



Legislation Text

File #: 21-2219, Version: 1

TO: Mayor and Members of City Council

**THRU: Telly C. Whitfield, Ph.D. - Assistant City Manager
Dr. Gerald Newton, AICP - Development Services Director
Taurus Freeman, MPA - Planning & Zoning Division Manager**

FROM: Craig M. Harmon, CZO, Planner II

DATE: September 27, 2021

RE:
SUP21-06: Special Use Permit to allow a reduction in the separation standards for a bar in the Downtown (DT) zoning district, to be located at 123 Hay Street (REID # 0405140604000), totaling 0.24 acres ± and being the property of John D. & Katherine Holms Wheeler; Weeks Rental Properties.

COUNCIL DISTRICT(S):
2 - Shakeyla Ingram

Relationship To Strategic Plan:
Strategic Operating Plan FY 2022
Goals 2026

Goal II: Responsive City Government Supporting a Diverse and Viable Economy

- Objective 2.1 - To ensure a diverse City tax base
- Objective 2.4 - To sustain a favorable development climate to encourage business growth.

Goal III: City Investment in Today and Tomorrow

- Objective 3.2 - To manage the City's future growth and strategic land use.
- Objective 3.3 - To sustain a favorable development and business climate through timely and accurate construction review and building inspection services

Goal IV: Desirable Place to Live, Work and Recreate

- Objective 4.3 - To improve mobility and connectivity through sidewalk, trail, and bike lane investments
- Objective 4.4 - To provide a clean and beautiful community with increased green spaces
- Objective 4.5 - To ensure a place for people to live in great neighborhoods

Executive Summary:

Evidentiary Hearing

During an Evidentiary Hearing, the burden of demonstrating that an application complies with applicable review and approval standards of this Ordinance is on the applicant, which shall be demonstrated by competent, material, and substantial evidence. The burden is not on the City or other parties to show that the standards have not been met by the applicant.

Bars and Cocktail Lounges are allowed by right in the Downtown (DT) zoning district; however, a distance of 500 foot is required from such uses as educational facilities, religious institutions and daycare centers. This is a request for a Special Use Permit to allow a bar to reduce the required 500-foot distance separation to approximately 95 feet. The lot is located in the 100 block of Hay Street.

Bars and Cocktail Lounges are defined as establishments having as its principal or predominant use the serving of beer, wine, or liquor for consumption on the premises, and which sets a minimum age requirement for entrance, consistent with state law. The primary source of revenue for such use is derived from alcohol sales, and the secondary source from the serving of food. Such uses may also provide on-site entertainment in the form of live performances, dancing, billiards, or other entertainment activities. Performances related to the display of specified anatomical areas (as defined by Section 14-202.10 of the North Carolina General Statutes) are classified as Adult Entertainment uses.

Background:

Owner: John D. & Katherine Holms Wheeler; Weeks Rental Properties

Applicant: Julianne Harrelson, Critical Path Solutions, LLC

Requested Action: SUP

Properties Addresses: 123 Hay Street

Council District: 2 - Shakeyla Ingram

Status of Properties: Developed

Size: Approximately 0.24 acres

Adjoining Land Use & Zoning:

- North: DT - Commercial
- South: DT - Commercial
- West: DT - Commercial
- East: DT - Commercial

Letters Mailed: 109

Land Use Plan: Downtown - (DTMXU)

Additional Reviews:

A Technical Review Committee (TRC) examination was conducted as part of the Special Use Permit process. However, this use is allowed in the zoning district so a complete review of the project will be conducted as part of the Development Review process to ensure the development meets all development standards for the use.

In general development comments were received, but no specific comments were addressed at this time.

Issues/Analysis:

History

In 2016, the City Council amended the City Code as follows to allow a reduction in the 500 foot separation requirements for bars in the Downtown (DT) zoning district:

Article 30-4: Use Standards

30-4.C. Use-Specific Standards

Use-specific standards are the requirements applied to individual use types regardless of the zoning district in which they are located or the review procedure by which they are approved. This section is intended to identify the use-specific standards for all principal uses identified in Table 30-4.A, Use Table, as subject to "additional requirements." These standards may be modified by other applicable requirements in this Ordinance.

These standards are not subject to a variance request. However, with the following exceptions or as explicitly stated in other sections of this ordinance, the separation standards may be reduced upon approval of a special use permit finding that the reduction in the separation standard does not increase negative impacts on surrounding uses and that there are specific characteristics that help minimize any negative impacts, such as natural or man-made features that create visual or physical separation between the uses. Consistent with standards for the procedure in Article 30-2.C.7 Administration - Special Use Permit, conditions may be attached to further minimize or prevent negative impacts, including limitations on hours of operation, maximum size, or range of activities. Uses which cannot use the special use process to seek reduction in separation standards are:

1. adult entertainment
2. bar, nightclub, cocktail lounge except that a bar in the DT Downtown district can request a reduced separation standard from any child care center, religious institution, or educational facility through the special use process.

This code amendment now allows bars, nightclubs and cocktail lounges to request a reduction in the required 500 foot separation in the downtown area from such uses as educational facilities, religious institutions and daycare centers. The owners of 123 Hay Street have applied for a SUP for just this type of reduction. The subject property is within 500 feet of two properties that would restrict its placement there.

1. 100 feet from the Capital Encore Academy (letter of support attached)
2. 450 feet from First Baptist Church of Fayetteville

The proposed use would not meet the state's definition of a restaurant which is an establishment substantially engaged in the business of preparing and serving meals. To qualify as a restaurant, an establishment's gross receipts from food and nonalcoholic beverages shall be not less than thirty percent (30%) of the total gross receipts from food, nonalcoholic beverages, and alcoholic beverages. beverages sold for on-premises consumption. If this use were part of a restaurant it would not be required to have a special use permit.

Surrounding Area

This site is located on the south side of the 100 block of Hay Street, downtown. This portion of Hay Street is completely commercialized. Across Hay Street are businesses such as Gaston Brewing Company, Capital Encore Academy, and City Center Gallery and Books. To the east and west are a mix of mostly commercial retail and office uses. To the south of this site is a parking/delivery area and Franklin Street.

Special Use Permit Request

A bar is requesting a Special Use Permit to reduce the 500-foot distance separation between educational facilities, religious institutions and daycare centers to approximately 95-feet. The site is currently zoned as Downtown (DT) and is an antique store known as The Shops at 123 Hay Street.

According to the application, Southern Pines Brewing Company plans to operate a taproom, similar to its second taproom location in downtown Southern Pines at 205 W. Pennsylvania Avenue (photo attached). It will hold a malt beverage on and off-premise permit as well as a wine on-premise permit. This will allow for the on-site consumption of beer, wine, and cider as well as for customers to purchase beer to-go. The location will not become a private club and will not serve liquor or spirits. A light snack menu will be included to stay in compliance with North Carolina ABC laws for establishments with an on-premise wine permit. It will not include a kitchen or prepare food on-site, but rather encourage customers to bring in food from the surrounding local businesses if they so desire. It will also not manufacture beer on site, but rather sell beer that has been manufactured at its main production brewery.

The application also states that Southern Pines Brewing Company's Hay Street Taproom will be a place for people to gather, enjoy the company of others, and socialize in a relaxed setting. It will provide a community, family friendly atmosphere and look for ways to be involved in the events that take place downtown. It will be a place for people to meet up before dinner, a place to grab drinks after dinner, a place to hold a business meeting, and a place for a retirement or going away parties.

The applicants intend for the location to be open seven days a week. Their initial plan will be to open from 12-10 p.m., Monday through Wednesday; Thursday from 12-11 p.m.; Friday and Saturday from 11 a.m. to midnight; and Sunday from 12-10 p.m. The taproom will employ roughly 15 individuals and will be open to the public.

Bars are allowed by right in the Downtown (DT) zoning district. This Special Use Permit is not to allow the use, but to reduce the required distance separation. Section 30-4.C of the Unified Development Ordinance states that "separation standards may be reduced upon approval of a Special Use Permit finding that the reduction in the separation standard does not increase negative, such as natural or man-made features that create visual or physical separation between the uses."

According to David Owens, Professor of Public Law and Government at the UNC School of Government, under North Carolina law the state Alcoholic Beverage Control (ABC) Commission has the ultimate decision-making authority on most aspects of alcohol sales. The applicable statute, G.S. 18B-901, provides that the ABC Commission issues all ABC permits and sets forth the factors to be considered by the commission in issuing permits. These include several land use factors: the number of places already holding ABC permits within the neighborhood, parking and traffic, the kinds of businesses already in the neighborhood, the proximity of schools and churches, zoning, local government recommendations, and potential detriment to the neighborhood.

The statutes require that notice be given to local governments before a decision is made on ABC permit applications. The ABC Commission must consider local ordinances but is not bound by them. Once a liquor merchant has secured a state ABC permit, that merchant is for the most part exempt from zoning restrictions, such as local restrictions on the location of the facility, limits on hours of operation, entertainment within the facility, and even signs advertising alcohol products.

The 2040 Land Use Plan and Map identifies this site as being suitable for Downtown (DTMXU). Downtown is defined as intense commercial, retail, service. Many 5+ story buildings (esp. in core). Dense residential uses, stacked vertically and urban neighborhoods on edges.

Land within the City is generally classified by the Unified Development Ordinance (UDO) to be within

one of a number of base zoning districts. Land may be reclassified to one of a number of comparable zoning districts in accordance with Section 30-2.C.

The SUP must meet the following findings of facts:

(1) The special use complies with all applicable standards in Section 30-4.C, Use-Specific Standards;

Currently, the Unified Development Ordinance identify the standards below for Bars, nightclubs, and similar establishments:

30-4.C.4.i. Retail Sales and Services

Bars, Nightclubs, and Similar Establishments shall comply with the following standards:

1. Bars, nightclubs, and similar establishments shall be located at least 500 feet from any child care center, religious institution, or educational facility. (Applicant requests a reduction to approximately 95 feet)

(2) The special use is compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands;

The application states the bar is compatible with all surrounding uses (retail and entertainment - including restaurant bars with full ABC Licenses).

(3) The special use avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration;

The applicant attest to there will be no adverse impact on surrounding lands.

(4) The special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands;

The applicant states the building will not be significantly altered and no visual impact upon adjacent lands. Any changes to the exterior of the building will require a Certificate of Appropriateness from the City's Historic Recourses Commission, since this property is in the Downtown Historic District.

(5) The special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources;

The applicant states the site in question is completely developed and will not affect deterioration of water and air resources, wildlife habits, scenic resources and any other natural resources in the vicinity.

(6) The special use maintains safe ingress and egress onto the site and safe road conditions around the site;

The applicant attest that ingress and egress will be limited to foot traffic only.

(7) The special use allows for the protection of property values and the ability of neighboring lands to develop the uses permitted in the zoning district; and

The applicant states that the surrounding area is already fully developed and the special use will not adversely affect property values.

(8) The Special use complies with all other relevant City, State, and Federal laws and regulations.

As depicted on the accompanying site plan for the proposed development, the use for which this SUP is requested complies with all use regulations and development standards of the City of Fayetteville. The applicant will be required to meet all applicable standards.

Budget Impact:

This action should result in no increase in City services.

Options:

- (1) Approve the SUP with any conditions listed above
- (2) Approve the SUP with additional conditions;
- (3) Approve the SUP without conditions; or
- (4) Deny the SUP.

Recommended Action:

OPTION 1

I move to APPROVE the Special Use Permit (SUP) to allow a bar to operate at 123 Hay Street, subject to all conditions identified in and conforming to the current Unified Development Ordinance standards as presented by staff, based on the standards of the City's development code and the evidence presented during this hearing. And that the application is consistent with applicable plans because: (1) the development is located in a Downtown (DT) zoning district and (2) that this use complies with the findings listed and (3) the proposed permit is in the public interest because the proposed SUP does fit with the character of the area.

[Applicable to Motion to Approve] If approved, this Special Use Permit shall become effective upon the approval of its Order of Findings by the City Council. The SUP shall expire one year from its effective date if a building permit is not issued within that time.

*For a motion to approve, all eight findings below must be met:

- (1) The special use will comply with all applicable standards in Section 30-4.C, Use-Specific Standards; [insert supporting facts]
- (2) The special use is compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands; [insert supporting facts]
- (3) The special use avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration; [insert supporting facts]
- (4) The special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands; [insert supporting facts].
- (5) The special use avoids significant deterioration of water and air resources, wildlife habitat,

- scenic resources, and other natural resources; [insert supporting facts]
- (6) The special use maintains safe ingress and egress onto the site and safe road conditions around the site; [insert supporting facts].
 - (7) The special use allows for the protection of property values and the ability of neighboring lands to develop the uses permitted in the zoning district; [insert supporting facts]
 - (8) The special use complies with all other relevant City, State, and Federal laws and regulations. [insert supporting facts]

-OR -

OPTION 2

I move to DENY the Special Use Permit (SUP) to allow a bar to operate at 123 Hay Street, as presented by staff, based on the standards of the City's development code and the evidence presented during this hearing. And that the application does not meet the finding(s) of fact listed below. More specifically finding(s) #_____.]

[Applicable to Motion to Deny] If denied this action shall become effective upon the approval of its Order of Findings by the City Council.]

* For a motion to deny only one of the findings shown below needs to not apply.

- (1) The special use will comply with all applicable standards in Section 30-4.C, Use-Specific Standards; [insert supporting facts]
- (2) The special use is compatible with the character of surrounding lands and the uses permitted in the zoning district(s) of surrounding lands; [insert supporting facts]
- (3) The special use avoids significant adverse impact on surrounding lands regarding service delivery, parking, loading, odors, noise, glare, and vibration; [insert supporting facts]
- (4) The special use is configured to minimize adverse effects, including visual impacts of the proposed use on adjacent lands; [insert supporting facts].
- (5) The special use avoids significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources; [insert supporting facts]
- (6) The special use maintains safe ingress and egress onto the site and safe road conditions around the site; [insert supporting facts].
- (7) The special use allows for the protection of property values and the ability of neighboring lands to develop the uses permitted in the zoning district; [insert supporting facts]
- (8) The special use complies with all other relevant City, State, and Federal laws and regulations. [insert supporting facts]

Attachments:

1. Application
2. Aerial Map
3. Zoning Map
4. Land Use Plan Map
5. Subject Property
6. Surrounding Properties
7. Site Map
8. Southern Pines Brewing (Downtown Southern Pines Tap Room)