

MEMORANDUM

TO: Board of Adjustment Members

FROM: Community Development Department

DATE: November 12, 2024

RE: Special Use Application – City of Hendersonville – 629 5th Avenue W.

SUMMARY: The Community Development Department has received an application from George Workman and Jessica Bayer, partners in G+J Coffee House, for a Special Use Permit. The subject property is currently zoned MIC, Medical, Institutional, and Commercial. The Special Use Permit is requested for restaurant use under Section 5-10-2 of the Zoning Ordinance.

SPECIAL USE REQUEST: The Special Use Permit is requested for restaurant use under Section 5-10-2 of the Zoning Ordinance.

PROPOSED FINDINGS OF FACT:

- Based on Henderson County records, the subject property possesses a PIN of 9568-58-7321 and is zoned MIC Medical Institutional and Cultural.
- Based on Henderson County records, the lot size is approximately .3 acres.
- Based on City of Hendersonville records, the subject property is located on a Major Thoroughfare.
- Based on Henderson County records, a North Carolina General Warranty Deed between Geral M. Haskins and wife, Fonda C. Haskins (Grantor) to Gerald M. Haskins and wife, Fonda C. Haskins.
- *Section 5-10-2* of the zoning ordinance requires a Special Use Permit for Restaurants in the MIC zoning district.

CODE REFERENCE:

5-10-2. Special uses.

The following uses shall be permitted in the MIC Medical Institutional Cultural Zoning District Classification only upon issuance of a special use permit pursuant to article X and shall be subject to special use requirements contained in section 16-4, below:

- Bed and breakfast facilities
- Civic clubs and fraternal organizations
- Cultural arts buildings
- Public utility facilities
- Restaurants

Sec. 16-4. Standards.

As stated herein, the following standards apply to the indicated use when such use is either a conditional zoning district, special use or a permitted use subject to supplementary standards. These standards are in addition to other applicable development standards contained in this ordinance.

16-4-26 Restaurants.

- a) The use must be located on, and have primary access from, a major or minor thoroughfare.
- b) All outside storage areas including dumpsters must be:
 - 1) Sited to the rear of the building;
 - 2) In compliance with the setback requirements for the zoning district classification within which it is located; and
 - 3) Made unnoticeable from both residential adjacent properties and public rights-of-way through installation of screening meeting the specifications of article XV.
- c) The use shall be limited to no more than 40 seats.
- d) Permissible hours of operation shall be limited to the hours between 7:00 a.m. and 11:00 p.m.

Sec. 10-8. Special use permits.

A special use permit from the board of adjustment is required for all special uses.

10-8-1 Application.

When a special use permit is required by the terms of this ordinance, application for such permit, along with a fee established by resolution of city council, shall accompany the application for a building permit.

10-8-2 Preliminary site plan.

The application for a special use permit shall be accompanied by seven copies of a preliminary site plan showing the following:

- a) The proposed title of the project and the name of the engineer, architect, designer, landscape architect, planner and/or licensed surveyor, developer and owner of record;
- b) The north arrow point, scale at not greater than one inch equals 40 feet, and such information as the names of adjacent roads, streams, railroads, subdivisions or other landmarks sufficient to clearly identify the location of the property;
- c) Location of site by an insert vicinity map at a scale no less than one inch equals 2,000 feet;
- d) Existing project zoning and zoning of adjacent property, to include properties abutting either side of a public right-of-way;
- e) City limits line;
- f) Names of adjacent property owners;
- g) Boundary survey of site and the location of all existing easements, buildings, rights-of-way or other encroachments;
- h) Existing topography and proposed finished contours at not more than five feet intervals, with project bench mark clearly identified. Location of the 100-year floodplain, if applicable. Other significant natural features affecting the site including but not limited to marshes, major rock outcrops and lakes or streams;
- i) All proposed streets with proposed names, pavement widths and rights-of-ways. All alleys, drive-ways, curb cuts for public streets and handicap ramps, loading areas, and provisions for off-street parking spaces and sidewalks; calculations indicating the number of parking spaces required and the number provided. All streets shall be clearly identified as public or private; a typical cross-section of the public or private street shall be included;
- j) Preliminary utility layout including location and size of existing and proposed water, sanitary and storm sewer lines; proposed location of electrical transmission lines, gas pipelines, street lights, fire hydrants and the location of garbage disposal facilities or a note indicating arrangements for these facilities;
- k) Location and size of all entrances and exits to the site showing sight distances and their relationship to all street and driveway intersections within 25 feet for driveways and 200 feet for street intersections;
- l) A landscape plan showing wood line before site preparation with species and average diameter of trees indicated and areas to be screened, fenced, walled and/or landscaped; also location of buffer strips, if required;
- m) Proposed location and intended use of all buildings with their dimensions, the number of floors, total floor area and maximum height above lowest ground point of each building;
- n) Notations to include the total project area, the amount and percentage of the site to be covered by buildings, open space, streets and parking;

- o) General location, size, height, orientation, and appearance of proposed signs.

As a matter of discretion, the administrative officer may require additional items for preliminary site plans, which would be necessitated by conditions such as topography, location and anticipated traffic volumes on or near the site. The requirements may include but not be limited to traffic, noise, visual or fiscal impact studies, architect's models, renderings and other studies or data. In addition, if the administrative officer determines that one or more of the above submittal requirements is not applicable to the proposed project, it may be waived.

Upon receipt of an application and site plan, the administrative officer shall review same to determine if all required information has been provided or if additional information is needed. If the site plan is insufficient, the administrative officer shall notify the applicant in writing of such deficiencies. An application for a special use permit will not be scheduled for evidentiary hearing until such time as the board of adjustment is in receipt of a complete application and site plan, that is, an application and site plan containing all the information required under this ordinance.

10-8-3 Evidentiary hearings on applications for special use permits.

Once the administrative officer is in receipt of a complete application and seven copies of a complete site plan, the administrative officer will schedule the application for an evidentiary hearing before the board of adjustment.

The administrative officer shall mail or deliver written notice of the public hearing to the person or entity whose application or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by the zoning ordinance. In the absence of evidence to the contrary, the city may rely on the county tax listing to determine owners entitled to mailed notice. The notice must be deposited in the mail at least ten days, but not more than 25 days, prior to the date of the hearing. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

The board of adjustment shall conduct an evidentiary hearing (quasi-judicial hearing) on the application. Per G.S. 160D-406(d), the applicant, the local government, and any person who would have standing under G.S. 160D-1402(c), shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.

10-8-4 Board of adjustment action on applications for special use permits.

After the evidentiary hearing, and on consideration of the record, the board of adjustment shall take action on the application, either (1) denying it, (2) approving it, or (3) approving it subject to one or more reasonable and appropriate conditions. The board of adjustment shall not approve an application for a special use permit, with or without conditions, unless it makes each of the following findings of fact:

- a) The proposed use complies with the standards for such use contained in article XVI;

- b) The proposed use will not adversely affect the health or safety of persons residing or working in the neighborhood of such proposed use; and
- c) The proposed use will not be detrimental or injurious to property or public improvements in the neighborhood of such proposed use.