicant as distinguished from others affected by the general rule must be shown. The fact that property may be utilized more profitably will not be considered adequate grounds to justify the board granting a variance.

The board may grant the minimum reasonable variance required to continue a use, either a nonconforming or conforming one, that has been rendered unusable by virtue of the widening of a public street.

The board is not a legislative body and has no power to rewrite the provisions of this ordinance. It may, however, vary the application of this ordinance in particular cases when the conditions enumerated above are found to exist. The power to grant variances is to be sparingly exercised and only in rare instances and under exceptional circumstances peculiar in their nature and with due regard to the main purpose of this ordinance to preserve the property rights of others.

RECOMMENDATION: Staff recommends that the Board continue this request to allow time for a revised legal ad to be advertised including the square foot reduction request if the applicant plans to rezone the property to an A-1 district.

However,

If the Board decides to hear the case, staff recommends that the following conditions be attached to the variance if the Board decides to grant the variance to the applicant.

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 property must be rezoned to a district that allows for single-family dwellings.