

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT FOR APRIL 28, 2011

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of City Hall.

Dr. Mulatu Wubneh, Chairman*	
Charles Ewen *	Scott Shook *
John Hutchens *	Sharon Ferris *
Linda Rich *	Justin Mullarkey *
Wanda Harrington *	Minnie Anderson *
Renee Safford-White X	Wiley Carraway *

The members present are denoted by an “\*” and those absent are denoted by an “X”.

VOTING MEMBERS: Wubneh, Ewen, Rich, Hutchens, Shook, Harrington, Mullarkey

OTHERS PRESENT: Mr. Mike Dail, Planner  
Mr. Wayne Harrison, Planner  
Ms. Valerie Paul, Secretary  
Mr. Bill Little, Assistant City Attorney  
Mr. Chris Kelly, Engineer  
Mr. Jonathan Edwards, Communications Technician

Chairman Wubneh had the Secretary call the roll for the meeting.

Chairman Wubneh welcomed Mr. Wiley Carraway to the Board and introduced him as the Alternate Member from the County.

Chairman Wubneh said that there were nine members of the Board present so seven of them would be voting. He said that Ms. Anderson and Mr. Carraway would be able to participate in the discussion, but they would not be able to vote. He informed the applicant that in order for his application to be approved, he would have to have the vote of six of the members.

MINUTES

Motion was made by Ms. Rich and seconded by Ms. Harrington to approve the minutes. The motion carried unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY FARID AHMED

Chairman Wubneh: This is a new business; a public hearing on a request for a special use permit by Farid Ahmed. The applicant, Farid Ahmed, desires a special use permit to operate a home occupation consulting and chemical test lab pursuant to Appendix A Use 3(a), of the Greenville City Code. The proposed use is located at 2905 South Memorial Drive, and the property is further identified as being tax parcel number 24139. All those wishing to speak for or against this case, please come forward and get sworn.

Secretary Paul: Raise your right hand and place your left on the Bible. Do you swear, or affirm, to the truth and nothing but the truth, so help you God?

Mr. Ahmed, Mr. Dail, Mr. Harrison: I do.

Chairman Wubneh: Thank you very much. Mr. Dail, would you please tell us about this application first?

Mr. Dail: Sure. Again, this is a request for a home occupation consulting and biological testing lab located at 2905 South Memorial Drive. As you can see by the red star, it is located near the center portion of the city along Memorial Drive. The red property indicates a more specific location along Memorial Drive and it's actually at the corner of Fairlane Road and Memorial Drive. The property itself is zoned R15S, Residential Single Family; and the surrounding properties on all sides are zoned R15S, Residential Single Family, as well. Surrounding developments on all four sides are single family residences. The subject property itself contains a 4,644 square foot single-family residential dwelling and has 270 ft. of frontage along South Memorial Drive, and 355 ft. of frontage along Fairlane Road, with a total lot area of 2.36 acres. The property is located within Visionary E as designated by the Comprehensive Plan and the proposed use is in general compliance with the Future Land Use Plan which recommends medium-density residential development for the subject property. This is the Thorough Fare Plan; it shows that the property is located along a major thoroughfare being South Memorial Drive. This is a view of the property from, Greenville Bou-, I mean, not Greenville Boulevard, but Memorial Drive, from across Memorial Drive. This is a view of the side of the property from across Fairlane. This is a view of the rear of the property from Fairlane. This is a view of the home directly to the south across Fairlane. This is a view looking south along Memorial Drive from the property; a view to the north looking along Memorial Drive from the subject property; views to the west of the single family residences – they're kind of hard to see because of the trees. And there, this is directly across from Memorial Drive. Views to the East of the houses to the east along Fairlane. And this is a view looking down Fairlane; and another residence immediately to the east of this property that joins it to the east. Under related zoning ordinance regulations I've included a definition of a home occupation; and under zoning comments, the requested use actually does not qualify the home occupation based on the fact that it does not comply with standard (J) listed in the definition of a home occupation. Standard (J) under the definition states "It shall not create any hazard, nuisance to the occupants residing or working within the principal use dwelling, or to area residents or properties. Non-compliance with this standard is evident based on the letter submitted by the applicant from the North Carolina Department of Environment Natural Resource Division of Waste Management; that's attached in your packet. The letter indicates that the biological testing portion of the business will be a generator of hazardous waste, and furthermore, the applicant must hire a hazardous waste disposal company to remove the waste from his property. Based on the information found in this letter, a hazard or nuisance to the occupants residing or working within the dwelling and area residents will be created, thus disqualifying the use to be called a home occupation based on the definition that's found in the zoning ordinance. Based on this fact, the proposed use does not meet the following Special Use Permit criteria: Conditions & Specifications, Health and Safety, and Nuisance or Hazard. Notice was mailed to adjoining property owners on April 14; however the notice identified the property proposed as being used as 2950 South Memorial Drive. We

discovered that was a mistake that was sent out, so we sent a second notice on the 25th correcting the address so adjoining property owners could know exactly which property we were talking about. Notice of the Public Hearing was published in the Daily Reflector on the 18th and on the 25th. Under other staff comments, the proposed project must meet all related NC State fire and building codes prior to occupancy; and there is also an attached police report for you to review. If you have any questions at this time I will be happy to answer them.

Chairman Wubneh: Thank you very much. Any questions for the City from the Board? No questions? Uh, maybe we'll have to come back to some of the specific criteria that you have mentioned. I would like to get some clarification. I want to take you, to get your attention to Criteria B - shall not be permitted with any detached accessory, structure or building - and I think there is a photograph that you showed, directly to the South from Memorial Drive? Is that - Is that much - Is there- Is there an attached building, or is it completely different from wherever the activity is going to take place?

Mr. Dail: Well, that's a detached accessory structure, the, the location -

Chairman Wubneh: (unintelligible)

Mr. Dail: Right, the location that the, uh, applicant proposes to run the testing lab facility and the consulting business is actually attached to the home.

Chairman Wubneh: It's attached.

Mr. Dail: Right.

Chairman Wubneh: Okay, I just want to make sure. (F) Visible from the right-of-way - and you're talking about Memorial Drive, or Fairlane?

Mr. Dail: Well it would either one, but in other words, what that's saying is cannot be done outside.

Chairman Wubneh: Okay, I got you... alright, and I'll move on. Any questions anyone has... from the Board?

Mr. Hutchens: I have a quick question - first, I'm a little confused - is the City declaring this is not a home occupation?

Mr. Dail: We're stating that the facts that show in the letter, that its a creator of hazardous waste, indicates that it does not meet the definition of a home occupation standard (J) which specifically states "shall not create any hazard or nuisance to the occupants residing or working within the principal use dwelling, or to area residents or properties."

Mr. Hutchens: In that case, would not the first decision of this Board be whether this is a home occupation or not a home occupation.

Mr. Dail: I think that we should ask legal advice on that one.

Attorney Little: What we have at this point is staff's review and analysis of the application and on that application is said does not meet the prima fascia definition. As the hearing continues, the Board may be able to establish, or, uh, determine additional facts that the Board may be able to determine which are materials substantial and relevant to whether or not it complies with (J) or to any other criteria that are listed. So, uh, the first question is that, whether or not it meets the prima fascia. That's the - the burden would now go to the applicant, to show how it meets it. Then the oppo-, if it does, .that is satisfactory established to the Board, then the next part would be for any opposition to be able to show specifically how its, it does not meet the other criteria. The first thing that staff looks at is does it meet the prima fascia. And based on what we have before us at this point, staff is of the opinion that it does not; but the Board has to make that final decision and that is something they're gonna develop through the rest of the hearing.

Chairman Wubneh: Alright. Any questions, any other questions for the City?

Ms. Ferris: Um, the applicant mentions some SOP's in their application - have we been submitted any of said SOP's to review?

Mr. Dail: Uh, what you have before you is what was submitted.

Ms. Ferris: Okay.

Chairman Wubneh: Any other questions? (pause) Okay, thank you Mr. Dail. I will move on to the applicant - would you please come forward and tell us about your application.

Mr. Farid Ahmed: Sure. I am Farid Ahmed, applicant for this application. There were a lot of mis-statements that have been made and I'm going to explain to them. Let me just give you idea about my background. I have doctorate degree from Ohio State University in Toxicology and have been handling chemicals for the past 40 years. I was a professor at the medical school at ECU, so I know what is chemical, what is hazard, what is not hazard. And I live there, so I do not want to cause hazard to myself or anybody. The chemicals that the City mentioned are in milliliters - very small amounts, and it will take years, years for this chemical to reach anything compared to the stuff in windshields that you put in your cars. I'm going to read you exactly what the E.P.A. says; it says here, in brief, you will become a conditional exempt small quantity generator of hazardous waste as defined in the section. I have attached a document for your review; and then the list may be conclusive, may not be conclusive since I am not familiar with all the chemicals". The gentleman does not know the chemicals I listed and this says "I mentioned that in the windshield that you put in your car you have \_\_\_\_\_glycon, if the kids ingested it, they would die" None of the chemicals that I mentioned will cause any such deaths. And the quantities that I'm using are very small so the statement that the City made is not correct. The second thing is the unit is detached from the house. The fire marshal came (unintelligible) about the unit because everything that will be generated, I will contact, uh, hazard removal company even though we are not hazardous - just to make sure that nobody is upset. And I chatted with my neighbors, the neighbor close to me, and I told him that's what I wanted to do and that's doesn't really need a special, a special, place to do - and I ask of him is there any

problem and he told me that no, it's not a problem and he is here to support my application. And this is, this is the, Chief Coggins himself came and said there is no problem. So I don't know, i don't know how can one expert change the statement of the E.P.A. and say that it is hazardous even though the gentlemen say that it is not hazardous. So, I don't know what is the basis for their, for their, uh, denial for me and it can be one-person operation. I'm a cancer researcher scientist. After I left ECU, I'm working research on cancer; so all these chemicals are chemicals that for biology. Biology can use, not hazardous waste as (unintelligible) they just have to call them hazardous waste because water itself can be a hazardous waste. So this is a scary word that the City uses to force me not to do cancer research. Simple and pure. I'm not going to benefit myself or for me - everybody in this room is going to benefit from this research because I consulted for the National Cancer Institute. I represent a committee - this will be good for the City of Greenville. So it is not something illicit or illegal. And I'm proud - I could have done this activity illicitly and nobody would have known because it is one-man operation. But I didn't want that; I want everything to be clear and approved of. And I spoke with my neighbor, the one that is close to me, and he said respected cancer research and he want us to find the cure for cancer. So I don't know where all these statements that they mentioned coming from. I can, I can answer every, every question the Board will want. I can answer it and the record will read it; so when the gentleman say that the E.P.A. says that it is not, uh, it is hazardous, thats not correct.

Chairman Wubneh: Alright. Does the Board have questions?

Ms. Anderson: I have a question.

Chairman Wubneh: Yes ma'am.

Ms. Anderson: Um, on page, well the page where you have Table 1, the chemicals that you use.

Mr. Ahmed: Yes ma'am.

Ms. Anderson: Can you explain to me, and us, some of the chemicals and how it would benefit your cancer research; and, as a family member of a funeral home with formaldehyde, could explain that to me, since I am asking the question.

Mr. Ahmed: Formaldehyde is a chemical that you use -

Ms. Anderson: No, not - no, I want - first of all I want you to explain these other and how it's gonna benefit your testing for cancer.

Mr. Ahmed: Sure, sure. Let us say, let us say, God Forbid, that anybody in this room has any form of cancer. So you want to detect this cancer at the earliest stage before it metastasize and become tumor. If cancer metastasizes you cannot cure it. You cannot. So you want to detect it at the earliest stage. Every cancer produce chemicals, toxic chemicals in the body - that is why you die of cancer. So these chemicals, when it is at the earliest stage, they are at a very small concentration. That's why you cannot detect it until a later stage and then it is too late. So, if for example, it is colon cancer, you take a sample of the stool, if anybody, anybody in this room, you take a sample of the stool and you try to extract these chemicals in the stool. So you use

this radiation, these chemicals I put here in a small amount, like, the amount, the amount, like one ml, .5 ml, 5 ml - things like this. So this will extract the chemicals from the stool, the cancer chemicals from the stool. We have to dissolve them, and then you get them, and then you can see them, you can detect them. These are by \_\_\_\_\_, change of color, or by filtration. So our body, our body produce a lot of toxic chemicals especially if we have a disease like cancer, or HIV for example. So I wanted to take these chemicals and dissolve them in other chemicals so we can concentrate them and then we can decide if we can detect this cancer at the early stage or not.

Ms. Anderson: How is your lab going to be different from when we go to the doctor and get the test for colon cancer or the stool? Is there something you are doing different?

Mr. Ahmed: Yes, because when you do the fecal or (unintelligible) blood test, that the, every year, if a person is doing, uh, is doing a physical every year, since the (unintelligible) of that test is ten percent, it is useless. Ten percent is useless so you are missing ninety-percent of people. So it is useless. So you want, because the chemicals, the chemicals that cancer producing, especially at the early stage, are in very concentration, so if I have cancer at a Stage 1, or a Stage 2, and I go, and uh, go to a doctor and he takes a stool of me, and do, do the tests and look to see if what, if it is going to change the color - it is not going to detect 90% of cases. What I'm arguing is - I think that I have a method that will detect over 95% in the City of Greenville, North Carolina. This cancer at this stage, all we have to do is concentrate these chemicals. And when we develop these tests, we are not going to make money off of it; we are going to give it to the right technicians so people in third world countries who cannot afford to do these colonoscopies - colonoscopies is more, is more specific, for example, but it will cost between \$900 - \$1200 to do colonoscopies. In certain countries, which they imitate our eating habits - diet, bacon fat, carbohydrates - cancer is on the rise worldwide. So these people cannot afford that and they are going to die, they can afford the \$1200 - maybe (unintelligible) ... Like if, nobody, nobody go to do a colonoscopy unless he is over 50 years. A lot of people get this cancer, like my sister-in-law, when it was younger than that. And she is going to die out of cancer.

Mr. Shook: Dr. Ahmed?

Mr. Ahmed: Yeah.

Mr. Shook: Uh, are you gonna have to hire, or are you going to hire a hazardous waste company to remove that waste?

Mr. Ahmed: Yes. Yes, from uh, from uh, uh Rockville. Yes, I spoke with him and he suggested, he said the recycle is only for, like tissue, like, or, or like stool for example. So I don't want the stool that you throw in the toilet, I won't even, won't do that. Whatever stool is left, I will not even throw it in the system because it is from cancer patients, for example.

Mr. Shook: But to be clear, you are going to hire a company to remove the hazardous waste.

Mr. Ahmed: Yes sir. Yeah, it will take about a year or so to get from this small amount like, I

collect the hazardous waste, and I - in fact, I have a picture for you that shows you I am putting - I got from Pfizer this special cabinets. These are fire-proof cabinets. And the Fire marshal came and he was impressed - Chief Coggins - I told him I want to do everything correct. I don't want to cause any harm to the public here.

Mr. Shook: I see that, but I just want to be clear that you are going to hire a company to remove the hazardous waste.

Mr. Ahmed: Yes, yes.

Chairman Wubneh: Any other questions?

Mr. Mullarkey: Dr. Ahmed, I'm sure that I speak on behalf of this Board and, and probably everyone in this room that we would encourage your cancer research. There is no question among, I'm sure, anyone of sound mind to say, that we have got, at some point, to make advancements in medicine and things like that and unfortunately, or fortunately, this, this Board is not the ones to say that's good or bad. The purpose of this Board is to find out whether or not that this can, that this works within the confines of our, of the codes that are set forth, and things that are, that are in that, so when I say that I don't want you to feel that anyone here is adverse to your expertise or what you are doing, and I'm sure that we would all encourage and applaud that. The problem with this that I'm sure of is that you're a scientist and, and, and folks like me just aren't; so when see things like chemicals that we don't-, that have funny names and diagrams, I can't tell you that I'm ever gonna understand that. But what I can tell you is it scares folks.

Mr. Ahmed: I know, I know that.

Mr. Mullarkey: And folks look at that and they say "Well gosh darn you've got these cabinets from Pfizer and you've got this education from Ohio State and you're a smart fellow, and we want you to get that, but there's a lot of vacant office space that wouldn't be in our backyard." And so folks get, get sensitive about that issue and I'm sure that you can understand that, but from a scientist you say, "Well shucks, you've got stuff in your garage that isn't in a fire-proof cabinet, that's not looked over, that's not hazardous waste, but there's a can of gasoline on the side of your house that sits out in 98-degree weather, and nobody says anything about that." So I think, that, you know, to get our arms around that and to understand, and I'm sure that you can understand and appreciate folks that, like me, we see things like that and it makes us nervous.

Mr. Ahmed: Sure, sure.

Mr. Mullarkey: It makes us nervous for our cats, and our dogs, and the squirrels and our kids ... walking by and things like that. And so, this Board has to decide whether that works within the confines that, of what the City has given us to make a decision upon. You're in a residential area. There are homes, there are churches there are - there are things around that, and from a scientist point of view, because you know, you say, "Well gosh, this is the safest thing in the world and there are things in your car that are more dangerous than that" - that's besides the point in this case because we've got areas that are designated for that. And I think that's gonna be the tough issue here, is that while your cause is noble, it's just the setting that makes it

difficult for this Board, I'm sure, to understand, and more importantly for these folks sitting here that are going to be your neighbors.

Mr. Ahmed: Here is the thing, if I have iota of a doubt in my mind that it is not safe, I would not even have brought it because I live there.

Mr. Mullarkey: I'm sure of that.

Mr. Ahmed: The second issue is you said "other places" That is fine if I have a grant of \$3 million dollars. And I get a million dollar grant when I was at ECU. Then you can say yes, I can go and get these places. And I can pay \$5,000 a month rent and I can hire 2-3 people - fine. But I don't have a grant several million dollars - I may get it later if I can prove the idea.

Mr. Mullarkey: Right.

Mr. Ahmed: So it is not, it is not possible now to go and invest money and become a big business man and do all of this. And I love to pay taxes for the City, but 90% businesses the first two years because people do not understand what it takes to get a business going.

Mr. Mullarkey: Right.

Mr. Ahmed: Now let us say that I can prove this idea, we have a sensitive marker, so we know that detect the cancer early, then fine. I can go and buy a new building. The amount of money that will come out of this because you don't have a single test today that can detect any kind of cancer, so I'm just telling you.

Mr. Mullarkey: Sure.

Mr. Ahmed: I will go, I will go and buy a property. But when you tell me now you can't, you have to do., you're basically telling me forget about it. So you have to balance this against the unfounded fears of people. And I could have done it without anybody have known.

Mr. Mullarkey: You, you certainly could have.

Mr. Ahmed: I could, but I didn't want to do that.

Mr. Mullarkey: An-an-and, that's good that you're going through the legal channels. But again, this Board and this room is not the place for us to decide on what's worthy of research and that; and it's just not. And I can appreciate your passion for this subject and it's obvious that you're an expert about what you're talking about. I believe that whole-heartedly; just the same as you believe that this is no danger to anyone around there. But let me just say, tell you - let me ask you a question first - what portion of this home is going to be dedicated to this research.

Mr. Ahmed: This place that I dedicated, where I'm going to put this solvents in, it is separate from the house, and not only that - I have two fire hoses, two fire hoses from each side, it has two doors on the side, I put them specifically in addition to the extinguishers, two fire hoses.

Mr. Mullarkey: What would you say the square footage is outside, how, what's the size of the room? Is it 10-by-10? Is it a broom closet? Is it...?

Mr. Ahmed: About, about 4... About 6 - by - 10.

Mr. Mullarkey: 6 - by - 10?

Mr. Ahmed: Yeah.

Mr. Mullarkey: So sixty square feet of this house.

Mr. Ahmed: Yeah, 6 - by - 10. So there is no, there is no hazard whatsoever because not only, not only the fire extinguisher, and not only the cabinets, but the fact that on each side of the door and there's fire hose that's why Chief Coggins, when he came, he approved it. If he have,... he is like you, if he think that anything will happen, he will not have given me the approval. It is here, his approval is here. Chief Coggins himself came twice because he know what is going to happen in this meeting. These questions, which I understand you do not want to deny out right, but you wanted to ask me and want me to alleviate your fears and that's what I'm trying to do now.

Mr. Mullarkey: And you, you're doing a great job of that, but again, the job of this Board is not to judge or not to determine the worthiness of your cancer research.

Mr. Ahmed: (unintelligible)

Mr. Mullarkey: This is a Board of Adjustment.

Mr. Ahmed: Is it really hazardous because if you don't know, I have to try to convince you, like you tell me... the worst hazard really, the hazard that cause problem - if you go to Lowes and get fertilizer - you saw what happened to Oklahoma buildings.

Mr. Mullarkey: Oh sure.

Mr. Ahmed: Okay. So that is the worst hazard. These are the hazards, not acidic acid. Acidic acid is the stuff you eat that you (unintelligible) your food. Formaldehyde is the stuff in your board here. So all of these, all of these are chemicals that, that, works to dissolve so it makes it easy for us to concentrate the cancer by-product, so we can do a test here in the City of Greenville and hopefully after a while we can hire a bigger place and hire more people and employ people. I mean, unemployment - what, 12% or 13%? In two years if this idea (unintelligible) we can buy a building and hire 10, 15 people.

Mr. Mullarkey: And I would tell you -

Mr. Ahmed: And everybody, everybody in the world is going to know the City of Greenville.

Mr. Mullarkey: No further questions.

Ms. Anderson: I have one more question for you.

Mr. Ahmed: Sure.

Ms. Anderson: You said that you could have done this research and no one would have known, but you're telling us about helping the people under... abroad. How would you... and manufacturing it -

Mr. Ahmed: No, we're not going to manufacture.

Ms. Anderson: Well, okay, but how would you have gotten this research to the people in other countries without anybody knowing if this was a great research?

Mr. Ahmed: No, research does not happen when you have a discovery, it does not happen immediately even though you may be a genius - it takes time.

Ms. Anderson: I'm, I'm aware of that what you're saying. But even if it happened two or three years from now, four years, five years, twenty years you worked on this, uh, how are you gonna keep it a secret? That's what I'm worried about.

Mr. Ahmed: We don't want a keep a secret. (unintelligible) We want the people to know. So what I'm saying, when you start something like this, you want to first to prove to yourself that the idea can work. It takes time to do that before you're going to hire people and go, if I go now to the bank and tell him, "Look I want to 2 million dollars to buy a building-

Mr. Mullarkey: Why do you need to buy a building for sixty square feet? You could rent office space for 300 a month and have all of this settled out, but you're thinking that, you know, you need to buy the, the, the coliseum, but to, to get office space, we could talk about unemployment, we could also talk about vacancy rate and something where you wouldn't even have to do this. That's my side of the business and you, you know your side of the business, but I can tell you, if you wanted office space, you can get it a lot cheaper than what you might think.

Mr. Ahmed: You will get a kind of a space you want with special specifications for this because you want a clean environment.

Mr. Mullarkey: Sure.

Mr. Ahmed: Because you don't want some stuff coming out of the air falling in your specimen and then you don't know is it my specimen or is it a contaminant. You don't want that.

Mr. Mullarkey: Right.

Mr. Ahmed: So it will cost you a lot of money to condition the space - not 300 dollars. 300 dollars if you are opening up a grocery store, for example.

Mr. Mullarkey: Do you have the conditioning space in this home that you are referring to?

Mr. Ahmed: Yeah, yeah, you put, you put special, special covering and things like this so this way you are sure that no chemical will fall on your sample and contaminate it.

Mr. Mullarkey: Okay, thank you.

Mr. Ahmed: You are welcome.

Mr. Ewen: Dr. Ahmed, are you no longer affiliated with ECU or....

Mr. Ahmed: Well, you know sir, you hear all the time, in the East Carolinian, or Daily Reflector, for the past three or four years, every year, they cut the budget back between 12 and 15 percent. Whom they going to cut the budget from? (inaudible) And then you are afraid you don't know if you will stay or if you're not going to stay, or what's going to happen. So to do research you have to have a clear mind so your thinking clearly, your developing ideas - thats the idea of research; that's why some people succeed, some people don't succeed. So I'm no longer at ECU now.

Mr. Ewen: So, you're-

Mr. Ahmed: But I was at Cancer Center, I'm independent now.

Mr. Ewen: Okay.

Mr. Ahmed: I look young, but I'm not as young as you think I am.

Chairman Wubneh: Alright, any other questions?

Mr. Hutchens: Couple of questions Mr. Chairman - first of all, are you saying that the chemicals and the biological substances in the amounts you handle are completely non-hazardous?

Mr. Ahmed: Anything, anything, even the water you drink is hazardous because they are salts - depends on the (unintelligible) and how much you use. So anything, anything is hazardous. It is the amounts I'm using are very, very small and all the chemicals, all the chemicals like alcohol - alcohol, if you drank a gallon of alcohol, it is hazardous. If you drank a small sip of alcohol it is not hazardous - it is social, it makes us happy, that's what I'm saying.

Mr. Hutchens: Are you saying that the amounts that you are using of chemicals and biological substances are completely non-hazardous? And would the EPA agree?

Mr. Ahmed: You cannot call it completely sir, it is relative thing, even water can be hazardous if you drank too much out of it. But they are of such minimal hazard - acidic acid is very good, yeah, if you put a whole thing in your food, yeah, it will be hazardous. But it is how much you're using, how much you're using.

Chairman Wubneh: Dr. Ahmed, Dr. Ahmed, what Mr. Hutchens is trying to get is, is the amount of these chemicals that you will be using for your experiment -

Mr. Ahmed: Is un-hazardous, yeah, I certify to you -

Chairman Wubneh: It's not the volume -

Mr. Ahmed: Yeah, okay -

Chairman Wubneh: but specifically with respect to your work.

Mr. Ahmed: Yeah, yeah. I mean one milli-, half a milli-, 3 milli-, these are not hazardous in that concentration, don't constitute any hazard.

Mr. Hutchens: I guess I have a follow-up question. Can you present evidence to this Board that -

Mr. Ahmed: Well, I presented, I have what is called I, what is called, uh, sheets, chemical sheets, I don't know if he enclosed them with my application, from the manufacturers that make this chemical. It shows them, any toxicologist that look at them he will tell you they are not hazardous. Even, even the gentleman that wrote the report said I don't really know all these chemicals even though I give him the sheets because people don't want to read the sheets, the long sheets and they confuse people. But I enclosed all these sheets that show these chemicals are not hazardous in the amount I use.

Mr. Hutchens: Thank you. Okay, in that you case, you're saying these sheets are in fact scientifically based evidence.

Mr. Ahmed: Pardon?

Mr. Hutchens: These sheets do constitute scientifically based evidence?

Mr. Ahmed: Yes, yes sir.

Mr. Hutchens: Second question, would you say that your experiment, your testing process is scientifically based?

Mr. Ahmed: What?

Mr. Hutchens: Is it scientifically sound?

Mr. Ahmed: It is very scientifically sound.

Mr. Hutchens: It is scientifically sound, in that case, uh, if it scientifically sound and a logical approach to solving the problem, why have you not been able to get a grant?

Mr. Ahmed: I have to prove it, I have to prove it. I have to prove it to myself and then to the federal government and tell them look, a small amount of samples it is working. But I have to test a population, so you need money; you need money for that when you want. If you have five or ten people, it doesn't cost that much when you can prove it yourself. When you go the government and tell them I, here are preliminary data with a small number of people and I want, I wanted to test it on 500 because you have to test it on larger number of population. So I myself sit on these boards, people, people like me who review, they don't want to give me money so they're going to find the things - show me preliminary data, did you- , have you done- , if I don't show them any preliminary data, they not going to give me grant - why would they give me grant? I'm competing with people from Harvard, from Stanford, from other big places, other big center, so you have to prove to the government at least in a small population, that the idea is workable. Science, this is how science advance and this is how to get money. Hundred years ago, you don't have to, but today you have to prove on a small population, yes, that it is workable.

Mr. Hutchens: And it strikes me as a little odd that if this is promising research, scientifically based, and someone is, and such a worthy goal, that someone isn't willing to snatch this research up and fund it immediately.

Mr. Ahmed: Well, I have, I have about forty-four years of experience okay? Most people don't have this experience. Some other people think of other and use sophisticated equipment, they cannot detect it. It doesn't mean that they will fail, but they cannot. They don't have, they don't have a single valid marker for cancer today; for any kind of cancer.

Mr. Hutchens: Thank you.

Chairman Wubneh: Okay, any other questions? Anymore question? Anyone else? How long have you been with East Carolina before?

Mr. Ahmed: Pardon?

Chairman Wubneh: How long were you with East Carolina before?

Mr. Ahmed: East Carolina...

Chairman Wubneh: The university.

Mr. Ahmed: About fourteen... about fourteen years.

Chairman Wubneh: So, you have not done this type of research while you were there. Is that correct?

Mr. Ahmed: Well I did other kind of research but this idea came to me after a relative of mine get sick with cancer and I know, I know she is not going to cure and she is going to die. Things happen in life, you know, a young lady, she got cancer -

Chairman Wubneh: So how do, how do the people come to you? Are you, are you going to solicit? Or, or people are going to send you specimen from all over the country? Or, I mean you're looking for -

Mr. Ahmed: There's nothing to say, nothing to say that somebody cannot send you a material in the mail, okay? So if I, if I, I know some people here, colleagues of mine at ECU, that I can go and ask them for this material. If I don't get, if I don't get from them, I know other people from many other cancer centers that I work with this before, they can mail me this material. This material can be mailed in, uh, you called the packs and send it to you - these are not hazardous material.

Chairman Wubneh: Okay, so it could be coming from anywhere in other labs and it will be sent to you and you'd be doing the testing -

Mr. Ahmed: I will try; the easiest way really is to try to get it locally-

Chairman Wubneh: Yeah, but -

Mr. Ahmed: If you cannot get it locally -

Chairman Wubneh: There is a possibility, what I'm saying is -

Mr. Ahmed: Yes, yes.

Chairman Wubneh: Alright, any other, any questions? \*PAUSE\* Okay, thank you Dr. Ahmed.

Mr. Ahmed: Thank you sir.

Chairman Wubneh: Alright, anyone else here to speak in favor of this application? Anyone here opposed to this application? Yes, you can come forward - are you sworn? (Response from audience) No, I think what we need is someone to speak on behalf of all of you, if you want, and that individual would have to come forward, get sworn and give us your testimony - why you are opposed to this application. So, anyone can come forward, it doesn't matter to me.

Secretary: Raise your right hand, and place your left on the Bible. Do you swear to tell the truth, the whole truth and nothing but the truth, so Help you God.

Ms. Portia O' Pharrow: I do.

Secretary: Okay, you want to sign in right there.

Chairman Wubneh: Tell us your name for the record and then continue with your...

Ms. O' Pharrow: My name is Portia O' Pharrow and I live at 210 Fairlane Road. My house is right behind the house, of the property thats in question tonight. And I have a problem because,

and I definitely oppose it because, this is a residential area and, um, we're all retirees, and any ounce of hazardous, or anything that would affect my family - my husband is a sick man, he's a quadriplegic and just like I said, we moved here in '96. We bought our retirement home there and it is, just like I said, it is a residential area. And I think, for this type research, and I am really excited about any kind of research - I'm not against any kind of research, I applaud the doctor. But just like I said, this is our retirement home and I don't want, you know, I wouldn't want any kind of hazard, or dangers, of any kind because I want to stress it is a residential area, and you know, it sounds like, you know, it might need to take place in a medical district or something, or in a medical office. But, um, these are all my neighbors and we all feel the same way. It's just like I say, it is a residential area and I don't think it's a place for medical research.

Chairman Wubneh: Alright, hold on - before you leave, there may be a question from the Board since you came forward. Alright, any questions for Ms. O' Pharrow from the Board? Any questions? Thank you.

Mr. Hutchens: One quick question, Mr. Chairman.

Chairman Wubneh: Yes, Mr. Hutchens.

Mr. Hutchens: Other than your feeling that this may be a danger to your family, can you present us with any evidence that this is actually a danger?

Ms. O' Pharrow: I cannot. I'm not a scientist so I cannot.

Mr. Hutchens: Thank you.

Chairman Wubneh: How far is your house from this site?

Ms. O' Pharrow: It's right - I am his neighbor, he said he had spoken with the neighbors, but I have never spoken to him before. My house is right behind - just a land of wood is between our houses.

Chairman Wubneh: Thank you.

Ms. O' Pharrow: You're welcome.

Ms. Ferris: Would it make you feel better to know that say, acidic acid is vinegar, and acetone you find in nail polish and a (unintelligible) is what you put on your nails, um, ethanol is rubbing alcohol - would any of that make you feel better about some of these chemicals?

Ms. O' Pharrow: No ma'am it would not because I moved into a residential area, not a research, any kind of research lab or anything.

Ms. Ferris: Even though you have some of these chemicals in your own home?

Ms. O' Pharrow: It still would - no ma'am - I still would not want a research lab in the area.

Ms. Ferris: Thank you.

Ms. O' Pharrow: Mm-hmm.

Chairman Wubneh: Any other questions? Thank you.

Ms. O' Pharrow: Mm-hmm.

Chairman Wubneh: Anyone else? Here to speak against..? We follow the.. I think that some of you may want to come forward and... I don't think - I'm not trying to preclude anybody from speaking, but we'll have to go through the same process. You'll have to come forward, get sworn, give us your name - it's got be on the record, that's why I'm asking.

Attorney Little: Maybe I can help with some of this. The Board of Adjustment as far as taking testament, unlike when you go to City Council and they have an ordinance that's being concerned, you can go up and say "I don't like this because of A, B, C, and D" – your opinion. Well, in the Board of Adjustment, because we are a quasi-judicial board, we have to make a decision what is material, substantial and relevant - factual information. An opinion is okay, everybody has an opinion, but it's not admissible evidence, you know, when you go to a courtroom and somebody says something and the, the defense counsel, or plaintiff's counsel, or the prosecutor says, "Objection Your Honor, that's an opinion." It's not a factual, they've not been qualified, they're not a, a, research expert, they're not, uh, an expert to be able to give an opinion on that – it's a lay opinion. Lay opinions would not be admissible. Now, we're not saying that you can't get up and give your opinion, but what we're having to do is decide upon the facts that are presented. One based upon the application, two based upon the objections of staff, three based upon the testimony explaining, uh, by the applicant – his explanation of the information that was in the application; his explanation of the questions that staff had and his explanations that the Board had. Those would be factual information that would become material relevant and substantial. The fact that, you know, and I'm going to use this as a, as a generic – it has no weight what-so-ever, I don't like, in my opinion, I don't want someone to have a hog gutting machine next door to me because I don't like hogs. Well, that's an opinion in there, so you might be okay if it was a cat gutting machine, but, you know, that's okay. But, you know, that's, but again what we're doing is looking at opinion, so we have to look at what is a factual. Uh, the – ma'am, in your case you had a concern about a research lab; that, part of it was opinion, but the fact also you did point out a specific fact issue, that it was a research lab in a residential area. So the question then becomes is that a proper home occupation and does it meet the criteria, and what you're, what you're doing is to address those specific points that were referenced in there – not the fact that, "I don't like it.", in there. You know, as my daddy told me, and I'm almost sixty, and my daddy still tells me this, he says opinions are like noses, everybody has one – some of them are pretty and some of them are just ugly. That, does that help quantify what we're trying to do, to do up here tonight? Whenever we have a large crowd,

we have the same sort of question that gets posed on, on a frequent basis, but I wanted to clarify that. That may help with some of the information that folks are trying to figure out, “what do I say?” Or “do I need to say anything?” Okay, before we go on, are there any questions on what I have explained? Yes sir?

Member in the audience: Well hasn't Mr. Dail already said that this doesn't meet the factual definition of –

Attorney Little: Okay, that's a question for the Board to decide. They have to listen to – it's based upon the initial information, the question then becomes “Did the applicant provide sufficient additional information to satisfy that question?” That becomes their, part of their decision. The staff looked at what was on the initial paper, all the paper documents that were submitted, and all the requirements and decorations by \_\_\_\_\_ saying what had to be done. Okay, the question is then, “Did the applicant satisfy that, to get over that hurdle, to get to the next hurdle?”

Mr. Ahmed: I have a question for you.

Chairman Wubneh: No, no, just sit down. Let –

Attorney Little: Okay, I don't answer the questions. I'm just trying to help doing a little clarification because we frequently get into opinion testimony. That, that doesn't help the Board. We're looking strictly at factual. Okay, thank you Dr. Wubneh for that.

Chairman Wubneh: I'm sure this required a high-powered attorney to explain the whole process, because you're -

Attorney Little: Well, I'm not sure that you got a high-powered attorney.

Chairman Wubneh: Alright, uh, let's, we are now hearing another, uh, some individual who is opposed to this application. You can go ahead and tell –

**Attorney Little:** (unintelligible) I believe we have to get him sworn in.

**Chairman Wubneh:** No, he's going to sworn in.

**Secretary:** Is there anyone else that's going to speak?

**Chairman Wubneh:** Is there anyone else? Yes, please come forward and get sworn so that we don't have to do it over and over again. And everybody here does not necessarily have to talk, but you know the ...

**Secretary:** Do you swear or affirm to the truth, the whole truth and nothing but the truth, so help you God?

Mr. Carlos Hemannes and Mr. John Elmore: I do.

Mr. Elmore: One at a time?

Secretary: Yes sir.

Mr. Hemannes: My name is Carlos Hemannes and I live on Fairlane Road for 21 years. I seen that house empty for a lot of years now, and I would like to ask the person that is planning to have this there if they like to have it in their neighborhood or next door to where they live. Imagine me trying to sell my house and somebody tell the buyer that down the street somebody is messing around with chemicals. Fear, that's a fear – it would destroy the neighborhood. I can give this gentleman a tour of places in Greenville that he can put up his business and don't have to be in a residential area. Fairlane Road, the majority of the residents of Fairlane Road and the vicinity – we're seniors. We're not young people that can handle these chemicals and (unintelligible) ten years later. We are seniors, retirees; we can't be subjected to any of these chemicals. I heard him mention formaldehyde; I remember when they banned formaldehyde because they use to put them inside the walls in houses as insulation and they have to ban it because it came through the walls and affected the people. He talks a good game because he wants his business there. He must have bought the house cheap because it didn't sell for, who knows, maybe about ten years. But we don't need that in Fairlane Road; he's going to kill the neighborhood. I was here before about a year ago in reference to another business down the street out there where they were putting crazy people or whatever you want. Everybody wants to dump on Fairlane Road, everybody. I don't know why they don't go someplace else. In the Industrial Park I believe that there are plenty of buildings over there with no use. Out there on 14<sup>th</sup> Street I remember the building that the ECU bought from the furniture place over there; empty with no use. Why it have to be on Fairlane Road? Especially that residential house – that's a nice house, that's not for chemicals. So I urge you to have patience and feel like you're living in Fairlane Road.

Chairman Wubneh: Alright.

Mr. Hemanness: And then make your decision based on that. Thank you.

Chairman Wubneh: Okay, thank you. Just a second, before you leave, you can, the Board has any questions? Do you have any questions?

Board Members: No.

Chairman Wubneh: Okay, thank you.

Mr. Elmore: I'm John Elmore, 2907 South Memorial, that's two doors down from the subject property. And just to follow up what he said, um, it's a fragile neighborhood. Uh, the house next door to this was built in 1930; it's a, got historic preservation, covenant on it. A lot of these houses were built when Memorial Drive was two, two lanes. And mine was build in '57, um, my neighbor across the street directly in front of the subject property, um, someone bought

that property a few years ago probably planning to fix it up, didn't do it and the house kinda started going down a little bit. And he started renting rooms out and our neighbors were concerned, so the neighbor next door to it bought the house from him and tore it down to keep people from destroying our neighborhood. Property value is a big thing now with things going down and who would want to buy a house if they think somebody is running a lab two doors down from them or one door down from them. And if you grant this special use, what's to say that he doesn't expand it into other biological testing. I mean, we don't have it - once you grant it, I mean, he could turn it into, open up another room and another room and another room. He never talked about what kind of traffic is gonna be coming in and out of there, as far as UPS, FedEx, hazardous waste vehicles, the people bringing him his raw materials or whatever it is that he's gonna do. People coming to pick up the things going out - the traffic situation is also a concern to me, to facilitate the business that he's running in there. Um, I don't know, I just think that, um, you know, when you open this kind of door, you're going down a slippery slope, and, uh, whether the materials are hazardous to us, I mean that's a big thing, but even if he says they're safe, all these other things that I just talked about are more important to me: my property value and what kind of ac-, what kind of vehicles are coming and going over there, and what... you know, that's just the bottom line.

Chairman Wubneh: Just a second Mr. Elmore. Let me have a question to ask you.

Mr. Elmore: Okay.

Chairman Wubneh: Any questions from the Board?

Mr. Hutchens: One question.

Chairman Wubneh: Mr. Hutchens.

Mr. Hutchens: You are stating that you feel this lab would constitute an injury to your property values.

Mr. Elmore: Absolutely.

Mr. Hutchens: Can you present any evidence from a, from a qualified expert saying this is true?

Mr. Elmore: No I haven't; I can get some real estate folks if you need me to before you want to vote. I can tell you that any realtor - I haven't talked to a realtor because this thing kind of came up quick - I didn't even know what it was, uh, but if we need to get a real estate people's opinion as to whether something like this in an old historic neighborhood, that's... you know, had... then we could do it. I mean, I think that's a good idea.

Chairman Wubneh: Any other questions that the Board has for Mr. Elmore? Anyone else?

\*PAUSE\* Thank you.

Mr. Elmore: Thank you.

Chairman Wubneh: Anyone else here to speak against this application? Ah, I believe the applicant has an opportunity to rebut. Dr. Ahmed, do you want to rebut any of this?

Mr. Ahmed: Yes.

Chairman Wubneh: You have to come forward. We have to have the stuff on the record. As the attorney indicated this is quasi-judicial –

Mr. Ahmed: The gentleman says that he did not have time. I spoke with my neighbor and the notice was sent to them about three weeks ago, so they have time. He is opinionated and as the gentleman said, opinion doesn't matter for a court. The question is about traffic. Most of the stuff I will get, I either get it from physicians here – I'll go pick it myself, or, or it will be mailed to me. United States Post Office consider it safe to mail this stuff –

Mr. Shook: How will you remove those materials?

Mr. Ahmed: They will be, they will be in a bucket so -

Mr. Shook: I mean, how are they going to be removed?

Mr. Ahmed: I open the bucket in an open space –

Mr. Shook: I mean how are they going to be removed from your property?

Mr. Ahmed: A waste company will pick them up.

Mr. Shook: Okay.

Mr. Ahmed: A waste disposal company will pick them up.

Mr. Shook: Who is, who is Stericycle?

Mr. Ahmed: Stericycle is a company that picks up biological material, like stool. I don't want to throw stool in the, in the... john, for example. So any, anything, anything, I keep them closed and not open after I finish working with them so they are not contaminated, and then call this company to come and pick it up so no neighbor can say, "Well he is throwing stuff in the neighborhood." So there won't be any traffic whatsoever, I mean I'm on 2 and 5, 2 and half acres.

Mr. Shook: Alright, it states in this North Carolina Department of Natural Resources that Stericycle is not licensed to manage hazardous waste. You'll have to contact a hazardous waste company – have you done that?

Mr. Ahmed: He is wrong, he is wrong. They are, they pick up biological materials. He is talking about the chemicals. Because he was on-, he didn't even bother about biological materials.

Mr. Shook: Are the chemicals going to be on-site at your house?

Mr. Ahmed: He was talking about chemicals here in his letter-

Mr. Shook: Are they going to be on-site at your house?

Mr. Ahmed: Yeah, these small chemicals will be on site.

Mr. Shook: They are. And when they leave your house, somebody licensed has to pick them up and take them away.

Mr. Ahmed: That's right, that's what he was referring to, but he did not even consider biological material. So Stericycle for biological and then I amended this. I understand. (unintelligible) Well, this chemical, this Stericycle is not a chemical. So I told him, "You are right", there's a company in, ah, close by that I will ask them to remove whatever traces of chemical left, and there's not going to be traffic as the gentleman say.

Mr. Shook: Well if, if your, um, application is approved and this Board says that you will have to have someone who is licensed to remove hazardous waste, have you contacted Eastern Environmental-

Mr. Ahmed: Eastern Environmental, this is a company –

Mr. Shook: Have you contacted them?

Mr. Ahmed: Yeah, I have contacted them and said yes, they can come and, and, and remove-

Mr. Shook: Okay, are they licensed to, are they licensed-

Mr. Ahmed: Yes, they are licensed for chemicals, for chemicals.

Mr. Shook: For hazardous materials?

Mr. Ahmed: Yes, they call them hazardous because any chemical is hazardous. Any chemical.

Mr. Shook: The North Carolina Department of Environment and Natural Resources is specifically stating about your specific purpose and referring to them hazardous, and they're asking you to have a licensed company to remove hazardous waste from your property.

Mr. Ahmed: They'll do it happily. And the company Stericycle is the company that will be taking the stool samples after I finish testing the sample. I covered both ends and there's not going to be any traffic what-so-ever. No one will even know that I'm doing it because I will be doing it by myself. When I prove that it can be done that then I can go and buy a building and condition it so that I can do this kind of research.

Ms. Ferris: Dr. Ahmed, question - under the ordinance regulations it specifies that you will have signage in accordance with article (N) – what kind of signage are going to need to have for your work?

Mr. Ahmed: Signage?

Ms. Ferris: Signs posted on the property.

Mr. Ahmed: You don't need to post signs that you have chemicals, but where you post the chemicals it will say that there are chemicals stored here.

Ms. Ferris: Right, so do need to have a sign.

Mr. Ahmed: Yeah, where the chemicals are. I have special signs for that.

Ms. Ferris: Okay, where on the property will they be posted?

Mr. Ahmed: Not outside the property.

Ms. Ferris: It doesn't have to property on the building where these are stored?

Mr. Ahmed: Not outside the property, but labeled so that if someone visited you, you know that there are chemicals there. I've never seen in any chemical company put a sign outside saying that they have hazardous waste.

Ms. Ferris: You don't have to have the diamond like they do on the trucks that carry hazardous materials?

Mr. Ahmed: If you are transporting them, then yes, but that is not what I'm doing.

Ms. Ferris: But you don't have to have any signs?

Mr. Ahmed: You don't have to signs on the property saying that I'm storing the chemicals. I'm not storing the chemicals; I'm using the chemicals and the amount that I'm using is so minimal.

Mr. Dail: Ms. Ferris, that statement is basically talking about an advertisement sign that would label his property as a testing facility and that's if he chooses to do that.

Ms. Ferris: Okay.

Mr. Ahmed: They gave me the option to do that and that was kind of the City to give me that option. But this is a research facility really, I'm not trying to make any money out of it - it's not a testing lab.

Chairman Wubneh: Any other questions for Dr. Ahmed? Alright, thank you.

Mr. Ahmed: Thank you sir.

Ms. Mewborn: Can I say something?

Chairman Wubneh: You have to come forward and get sworn in and then you can speak - that's the only way that we can do it.

Secretary: Do you swear to tell the truth, the whole truth, and nothing but the truth so Help you God?

Ms. Ann Mewborn: I do.

Ms. Mewborn: Okay, my name is Ann Mewborn and I live at 102 St. Andrews, which is right around the corner from his property, and I have a problem with who is going to be overseeing his work. Nobody is going to be checking up on what he is doing or seeing how his research is going. My husband has a medical practice here in Greenville and he's under the guidelines of OSHA - who's going to be doing Dr. Ahmed's stuff? And he says that he's just going to be using a little bit of chemical - how do we know what he's going to do once he gets in there all by himself? That's a big concern. And once you open this up to chemical testing, then all kinds of chemical testing can be done. And I just have a real concern that nobody is checking on what he's doing; he's just doing his own thing.

Chairman Wubneh: Alright, before I close, I think I know, but what is staff's recommendation?

Mr. Dail: Staff recommends denial of the request based on the evidence provided that proves the use does not meet the standards; specifically standard (J) required to qualify for a home occupation.

Chairman Wubneh: I now close the public hearing-

Ms. Ferris: Can I ask one more question? Mr. Dail, (B) says shall not be permitted within any detached accessory or building - can we clarify attached or detached?

Mr. Dail: Sure, there is an illustration in the information.

Mr. Shook: If you also look in the application process, it shows it and it looks attached.

Mr. Dail: Yes, this page here. I've been to the property and it is attached.

Ms. Ferris: Okay, that's all I needed to hear.

Chairman Wubneh: Alright, any other questions? I now close the public hearing once again and call for Board discussion. Please keep your mic open; this is the time where the Board has an opportunity to discuss the matter.

Mr. Shook: Mr. Little, could you define conditionally exempt small quantity generator of hazardous waste as defined by such-and-such and so-and-forth...?

Attorney Little: It is my understanding that they have provided him a conditional license and with that conditional license he has to meet the criteria of having a, in this case, as I understood the testimony, he has a biological waste contractor, Stericycle, and then he has to have a hazardous waste disposal for the chemicals which were highlighted in yellow. Those require a hazardous waste - licensed disposal company to pick up those particular items.

Mr. Shook: Okay. Now Mr. Denton, I take it, is not here - is that correct?

Attorney Little: That's correct. What you have, the document that he submitted is the document that's regularly presented in the regular course of business by North Carolina DENR. As such it becomes a business record which then in and of itself, would be admissible.

Mr. Shook: So it meets the standard of admissibility.

Attorney Little: It meets admissibility, that is correct.

Chairman Wubneh: So once he meets those conditions, it could be lifted.

Attorney Little: It can be lifted, that's my understanding- that is correct.

Chairman Wubneh: Okay, I know that many of them say "maybe... maybe", but that's okay. Any other discussions?

Mr. Ewen: Well, if I could, I also live in a historic neighborhood and we've had a couple of occasions to object to home occupations of any kind. As I understand, a lot of people are concerned. They don't want to live in an area and have people work in another area and you want to keep your residences and your businesses apart. But that's not what the Board of Adjustment is here to do, to keep those two necessarily apart. We are here to follow the law as we understand it. The concern over hazardous waste, does the amounts of the chemicals that he brings up, are they in fact hazardous? It's hard to really see in the small amounts that we have here; however, there is a legitimate concern, and perhaps the idea that he has no oversight has merit. Can we put an inspection clause on this, where after three months or so, his lab is looked at?

Mr. Dail: Just to touch on that base if you'll let me. I spoke with a representative from DENR today and conditionally exempt small generator of hazardous waste means that are in such small amounts that they don't have to be inspected or register with the EPA. He suggested that if the Board did approve that you could place a condition on the property that would require the applicant to register and get an I.D. number from the EPA, and if that did happen then notify the state that he was using hazardous in his home and that would subject him to inspection by the state especially if the City requested the inspection periodically.

Mr. Shook: Would that get him over the burden of prima fascia - doesn't meet the prima fascia of a home... in your opinion?

Chairman Wubneh: So what's the condition the Board would have to put - just require him to have an ID number from the EPA?

Mr. Dail: Right, require him to have an EPA ID number and also notify the state that hazardous waste generation was going on at the property.

Chairman Wubneh: And that would mean how often would the supervision take place? You don't know?

Mr. Dail: Well, based on the conversation I had, it probably wouldn't take place unless the City or the State had some reason to believe that it needed to be inspected.

Chairman Wubneh: But can this Board set the date, as proposed by one of the Board members? Within three months? Six months? A year?

Mr. Dail: I don't think the Board's condition would carry any weight with DENR, but we could request that DENR come and do an inspection.

Mr. Ewen: Well, you're saying that DENR would come at the request of someone.

Mr. Dail: Right, but there again, we would be requesting and we cannot make them come and do the inspection.

Chairman Wubneh: But the Board could ask the City.

Mr. Dail: Sure.

Chairman Wubneh: But did you specifically set the date?

Mr. Ewen: No, no, I haven't; we can discuss that.

Ms. Ferris: And I'm not sure of the requirement for the amount of chemicals before you have to put one of those hazard diamonds on the facility where the chemicals are being stored, whether the amounts are small enough where he doesn't have to have that signage posted, or whether it doesn't matter the amount and that sign will have to be posted per the State of North Carolina.

Mr. Ewen: I don't think, just being on a campus, we don't see them on the outside of buildings. Those are just in the labs in the storage lockers. So I don't think there needs to be hazardous waste signs unless you want to kill property values.

Ms. Ferris: That's my concern, if whether or not that is a requirement from the state.

Mr. Shook: Well I think what the Board needs to consider here, and the City stated that based on his testimony and what he has put forth, or let me say, in his application, that this does not meet the prima facie case to be defined as a home occupation. The burden of proof then fell on the applicant to make the case that he does meet the definition of a home occupation. Some of that

being hazardous, he admitted on a few occasions that he's going to have to and will have to have a licensed company to remove hazardous waste from the home, so what, in my opinion, and what's been laid out here, do we even get past the first definition of conditions and specifications and they listed three in health and safety, nuisance and hazard. Based on that, and based on his own application, the City says that he doesn't meet the case. Normally the applicant has the burden of persuasion and people opposed to that have the burden of proof. That is the case with this, but also based on his application and the information put forward, he does have the burden of proof that he meets the prima fascia standard.

Mr. Hutchens: If I could sum that up, because he has to hire a hazardous waste handling company, he therefore does not meet the qualifications for a home occupation.

Mr. Shook: That was his testimony.

Mr. Hutchens: Is that what you're saying?

Mr. Shook: That's correct.

Mr. Wubneh: Alright, any other discussions?

Mr. Mullarkey: I do have to bring up, Scott you put it very well. I think that when I look through my sheet of required findings for special use permits, my eye stops at health and safety. Whatever quantities they may be ... that's beyond me. Outside of this, it would be like the (unintelligible) saying, "Not in my backyard" And so I think that has to go back to Section F, which is an injury to properties or improvements and in my small opinion about this I would say that this may cause injury by value or otherwise to adjoining or abutting properties or public improvements in the neighborhood. I can't quantify that, but I can't deny that either.

Chairman Wubneh: Alright -

Ms. Harrington: Also, that goes hand in hand with public welfare.

Mr. Mullarkey: Correct. And I think that if there wasn't... this is a home and while I think that it was a great argument, my thinking is that this is a home and not a laboratory environment. This is between the garage and mud room.

Ms. Harrington: That goes hand in hand with the nuisance/hazard condition here as well because that has the toxic issue in here.

Mr. Mullarkey: If you put up some tarp on the wall and duct tape them shut, is that a sterile environment? I don't think so. Maybe I'm wrong, but that doesn't seem logical to me - I'm sorry. But then you go to if it's not dangerous in whatever quantities, why does there have to be a fire-proof box and two fire extinguishers and have the fire marshals come? To me that throws up a red flag. I'm not a chemist, but we're blessed to have one on the Board that knows a lot about this than I do, but with those things that I just said, I think I've heard enough of what I need.

Attorney Little: I want to make sure that when we're talking about the decision that has to be made, when you go through each one of the criteria, if there is a vote on any one of the criteria and there are two negative votes, what each person who votes in the negative has to be able to do is point to the substantial, material, factual and relevant evidence that presented in the application, testimony or rebuttal testimony that supports that. It can't be "In my opinion, it will injure the property", you have to be able to look at what testimony was there to say that it absolutely would injure the property. We can't use gut feelings, we have to look at admissible evidence and go from that standpoint.

Mr. Hutchens: If it is our conclusion that this does not constitute a home occupation by definition, where does that tie in?

Attorney Little: Where this is going to tie in, you're still going to have to go through the criteria. The criteria, as I understand the objection of staff, it's not so much that it does not meet the definition of a home occupation, it's that Item J is not satisfied on it's face, certain criteria and those criteria were listed; that was based on the application. The question then comes, when its time for the vote, did what was presented overcome that objection on it's face and was there evidence to rebut that objection and was there anything else presented in opposition to rebut that presumption that it did qualify?

Chairman Wubneh: Alright. Okay, any other discussion, or are we ready to move? Alright, keep your mics open for any discussions. Members of the Board, this is a special use permit and I will now read the criteria by reference. If you want a vote you can stop me, otherwise by your silence, you are voting in support of the application. First criteria is Conditions and Specifications.

Mr. Shook: Vote.

Chairman Wubneh: Okay, we have a vote. We start from the other - who are the voting members... I have already mentioned the seven people that can vote... Yes, Mr. Mullarkey, I think you are the one - we start from you.

Mr. Mullarkey: Start from me?

Chairman Wubneh: Yes.

Mr. Mullarkey: And just to clarify, we're voting on?

Chairman Wubneh: The First Criteria, Conditions and Specifications. Which the City has also pointed out... by voting yes or no on that...

Mr. Mullarkey: I'm a little behind Mr. Chairman...

Chairman Wubneh: Well, what we will be doing, as I go through the criteria, if someone says "Vote", then we'll ask individually for votes. Those that say "No" have to explain, and those that say "Yes" do not. We're going to go through the criteria one by one. And I just happened to

start with you because you are to my right.

Mr. Mullarkey: I would vote no.

Chairman Wubneh: That means you are voting against the application.

Mr. Mullarkey: Correct.

Chairman Wubneh: Okay, next.

Ms. Ferris: Was I eligible to vote? I came in late.

Chairman Wubneh: Oh no, I don't think so.

Mr. Ewen: No.

Chairman Wubneh: I vote no.

Mr. Hutchens: No.

Mr. Shook: No.

Ms. Harrington: No.

Ms. Rich: No.

Chairman Wubneh: Do we have to hear from everybody?

Attorney Little: That is correct.

Chairman Wubneh: Mr. Mullarkey, why are you voting no? We need a specific explanation.

Mr. Mullarkey: Number 5, compliance with all application submission requirements.

Mr. Ewen: Same.

Chairman Wubneh: Yeah, I think the fact that (J) is not met because it creates a hazard. The fact that it requires special handling, the fact that it requires a special company to come and move the product shows that its hazardous substances and therefore it violates (J) and that's why I voted "no".

Mr. Ewen: To me (J) is clearly violated because it requires the use of a hazardous chemical handling company to deal with its waste.

Mr. Shook: I vote "no" for the same reason - did not meet the application requirements and did not meet the prima fascia case of a home occupation.

Ms. Harrington: Same thing he said.

Ms. Rich: Ditto.

Chairman Wubneh: Okay, I'll move on the next item. Comprehensive Plan. Health and Safety.

Mr. Shook: Vote.

Chairman Wubneh: Vote on Health and Safety. Let's go again, one more time. There is a whole lot of criteria, the proposed use will not adversely affect the health and safety of person residing or working in the neighborhood.

Mr. Mullarkey: I would have to say no, based on what we just said.

Mr. Ewen: Same.

Chairman Wubneh: Yes, same. I'm voting no, but for the same reason.

Mr. Hutchens: No.

Mr. Shook: No.

Ms. Harrington: No.

Ms. Rich: No.

Chairman Wubneh: Do we have to go any further? We already have two criteria...

Attorney Little: You have to go through all the criteria. I want to be sure that I understand that the factual basis that you used to vote "no" on this criteria was the same facts that were listed as to the first criteria that you voted "no" against.

Chairman Wubneh: That's correct.

Attorney Little: Okay, I had to have it for the record.

Chairman Wubneh: Yeah, there no changes. Everybody stayed the same. Alright, D, Detriment to Public Welfare. Existing Use Detrimental. Injury to properties or improvements. Nuisance or Hazard.

Ms. Rich: Vote.

Chairman Wubneh: Okay.

Mr. Mullarkey: I'm kind of afraid to say no because I don't have anything to substantiate that.

Attorney Little: Then you only have one option.

Mr. Mullarkey: Then I would have to say yes.

Mr. Ewen: I say no, the method of operation or physical activities, or proposed use bringing in the hazardous disposal peoples and so on.

Chairman Wubneh: I vote no for the same reason because it's requiring a special company to come in and handle it, and the fact that the applicant has on many occasion said that it is yes, it's hazardous, it's just a question of quantity and with no supervision we don't know how much quantity will be used.

Mr. Hutchens: I'm going to vote yes on that one.

Mr. Shook: No, based on the reasons given by the Chairman as well as the nature of the business requiring hazardous removal.

Ms. Harrington: No, based on number 5, toxic characteristics and the transport issue.

Ms. Rich: No, and as Wanda said, based on number 5 and number 6.

Chairman Wubneh: Okay, now that we have this kind of voting system, do we still have to go through the process?

Attorney Little: You've established the Finding of Facts, now you have to have a motion to approve the Finding of Facts that you have established.

Chairman Wubneh: Basically, we're going to have to go through the whole thing.

Attorney Little: Right.

Chairman Wubneh: I will now entertain a motion to approve the Finding of Facts.

Mr. Shook: Motion.

Mr. Ewen: Second.

Chairman Wubneh: Motion made by Mr. Shook, seconded by Mr. Ewen, all those in favor of approving the Finding of Facts please indicate by saying aye.

Voting members: Aye.

Chairman Wubneh: Oppose?

\*None in opposition\*

Chairman Wubneh: Motion to - is it to approve or deny the petition?

Attorney Little: In this case it will be a motion to deny based on the Finding of Facts.

Chairman Wubneh: That's what I thought. Based on the Findings of Fact, a motion to deny the petition?

Mr. Shook: Motion.

Ms. Rich: Second.

Chairman Wubneh: All those in favor of denying the petition, please indicate by saying "aye".

Voting members: Aye.

Chairman Wubneh: Opposed?

\*None in opposition\*

Chairman Wubneh: I'm sorry but your application is denied, thank you for coming. Are there any other items, if not, I will entertain a motion -

Mr. Shook: Motion.

Ms. Harrington: Second.

Chairman Wubneh: Motion made and properly seconded to adjourn.

Motion was made and properly seconded to adjourn at 8:29 p.m.

Respectfully Submitted,

Mike Dail, Planner