



MINUTES

SPECIAL CALLED MEETING OF BOARD OF ZONING APPEALS

THURSDAY, OCTOBER 2, 2025 - 5:00 PM

Greenville City Hall, Council Chambers, 10th Floor
206 S. Main Street
Greenville, South Carolina 29601

Citizens may access the meeting at the following web address:

<https://www.greenvillesc.gov/meeting>

1. Call to Order

Chair Ken Betsch called the meeting to order at 5:01 PM.

2. Welcome and Opening Remarks from the Chair

Chair Ken Betsch invited the other members to introduce themselves, provided normal beginning procedures for the meeting, explained the agenda, and outlined the rules for procedure.

3. Roll Call

Ross Zelenske moved on to roll call of board members in attendance.

Members Present:

Chair Ken Betsch, Vice Chair Lauren Rounsville, Mark Herro, Matthew Praytor, Tammy Johnson, Al Horrigan, and Sam Davis

Staff Present:

Leigh Paoletti, City Attorney; Mike Spinelli, Assistant City Attorney; Mary Douglas Hirsch, Planning Director; Kristopher Kurjiaka, Principal Development Planner; Ross Zelenske, Senior Development Planner; and Deanna Ensley, Planning Assistant

4. Call for Public Notice Affidavit from Applicants

Staff reported receiving all applicants' affidavits.

5. Acceptance of Agenda

Al Horrigan moved to approve the agenda. Mark Herro seconded. The motion passed 7-0.

6. Conflict of Interest Statement

None

7. NEW BUSINESS

A. A 25-756

Application by Whistler Restaurant Group, LLC (Jessica Kearns) dba Reys to **APPEAL** the administrator's decision to revoke special exception permit S 23-033 / S 23-033M that allowed a 'General food and beverage (up to 6,000 SF)' and 'Bar' use to operate after midnight in an MXS-D, Shopfront Downtown district at **20 N MAIN ST**

(TM# 000100-05-00200)

Staff report presented by Ross Zelenske. Staff recommends affirmation of the administrator's decision.

Questions to Staff:

Mr. Betsch asked to confirm if the Board affirmed the administrator's decision if the appellant would still be able to operate until midnight, which was confirmed.

Mr. Praytor asked if the Board affirmed the administrator's decision, what would the appellant need to do to reinstate their special exception.

Mr. Zelenske explained the appellant would have to wait 12 months and then reapply for a new special exception permit and would follow the same process as other new special exception permit applicants.

Appellant Present Project:

Jessica Kearns, 108 W. Earle St.

Ms. Kearns stated her business supported both her staff and the vibrancy of the Greenville community. She stated they actively supported local schools and initiatives and that, with the recent uptick in violence downtown, they were taking it seriously, working with SLED and other businesses to ensure they were in compliance. She stated her business went above and beyond training requirements, using SLED-specific training standards, and that their business had had no complaints or legal problems and no recent fights. She stated her violation letter paints a different picture and that they had tried to work with City staff as their intent was to collaborate to address issues. She stated if the administrator's decision is affirmed, it would close their business as they rely on late night traffic and stated that over 50% of their sales were from late night business. She stated closing their business wouldn't solve the late night challenges the City is facing and would make it worse. She stated she had no plans to operate live music, and that they had only briefly introduced DJs and once it was pointed out it was a problem, they took responsibility and ceased. She pointed out it was not willful disregard for the rules, only misunderstanding. On the other violations related to lack of serving food, she pointed out food was central to their business model, but that the citation was for not serving food on the 2nd floor, which was under construction, and that there was no active occupancy permit for that space yet. She also pointed out in the violation letter the mention of an absence of a food menu on their website, which implied they don't serve food, but there is no rule for requiring a menu on their website. She pointed out their business uses social media more than their website, and once it was brought to their attention, they immediately updated the website to include their menu. She stated, regarding the instance of a plain clothes officer not being served food, that the regular manager had been admitted to the ER, and through miscommunication, their kitchen had been closed earlier without their knowledge. She stated pizza by the slice was always available, and that this was an isolated incident and was not indicative of normal circumstances. She stated once made aware, they took immediate action to eliminate the confusion. She said food was about 40-50% of sales and on the night of that incident, was 49% of the total revenue. She pointed out that their business has been visited repeatedly since and not once was found in violation. She stated they can't be present every hour and one mistake shouldn't define a business. She stated she was not asking to escape accountability for any violations, but asked to keep working with the city on a resolution instead of being shut down.

Questions to Appellant:

Mr. Herro and Mr. Betsch asked regarding the original special exception request to stay open past midnight submitted by Ms. Kearns and the reasons for the change.

Ms. Kearns confirmed it was because of a change of ownership of the business that the original request was submitted, but that prior to her permit, the business was owned by her brother-in-law, who was also open and operating until 2am before she took over.

Mr. Betsch asked if the original permit stated alcohol sales would be about 40% of revenues, what is the percentage now and if there had been any other instances where City staff had come by and asked for compliance with the permit.

Ms. Kearns stated it was about 40-50% of sales in food, so about 60% in alcohol and that they had never had any issues with compliance.

Ms. Johnson asked if after they were notified of the permit revocation, if they had submitted any evidence to the City in the way of receipts or formal food sales numbers to prove they had been serving food that night.

Ms. Kearns stated yes, they had submitted 180 pages showing emails of trying to reach out, food sales reports, and photos of construction on the top floor.

Mr. Praytor and Mr. Betsch asked about the upstairs portion of the business and how the violation pertained to it.

Ms. Kearns stated the upstairs portion was not open to the public and did not even have a certificate of occupancy yet as it was still under construction, so she was confused about how they have a violation on the second floor as stated in their violation letter.

Ms. Hirsch stated that on August 14th, a violation letter was sent to the business and cited it as saying "restaurant operations are not currently running on the second floor," but in the next sentence said no food menu was posted for the overall business, which was the concern of the violation. She clarified when two police officers in plain clothes attempted to order, they were able to get alcohol, but were denied food, and it was on the first floor.

Ms. Kearns stated they were going off of what was in the letter and that she was confused why it mentioned the second floor.

The administrator's report was presented by Kris Kurjiaka.

Questions to Administrator:

Board members asked about the difference in use and regulations between general food and beverage and bar uses.

Mr. Kurjiaka stated it was the proportion of revenue from food versus alcohol sales, and they typically have different types of operational standards such as the use and purpose of music and a noticeable time that their food menu substantially changes. He also pointed out that for restaurant uses, at least some food is served at all times and usually has fewer conditions than a bar or nightclub use, which may have more stringent requirements such as security and limitations on live entertainment/music that wouldn't be applicable in most restaurant settings. Mostly, he confirmed, it was an issue of security, noise, and loitering.

Mr. Davis asked if there was anything that wouldn't have been covered in the initial review of the special exception.

Mr. Kurjiaka stated it was possible as the application they were reviewing was for a general food and beverage use so he would assume there would be some adjustment that would need to be made if the use had changed.

Ms. Rounsville asked if there were other businesses being investigated for the same timeframe.

Mr. Kurjiaka confirmed there were and that police and fire personnel are out every week

and are being more vocal in reports to Planning staff as well.

Ms. Hirsch explained that Mr. Kurjiaka is over zoning enforcement within the department and the department has been doing code enforcement for years, including utilizing different forms of enforcement like revocations. She explained that they use a variety of methods to review use and compliance, such as social media review and how businesses present themselves to the public.

Mr. Davis asked about the trigger for the investigation into Reys and the role of the business.

Mr. Kurjiaka explained that at least one fight from the time period in discussion was attributable to patrons from Reys and that the business was a contributor to the overall late-night environment, and that Reys was investigated and addressed for their part in the situations similar to other businesses. He clarified that, in this instance, the information was not directly from a police report, but from other sources, but regardless, the compliance check would have stood on its own, even if the department chose to review their compliance without provocation.

Mr. Betsch and Ms. Johnson asked about the number of incidents and how the business was notified.

Mr. Kurjiaka explained there was one instance where a plain-clothes police officer confirmed that there was no food being served on site as required by conditions of the business's permit, and was contradictory to statements made in their original application. He stated he didn't consider the incident to be just a coincidence, considering the business had been put on alert regarding compliance with three prior instances of having a DJ on-site, which was another type of violation of their permit. He stated the business had been contacted via phone regarding the DJ incidences for general notices of violations and then after those notices, within a few days, a plain-clothes officer was sent to review compliance and found the issue with serving food.

Ms. Johnson asked how music and sound amplification played into the situation and the requirements surrounding it.

Mr. Kurjiaka explained that the noise restrictions as part of their application limit noise to ambient background music that is not allowed to be live, and that the purpose is to have a quieter atmosphere that is still conducive to conversation. As DJs require amplification and are nearly always not performing in a way that is conducive to conversation, it has a different impact on the patrons and how the properties are utilized.

Mr. Herro stated the reason they were attending the meeting was really based on the chronology of events, mainly that they had been given a letter for a violation and then the next day or soon thereafter, immediately had another violation.

Mr. Davis asked about the options the administrator has to punish infractions and the level of severity.

Mr. Kurjiaka stated the administrator can continue issuing violations, take a business to court for the court to assess fines, or suspend or revoke permits. He stated revocations are typically seen as more severe, but they give the business an option to appeal the decision.

Ms. Johnson pointed out the original TAC recommendations mentioned repeated infractions would be grounds for revocation and asked what specific dates before the incident in question were the appellants issued written noise complaints or violations and if there was a repeat of incidents or if it was really just 1 weekend being referenced.

Mr. Kurjiaka stated it was the 2 weekends they were referencing for this appeal.

Ms. Hirsch stated there had also been reports of DJs in the establishment over the summer, though there hadn't been any formal noise complaints.

Mr. Horrigan asked if the ordinance gives the city the ability to fine.

Mr. Kurjiaka stated that they could issue a summons to the municipal court, but couldn't directly fine them.

Mr. Herro pointed out that along with requirements of no live music or entertainment on site, the TAC recommendations also state that if the use changes, the permit would be revoked until a new permit is issued, though that would be up to the board's discretion, along with the conditions they set when they approved the permit originally. He pointed out that the permit also stated the business is supposed to have a manager on site who can enforce the conditions and the permit, which it appeared there wasn't someone to step in during the incident in question.

Mr. Betsch asked if the missing manager was part of the discussion with staff on the violation and if communication had occurred after the revocation.

Mr. Kurjiaka stated it was not part of the discussion, and they had not discussed the revocation with the applicant after it was issued.

Ms. Johnson asked if there was any opportunity given by staff to communicate regarding evidence that food service was being provided.

Ms. Hirsch stated she was unsure how they could provide food receipts, stating 49% of their sales that night were in food when they were told there was no food to be served, especially as it was at 10:25 p.m. when the incident occurred.

Mr. Kurjiaka stated they did not request or receive any information prior to issuing the revocation of the permit.

Mr. Davis asked if the assertion was that Rey's doesn't have a kitchen at all, or that they didn't have one for a short timeframe.

Staff clarified that per the conditions of the permit, they are supposed to have food available at all times and that there was no way to confirm this outside of when City staff directly attempted to order food or directly outside the time of their review via sending the plain-clothes officer and trying to find a menu from which to order from.

Mr. Herro asked if the administrator's decision is affirmed, how long before the business could reapply for a different permit and if there were any other options available to the board as a remedy for the next year while their permit is revoked.

Mr. Betsch asked about the possibility of shortening the time period.

Mr. Herro discussed revoking the permit temporarily and asked, since the issuing of the revocation, if the business had closed at midnight.

Mr. Kurjiaka explained that by submitting an appeal, the action to revoke the permit was stayed, and so they were still operating by their previously issued permit.

Mr. Zelenske clarified that there is a waiver process in the ordinance to waive the waiting period requirements for disapproved applications, and mentioned suspension as an alternative option.

Public Comment:

Tim Kearns, 108 W. Earle St.

Mr. Kearns stated there have been no police reports of fights that cite Rey's, no city reports of fights, and when they had a DJ and were asked once to stop, they immediately complied. He stated their business has always been open from midnight to 2 a.m. and in the past month the City has given out over 100 violations, with plenty of other businesses that have a lot more violations and worse ones. He stated he understood the need for accountability, but asked for a probationary period of 6 months to prove they are a good business. He stated they hadn't had a violation in 17 years, that they had made a mistake, and they had continued to reach out to the City to try to collaborate with no response.

Jack Logan

Mr. Logan introduced himself as a member of a non-profit that tries to get licenses taken from businesses throughout the state who break violations and pointed out the owners admitted to the violations. He stated that with all the fights occurring, the owner was right that they were not the only ones with violations, but it's contributing to people being afraid to come downtown. He said it starts when the food stops and DJs start. He pointed out the incident made it on national TV and claimed it was an embarrassment to the city, and that the issue was about safety and the City should be focusing on that.

Joe Farmer, 207 Alpine Way

Mr. Farmer stated the special exception being discussed is a legal document between the city and the business and that the applications are not given by right. He stated they are exception permits that have conditions, and everyone agrees that the conditions in this case were not met. He stated the board must apply the rules to everyone and that if the rules are not applied, the permit is useless. He pointed out the infraction wasn't even after midnight, it was at 10:25 p.m., and they had admitted to a lack of training and management, which is not what people want to hear about an establishment selling alcohol. He stated there are other restaurants that make it work being closed before midnight, and if they are a restaurant, closing early won't hurt them. He stated the board needs to make sure everyone knows permits will be enforced and asked the board to support City staff in enforcement.

Appellant Rebuttal:

Ms. Kearns stated that they take full responsibility and when it was made clear that a line had been crossed, their immediate response was to correct their actions and try communicating. She stated it was an unfortunate management oversight, but that they had acted without hesitation to make corrections. She stated the business is classified as both a restaurant and a bar, and she hasn't been able to understand how to go from one to the other. She asked for the chance to modify their permit and mediate with the City. She proposed a 6-month probationary period and stated revocation would close their business, whereas modification would give them the option to continue serving.

Board/Commission Discussion:

Mr. Davis pointed out the infractions/issues asserted by City Staff are: First, that there was no menu online. He stated that it has not been proven to be a requirement. Second, that there were DJs performing. He stated that it is unclear if a DJ constitutes live performance because it is using the existing sound system. Plugging a phone into a sound system could be a live performance. Third, food sales were less than 50%, making them more of a bar use. He stated that the distinction between bar and restaurant is woolly even BZA members struggle to understand. Fourth, they were not serving food when they were being checked on. He stated he wasn't sure if the food not being served was really a pattern or if it was a one-off.

He agreed with Mr. Farmer that there needs to be a penalty for the infraction. He said his main question was whether the punishment chosen by staff was in proportion to the situation, and to him, it felt disproportionate, as there are other options available, but that there needs to be some action for the infraction.

Mr. Praytor stated he agreed, but that there were the considerations of the business having a history without violations and to him the incident seemed to be an isolated one. Mr. Herro stated he agreed with Mr. Davis and Ms. Hirsch and that Greenville is pro-business, but also agreed that it is a special exception, not that the permit was given on

a whim. He stated the reason they were there was because they didn't have food a day after the city pointed out there were issues, which was a clear condition on the permit. He said he agreed they shouldn't be taking violations lightly, though he was not sure 12 months of not staying open was appropriate and if they could make it a little less time he'd be in favor.

Mr. Spinelli stated that as far as modifying an administrator's decision, suspension would be an option.

Ms. Rounselle stated she felt it was important that they enforce the permit as they granted it, but that the track record of 17 years without issues leads to a very different situation than shorter-term businesses. She stated she doesn't want other businesses to think because they don't enforce their permits that they can violate their permits without consequences. She said she was open to suspension and asked to consider what actions they can add as conditions to prove the business' compliance at the end of the suspension.

Ms. Johnson said it was a difficult case for her as she has a special exception as well and understood the difficulty of sticking to the requirements of the permits, but mentioned that it is not uncommon for businesses to change and sometimes owners have to adapt their models to make it work. She stated she would agree that shutting down the late-night activity for a year would close the business as they were definitely a late night establishment and are a staple to downtown and Main Street. She said she feels no one that is open late-night is in it to cause trouble and that there needs to be an opportunity to support good businesses. She stated she was concerned there was not more notification or conversation with the City, but knows it's hard to navigate. She stated she would like to speak to the applicant more about their numbers, but says in the long run they are more of a bar and would encourage the appellant to represent themselves as a bar. She also pointed out that the requirements for music amplification are confusing and questions the classification of DJs as live music, but that there are levels of live music and different types of DJs that would be different in their effect, such as those that encourage dancing or other activity.

Mr. Betsch stated they may need to be more specific about those kinds of conditions in the future.

Ms. Johnson agreed and stated that the term amplification was really broad and didn't really get at the intent of the entertainment and program and the environment it creates. She said without more information on that there could be a bit of a conflict and that clarification in the future is advisable. She agreed the revocation was a little severe, but stated she understood that the City needs to address these issues.

Mr. Horrigan agreed that a year is maybe a little too severe, and that something short of a year would be appropriate. He pointed out that a 60-40 split in sales was not even close for their use so they are more of a bar than a restaurant.

Mr. Betsch stated that owners have an obligation to know what was in the special exception permits for their businesses and this case shows they weren't being observant and are not following the letter of the law or managing the way they should be. He stated if the board doesn't set the right example, others will continue to cause similar issues. He agreed that a year was too long and agreed with shortening it to send a message to owners city-wide and set the tone to get the bars' attention that they need to follow their special exception permits. He stated the board needed to affirm the administrator's decision, but lessen the severity of the penalty.

Mr. Spinelli confirmed if the administrator's decision was affirmed, there would be a 1-year waiting period for the appellant to reapply and that they would need to come before the Board for approval to waive that waiting period requirement, and confirmed that

regardless of what the use was determined to be, the process would be the same.

However, he stated that if the Board decided to modify the administrator's decision to a suspension instead, the Board would have wide latitude and discretion on conditions.

Ms. Rounsville asked if they affirmed the revocation and the appellant submitted the waiver, if they could come back for bar use instead, which was confirmed.

Mr. Betsch asked if that would change anything to revoke their permit and make them a bar instead of suspending them.

Mr. Herro asked if the applicant would have to attend the November or December meeting to meet the appropriate deadlines for that process as well.

Ms. Rounsville asked if they heard a waiver request in the future, could they also make other stipulations on the waiver.

Mr. Spinelli stated the application for the waiver of a 1-year time limit, requires that the applicant show substantial changes in circumstances, new information, be materially different from the prior application, and that the prior decision was based on a material mistake of fact.

Mr. Herro stated they would then be butting up against the ordinance to go that route and that he'd be included to suspend them instead for 4 months, with the stipulation that they also apply for modification of their use.

Mr. Kurjiaka explained the differences between a suspension and revocation and the processes they would require.

Mr. Betsch and Mr. Herro confirmed that during the suspension they would not be able to operate past midnight and during that timeframe would also need to address the comments made about their operating more as a bar.

Mr. Davis asked Ms. Johnson to weigh in.

Ms. Johnson asked the applicant for details regarding their business, including costs, revenue, vendors, and ordering processes.

Mr. and Ms. Kearns provided as many answers as they had available and pointed out that their best season for business was coming up with the holidays and stated that during that time, they made enough to make up for all the rest of the year. They stated that even being shut down for a single month would do substantial damage to their business.

Mr. Praytor asked if, during their application for a special exception for a restaurant, they were just reapplying for what had been in place prior, which was confirmed.

Mr. Horrigan pointed out that financial hardship was not listed as a valid reason to grant a special exception or variance. He stated he knew the holiday was coming up and if they gave a 90-day suspension, it would eliminate their holiday after-hours business, so he was inclined to give something less severe, but that something needed to happen.

Mr. Davis asked if the Board was allowed to impose a fine.

Mr. Spinelli confirmed that it would be a matter for the court to impose a fine.

Ms. Paoletti stated that the board can cite an applicant to the municipal court, but the actual fine would be decided by the court.

Ms. Johnson asked how many bars the city has under conditional use permits.

Ms. Hirsch confirmed there are 106 businesses within the city that have either a conditional use permit or special exception permit, but pointed out there are also about a half-dozen legacy businesses that don't have either due to being in business prior to the updated code requirements.

Ms. Johnson asked how many are bar use specifically.

Ms. Hirsch stated she'd have to get that number.

Mr. Betsch stated that their options were really to suspend or revoke, which were basically the same, or to give a probationary period, which was confirmed.

***MOTION:**

Mark Herro moved to modify the administrator's decision of A 25-756. The motion was to modify the revocation of the permit to a suspension of the permit for 90-days. The motion was made on the findings that:

- 1. The business holder violated the terms of their special exception permit by not having food available per item #3 of their permit conditions, and**
- 2. From information received determining that the facility is operating under a bar use classification instead of a restaurant.**

The motion included a condition that the business operators cooperate with city staff to modify the special exception permit if the use classification of the business is determined to have changed based on information submitted by the permit holder and as determined by City staff. The suspension would only apply to operations of the facility from midnight to 2 am and the business would be able to resume late night hour service at midnight on January 3rd, 2026.

Mr. Praytor stated he could agree with a 30-day suspension and then a subsequent probationary period where if they ended up with another violation there would be no grace.

Mr. Herro stated he would not modify his motion to that as he doesn't see 3 months as overbearing, but understood that the holidays and events are coming up.

Ken Betsch seconded the motion.

Mr. Zelenske confirmed Mr. Betsch could second, but stated they needed to clarify the condition to change the use in the permit.

Mr. Herro stated the condition was to review the use classification and, based on that review, if it was determined their use had changed, the appellant would be required to amend their special exception permit to coincide with the change of use.

Ms. Johnson stated she couldn't fault the owners for not having the numbers available, but stated that based on earlier comments, they probably weren't making more than 30% of overall revenue in food sales. She stated to put it in perspective, for each month they were suspended and unable to do business during the late night hours, they would be losing roughly \$30,000-\$40,000 per month in gross profit. She clarified that she also could believe that most of their business for the whole year was made from October through December.

Mark Herro stated he withdrew his original motion.

***MOTION:**

Mark Herro moved to modify the administrator's decision of A 25-756. The motion was to modify the revocation of the permit to a suspension of the permit, ending the suspension on Thursday, November 20, 2025. The motion was made on the findings that:

- 1. The business holder violated the terms of their special exception permit by not having food available per item #3 of their permit conditions, and**
- 2. From information received determining that the facility is operating under a**

bar use classification instead of a restaurant.

The motion included a condition that the business operators cooperate with city staff to modify the special exception permit if the use classification of the business is determined to have changed based on information submitted by the permit holder and as determined by City staff. The suspension would only apply to operations of the facility from midnight to 2 am and the business would be able to resume late night hour service on Thursday, November 20th, 2025.

Sam Davis seconded the motion. Motion passed 7-0.

8. Adjournment

Meeting adjourned at 7:03 PM.