

NORTH CAROLINA
GUILFORD COUNTY

FILED

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION

2014 NOV 13 P 2:51

File No. 14 CVS 8313

GUILFORD COUNTY N.C.

CELESTINE L. SIMMONS,
Petitioner.

BY: _____

Vs.

ORDER

CITY OF GREENSBORO
ZONING COMMISSION and
THE DURAN GROUP,
Respondents.

THIS CAUSE came on for hearing before the undersigned Superior Court Judge presiding at the October 13, 2014, session of the Guilford County Superior Court, on Petitioner's Petition for Writ of Certiorari. Present were plaintiff; Terri A. Jones, Assistant City Attorney and David R. Pond, Counsel for The Duran Group. Upon reviewing the record of the proceedings before the Greensboro Zoning Commission in Z-14-06-003 and materials and briefs submitted by the parties and upon hearing the arguments of the Petitioner and counsel for the Respondents, and the Courts' scrutiny of the record for substantial, competent evidence, IT APPEARS TO THE COURT that:

1. The Durban Group applied to the Zoning Commission to grant a Special Use Permit, hereinafter referred to SUP, for a commercial building not to exceed ten thousand (10,000) square feet at the property known as 601-605 Martin Luther King Jr. Drive.
2. The record shows on its face that certain matters were not provided to the decision-making body for consideration of a business operating under a special use permit as requested by Applicant, as would be generated operating at not less than three thousand square feet and not more than ten thousand square feet:
 - a. Neighborhood concerns about market value of adjacent and neighboring parcels;
 - b. Crime;
 - c. That the use will meet any restrictions imposed, including but not limited to, architectural character;
 - d. Circulation and traffic impact on the two-lane public vehicular access routes for issues such as customer ingress and egress, traffic flow, pedestrian safety with increased motor vehicular traffic and, service entrances and areas;
 - e. Compatibility of Architectural drawings to demonstrate how the façade would with the buildings and homes, present and planned, closest to the site;
 - f. Follow-up by the Applicant to talk about the requested Special Use Permit and proposed change of use with neighboring landowners and community as recommended by city staff in the staff report; and,

- g. How this size facility was determined to be the preferred size and how the size impacts communities.
3. The factors in the above paragraph would tend to show whether the Applicant has met its burden as required by Section 30-4-10.5 of the LDO by providing information for consideration as substantial, competent evidence in order to permit the issues to be adequately by the decision-making body, above and beyond whether the land is sufficient to accommodate an enlarge 'footprint' of the facility proposed by the Applicant in demonstrating a) that the proposed use would not be detrimental to the health or safety of persons residing or working in the vicinity or injurious to property or improvements in the vicinity; b) that the proposed use at the particular location provides a service or facility that will contribute to the general well-being of the neighborhood or the community; and c) that the location and character of the proposed use will be in harmony with the area in which it is to be located and in general conformity with the Comprehensive Plan.
4. If the body considered the evidence in question, the Court could not determine so from the findings of fact made by the Zoning Commission in reaching its conclusions.
5. The decision of the Zoning Commission was unsupported by substantial, competent evidence in view of the entire as required by law.

IT IS THEREFORE ORDERED that this matter is to be REMANDED to the Zoning Commission for further proceedings, namely for the purpose of receiving additional evidence as indicated above and to make findings of fact that reveal the process and the adequacy of information considered.

This the 12th day of November, 2014.



Superior Court Judge Presiding