

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT FOR OCTOBER 27, 2011

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

Scott Shook, Chairman\*

Charles Ewen *	Sharon Ferris X
John Hutchens *	Justin Mullarkey X
Linda Rich *	Bill Fleming *
Wanda Harrington *	Wiley Carraway *
Tom Taft, Jr. *	

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

VOTING MEMBERS: Shook, Ewen, Hutchens, Rich, Harrington, Fleming, Carraway

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

Chairman Shook said that they had a full board so Mr. Taft would be able to participate in discussions, but he would not be able to vote.

MINUTES

Mr. Hutchens made a motion to approve the minutes as presented, Mr. Ewen seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A VARIANCE BY T.A. LOVING CONSTRUCTION SERVICES

The applicant, T.A. Loving Construction Services, desires a variance from Section 9-3-5 of the City Code (Airport Zone Height Limitations) to temporarily exceed the height limits for a structure in the Airport Overlay Zone. The property is further identified as being tax parcel number 29132.

Mr. Dail delineated the area on the map. He said that the property is located at 2100 Stantonsburg Road and is zoned MI (Medical Institutional).

Surrounding Zoning:

North: MI (Medical Institutional)  
South: MS (Medical Support)  
East: MI (Medical Institutional) & MS (Medical Support)  
West: MS (Medical Support)

Surrounding Development:

North: Brody School of Medicine  
South: Courtyard by Marriot, Rite Aid, Taft, Taft and Hagler and Medical Offices  
East: Various Medical Uses  
West: Various Medical Uses

**Description of Property:**

The property contains Pitt County Memorial Hospital and has approximately 2,300 feet of frontage along Stantonsburg Road with a total lot area of 55.66 acres.

**Comprehensive Plan:**

The property is located within Vision Area “F” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends medical development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on October 13, 2011. Notice of the public hearing was published in the Daily Reflector on October 17, 2011 and October 24, 2011.

**Variance Criteria:**

The Board must find in favor of the applicant on each criteria in order to grant the requested variance.

1. Reasonable Return – The applicant could not comply with the literal terms of the ordinance and still secure a reasonable return or make reasonable use of the property.
2. Unique Circumstances – The hardship of which the applicant complains results from unique circumstances related to the applicants land.
3. Hardship by the Applicants Action – The hardship is not the result of the applicant’s own action.
4. General Purpose of the Ordinance – If granted, the variance would be in harmony with the general purpose and intent of the ordinance and would preserve its spirit.
5. Public Safety and Welfare – The granting of the variance must secure the public safety and welfare and does substantial justice.

**Staff and FAA Recommended Conditions:**

The crane shall be marked and lighted in accordance with FAA requirements.

The crane must be lowered to the ground when not in use and during the hours between sunset and sunrise. The cranes shall be used during daylight hours only.

The FAA must be notified at least 5 business days prior to the crane being erected and again when the crane is removed from the site.

The Pitt-Greenville Airport Manager must be notified at least 3 business days prior to the crane being

erected and again when the crane is removed from the site.

Any height exceeding 215 feet above ground level (287 above mean sea level), will result in a substantial adverse effect and would warrant a determination of hazard to air navigation. The variance shall remain in effect only so long as the FAA approvals (i.e. determinations of “no-hazard”) are effective. If the crane is raised above 215 feet above ground level (287 above mean sea level) an immediate stop work order will be issued by the City of Greenville Building Inspections Department.

This determination is based in part on the foregoing description which includes specific coordinates and heights. Any change in coordinates and/or heights will void the determination. Any future construction or alteration, including increase in heights, requires separate notice to the FAA.

Any failure or malfunction that lasts more than thirty (30) minutes and affects a top light or flashing obstruction light, regardless of its position, should be reported immediately to 877-487-6867 so a notice to airmen can be issued. As soon as the normal operation is restored, notify the same number.

Crane operations are through March 22, 2012.

The variance shall remain in effect as long as no complaints are received or filed by the Pitt-Greenville Airport Authority.

If any of the conditions stated above shall not be met, then this variance shall become void and of no effect.

Chairman Shook asked if the current height restriction is in the City Code because of a request from the FAA based on an overlay zone.

Mr. Dail answered that he was correct and that it is a matter of protecting air travel safety.

Chairman Shook said that the FAA had included a letter saying that they are okay with the request.

Mr. Fleming asked what the highest part of the hospital is.

Mr. Dail said that it is the Heart Center at 199 feet high; he noted that they had to apply for a variance for that construction as well.

Ms. Harrington pointed out that the application states that the highest the crane can be lifted is 107 feet without the variance, but it should be 105 ft.

Mr. Dail answered that she was correct.

The applicants, Mr. John Berry with T.A. Loving Construction Services and Mr. Tim McDonnell with University Health Systems, came forward to address any questions that the Board might have about the project.

Mr. Berry said the basic need for the crane is to erect their structure. The crane will be on site as soon as it is allowed until late December. The 215 ft. above ground level will be their maximum height and they will not go

above that level. They have already spoken with the FAA and local authorities and received all the necessary clearances.

Chairman Shook asked if they were aware of the conditions from the FAA.

Mr. Berry answered that they are aware and they will follow all of the requirements such as the height that they will need to lower the crane daily, as well as other things such as the orange and white flags and strobe lights that they will be required to use.

Mr. Taft asked who would be regulating the hours that they will be using the crane and other things of that nature.

Mr. Berry answered that they are ultimately responsible for regulating that since they are the contractor for the project.

Mr. McDonnell followed up and said that the hospital has their own concerns regarding the helicopters with East Care so between the contractor and the hospital they will be reminded daily of where the crane needs to be and also in inclement weather.

Mr. Carraway said that he was going to ask about inclement weather but they covered it. He asked if they had a safety project manager on this site.

Mr. Berry answered that they have a Safety Manager with their Director that rotates and looks at the jobsites periodically and they would have a Safety Manager that comes once a week as well as two superintendents on the site that are responsible for safety management.

Mr. Carraway said that it sounded good.

With there being no further speakers in favor or against the application, Chairman Shook called for staff recommendation.

Mr. Dail said that Planning staff does not object to the requested variance provided that continuing approval is received from the Federal Aviation Administration concerning the height limitations and restrictions waivers, and no complaints are received or filed by the Pitt-Greenville Airport Authority.

With there being no comments made during Board Discussion, Chairman Shook read the criteria.

**Ms. Harrington made a motion to approve the Finding of Fact, Mr. Carraway seconded and it passed unanimously.**

**Mr. Hutchens moved to approve the variance with the conditions, Ms. Harrington seconded and it passed unanimously.**

Based on the facts found by the Board and the evidence presented, the Board orders that this variance be granted and subject to full compliance with all of the specific requirements stated in the Zoning Ordinance of the City of Greenville for the proposed use.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY HAZEL HARDWICK, LLC**

The applicant, Hazel Hardwick, LLC, desires a special use permit to operate a private convention center pursuant to Appendix A, Use (8)l. of the Greenville City Code. The property is further identified as being tax parcel number 01781.

Mr. Dail delineated the area on the map. He said that the property is located at 330 S. Evans Street and it is zoned CD (Medical Institutional).

**Surrounding Zoning:**

- North: CD (Downtown Commercial)
- South: CD (Downtown Commercial)
- East: CD (Downtown Commercial)
- West: CD (Downtown Commercial)

**Surrounding Development:**

- North: East Group
- South: Felicia's Fashions
- East: Private Parking Lot
- West: City of Greenville Parking Lot

**Description of Property:**

The property contains a 20,606 square foot commercial building with multiple units and has approximately 68 feet of frontage along Evans Street and 130 feet of frontage along W. Fourth Street with a total lot area of 0.19 acres. The applicants unit contains 4,750 square feet. Currently, Copper & Vine, Jefferson's, Matt Holder Hair Design and The Martinsborough are operating within the other units of the applicants building.

**Comprehensive Plan:**

The property is located within Vision Area "H" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on October 13, 2011. Notice of the public hearing was published in the Daily Reflector on October 17, 2011 and October 24, 2011.

**Staff Recommended Conditions:**

The establishment shall not operate as a public or private club.

**Other Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy.

Attorney Stanley Sams and Allison Thomas spoke on behalf of the applicant.

Attorney Sams provided some materials for the Board's review. The company does business as Scarborough Fare. He made a correction and said that there is not a separate business by the name of the Martinsborough, but

that is the actual space is identified as the Martinsborough and it is located on the third floor of the Jefferson Blount-Harvey Building in downtown Greenville. The proposed use is as a private convention center where which will act as a banquet hall and venue for events and business meetings. He noted that the bulk of their business is typically for rehearsal dinners and wedding events which are typically held on the weekend during the evening when most of the other downtown shops are closed. He went through the materials that he provided to the Board and concluded that the building would be doing the bulk of their business during hours when most of the other shops would be closed and the business would be a good fit with the rest of the redevelopment going on in the downtown area.

Mr. Ewen asked if this is where the L.A. Lounge and Spa used to be.

Attorney Sams answered that the L.A. Lounge is no longer there but the Spa is still there.

Mr. Michael Glenn spoke on behalf of the Jefferson Blount-Harvey Building. He said that they are in full support of this business and he offered to answer any questions that the Board might have.

Ms. Thomas offered to answer questions for the Board.

Mr. Ewen asked when they would be ready to start business.

Ms. Thomas answered that they would be ready immediately.

With there being no further speakers in favor or against the application, Chairman Shook called for staff recommendation.

Mr. Dail said that staff did not have any objections to the request.

With there being no comments made during Board Discussion, Chairman Shook read the criteria.

**Ms. Rich made a motion to accept the Findings of Fact with the stated conditions, Mr. Hutchens seconded and the motion carried unanimously.**

**Mr. Ewen made a motion to approve the petition, Ms. Harrington seconded and the motion carried unanimously.**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY SAMI HUFALD**

The applicant, Sami Hufaid, desires a special use permit to operate retail sales not otherwise listed (tobacco pipe sales) pursuant to Appendix A, Use (15)d. of the Greenville City Code. The property is further identified as being tax parcel number 33737.

**Mr. Dail delineated the area on the map.** He said that the proposed use is located at 703 SE Greenville Boulevard and it is zoned CG (General Commercial).

**Surrounding Zoning:**

North: CG (General Commercial)

South: CG (General Commercial)

East: CG (General Commercial)  
West: CG (General Commercial)

**Surrounding Development:**

North: Upper Deck Sports Bar and Grill  
South: Carolina Ale House, Greenville Mall  
East: Kmart  
West: Checkers

**Description of Property:**

The property contains a 2,220 square foot commercial building with two units and has approximately 95 feet of frontage along SE Greenville Boulevard with a total lot area of 0.27 acres. The applicants unit contains 1,100 square feet. Currently Edward Jones Investments operates within the other unit of the applicants building.

**Comprehensive Plan:**

The property is located within Vision Area “D” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on October 13, 2011. Notice of the public hearing was published in the Daily Reflector on October 17, 2011 and October 24, 2011.

**Other Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy.

The police department issued a general objection to the proposed business. The objection was not specific as to this business at this location but as to the type of business involved. Historically this category of business has created quality of life issues for surrounding businesses and residents; however, there is no specific information concerning this specific location and business.

Mr. Fleming asked if they would sell tobacco products as well as tobacco pipes.

Mr. Dail answered that they would.

Mr. Ewen asked if this store would sell beer and wine.

Mr. Dail answered that the applicant had not applied for an ABC permit at this time.

Chairman Shook asked if there was a representative from the Police Department to explain general objection to the proposed business.

Mr. Dail answered that there was not.

Chairman Shook asked if they had submitted a letter.

Mr. Dail answered that they had not submitted anything beyond the summary that was provided in the Board's packet.

Mr. Fleming asked if the Police Department had any problems with the other stores in the area that were similar in nature.

Attorney Little said that there has been problems in the past with similar stores, but the Board would have to look at this particular application to see if the permit and location would likely cause the applicant to violate the Criteria. Based on the information given, there is nothing to say that it should not occur, so it can be entered into the Finding of Fact, but it cannot be used as a factor to approve or deny the application. The Board would have the option of putting a periodic review in place to make sure that it is not a nuisance area. When an area is found to be a nuisance or if it is found that there is illegal activity there, then staff can recommend that their application come back for review for possible revocation of their Special Use Permit.

Mr. Fleming asked what kind of illegal activities have gone on at these type of businesses.

Attorney Little answered that there had been inappropriate sale of tobacco products and alcohol, inappropriate use of EBT cards and other similar activities of that nature. He said that they have also been issues with businesses of that type becoming places to congregate.

Mr. Fleming asked what their hours of operation would be.

Attorney Little answered that he would have to ask the owner that question.

Chairman Shook said that similar problems could also be found at convenience store. He said those kind of issues are not particular to this proposed use.

Attorney Little said that he was correct.

Chairman Shook said that the statement "creating a quality of life issue" is pretty broad.

Attorney Little said that he was correct and it was meant to encompass the nuisance activities.

Mr. Ewen said that even if the Board were to not put a condition for a yearly review on the application, there would still be a possibility of the application coming back before the Board if there was a problem.

Mr. Sami Hufaid addressed the Board to answer questions about his application. He said that they would not be selling alcohol and they would only be selling tobacco products. He said that their business is set up in a business district and not in a neighborhood, so there wouldn't be a problem with people hanging out. Most of his customers are grown people, like the folks that are coming out of town and staying in a hotel.

Chairman Shook asked for his hours of operation.

Mr. Hufaid answered that they would open from 9 a.m. – 10 p.m.

Mr. Fleming asked if they would sell drug paraphernalia.

Mr. Hufaid answered that they would not. He said that they would sell wooden pipes, hookahs, and other pipes that are used for tobacco products.

Attorney Little followed up and said that anything can be used as drug paraphernalia so that would be very broad. He wanted to make that clear to the Board.

Mr. Ewen asked why customers would come from out of town just to buy his products.

Mr. Hufaid clarified and said that he meant that his customers are grown people and sometimes he gets customers who are from out of town that are staying in the local hotels.

With there being no further speakers in favor or against the application, Chairman Shook called for staff recommendation.

Mr. Dail said that staff did not have any objections to the request.

Mr. Hutchens said that he did not think that they could not weigh the Police Department's statement because they were not there to explain and it was too vague.

Mr. Fleming said that he thought that they need to hear more from the Police Department.

Mr. Ewen said that they will find out more if it becomes a problem.

Mr. Fleming noted that the Police Department had shut down convenience stores a few years ago because of illegal activity and he felt that they needed to hear more from the Police Department.

Mr. Hutchens said that this was not the same type of business.

Chairman Shook said that if the Police Department had any real concerns about the application then they would have attended the meeting.

Mr. Ewen said that if there were any concerns from surrounding businesses then they would have shown up as well.

With there being further comment, Chairman Shook read the criteria.

**Mr. Hutchens made a motion to approve the Finding of Fact, Ms. Harrington seconded and it passed unanimously.**

**Mr. Ewen made a motion to approve the petition, Mr. Hutchens seconded and it passed unanimously.**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY I-ONE BUSINESS CENTERS, LLC**

The applicant, I-One Business Centers, LLC, desires a special use permit to operate a game center pursuant to Appendix A, Use (6)d. of the Greenville City Code. The property is further identified as being tax parcel number 62278.

Mr. Dail delineated the area on the map. He said that it was located at 4052-A S. Memorial Drive and it is zoned CG (General Commercial).

**Surrounding Zoning:**

- North: CH (Heavy Commercial)
- South: CG (General Commercial)
- East: CH (Heavy Commercial)
- West: O&I (Office & Institutional) – Winterville’s Jurisdiction

**Surrounding Development:**

- North: Auto Store of Greenville
- South: Various Commercial Uses, Pitt Community College
- East: AAMCO
- West: Vacant (Pitt Community College Property)

**Description of Property:**

The property contains a 12,000 square foot commercial building with multiple units and is part of the larger Community Square Shopping Center located along S. Memorial Drive and Reedy Branch Road. The applicant’s unit contains 1,200 square feet. Currently Anchor Insurance, The Beauty Shop and Player’s Choice Billiards are operating within the other units of the applicants building.

**Comprehensive Plan:**

The property is located within Vision Area “E” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on October 13, 2011. Notice of the public hearing was published in the Daily Reflector on October 17, 2011 and October 24, 2011.

**Related Zoning Ordinance Regulations:**

Definition:

*Game center.* Any establishment that has more than five coin/token operated or other amusement devices or whose principal purpose is the operation of a game center regardless of the total number of amusement devices. For purposes of this definition, the term amusement devices shall include electronic games and similar machines, and any other game table or device. Bingo parlors shall be considered as game centers regardless of the number of participants. See also definition of billiard parlor; pool room.

**Staff Recommended Conditions:**

The interior connection between Players Choice Billiards and the proposed game center shall be closed with a solid wall preventing interior access between the two prior to operation.

All construction must meet North Carolina Building Code Standards.

No loitering permitted outside of the establishment.

Trash receptacle must be placed outside of the establishment.

No amplified or unamplified audio entertainment shall be permitted at this establishment.

The establishment shall not operate as a public or private club.

The establishment must comply with any ABC Commission imposed conditions. ABC Commission imposed conditions will become part of the conditions required to maintain the special use permit.

**Other Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy.

The police department issued a general objection to the proposed business. The objection was not specific as to this business at this location but as to the type of business involved. Historically this category of business has created quality of life issues for surrounding businesses and residents; however, there is no specific information concerning this specific location and business.

Chairman Shook asked what the specific reason was for separating Player's Choice Billiards and this business.

Mr. Dail answered that staff felt a game center of this nature mingling with alcohol in the same building would not be appropriate.

Chairman Shook asked if Players Choice Billiard currently a public/private club.

Mr. Dail answered that it was.

Chairman Shook asked if there is anything in the ordinance for public/private clubs that would prohibit this type of use.

Mr. Dail answered that there was not anything specifically in the ordinance, but staff feels that a casino-type environment could be created.

Mr. Ewen noted that staff recommendations state that the applicant must comply with any ABC imposed conditions but they would not have alcohol.

Mr. Dail said that if they were to stay connected then they would.

Mr. Ewen asked if staff was recommending that they be separated.

Mr. Dail answered that was correct.

Mr. Carraway asked if this would mean that they could not obtain an ABC Permit.

Mr. Dail answered that was not the case.

Mr. Carraway asked if they could apply later.

Mr. Dail answered that game-centers typically do not apply for ABC permits.

Chairman Shook asked if there was anything that would prohibit them from obtaining an ABC permit even if the wall was not there.

Attorney Little answered that ABC Permit guidelines, which are imposed by the state, would prohibit the sale or consumption of alcoholic beverages in establishments that appears to be a casino or is involved in games-of-chance operations. In this instance, if the interior is completely walled off so that there is no interior access between the two businesses, then Player's Choice can avoid the possibility of losing their ABC permit. ABC may impose other conditions with the ongoing litigations of the online sweepstakes.

Mr. Mike Baldwin spoke on behalf of I-One Business Centers, LLC. He said that this is really an internet café and its primary use is going to be for sweepstakes. There will be computers in the space, which is 1200 sq. feet and the area will be sheet-rocked off. There will be vending machines and an employ. It will be \$8 per hour and you will have sign a purchase; staff will record your license number when you sign the purchase agreement and that is how you will access the computers. He compared the games that they will offer to the Monopoly game that McDonalds sometimes offers. He said that the operating hours will be 10:00 a.m. – 12:00 a.m. He said that there will be no alcoholic beverages so there will not be a need for an ABC permit. He went through the Findings of Fact and said that this application complies with every point and there will not be any smoking, drinking, or passageway to Players Choice Billiards; he offered to answer any questions that the Board might have.

Mr. Ewen asked what they intended to do about potential loiterers.

Mr. Baldwin said that Mr. Tyler Williams, one of the owners, will be there regularly and loitering for this business would be handled as it would for any of the other businesses in town.

Mr. Williams said that loitering would not be tolerated, along with smuggling of outside food or beverages, or bad behavior.

Chairman Shook asked how many would be allowed inside at any given time.

Mr. Williams said that at the most, it would be 27 customers, 1 staff member, and himself if he happens to stop in. He said that they expect that the capacity will be between 18 – 23 people. He said that there will be an alarm and door buzzer for after hours security, along with DVR surveillance.

Mr. Baldwin made a point that sweepstakes is a legal operation in North Carolina by order and judgment by Judge John O. Craig.

Attorney Little said that there is a little difference of opinion since there were two lawsuits that were filed after that ruling alleging that the acts are unconstitutional. One court found all requirements of the act constitutional, and the

other court found that all acts, except for one, were unconstitutional. As a result, the initial act made it illegal to operate video games based on the random matching of words, letters, numbers, or symbols not dependent on the players' skills or dexterity. The court that found a portion of this statute unconstitutional said that the last criteria, which was video games based upon the matching of random numbers, was vague and thus unconstitutional, but all other prohibitions were accepted. There are some games that are okay and there are some that are not; later on in year the Court of Appeals will rule on how far the video games can go.

Mr. Williams said that it is the same case with software – there is some software that is permitted and there is some that is not.

Chairman Shook said that this permit is not specific to sweepstakes.

Attorney Little answered that he was correct, but if they operate any of the sweepstakes that are within the statutory prohibitions then that would not be permitted. As long as they are within the guidelines, then they are an acceptable business – pending the ruling of the Court of Appeals.

Mr. Baldwin said that they would operate within those guidelines.

Mr. Carraway referred back to the comparison of this business and McDonalds. He asked if the patrons of his business would be able to win cash prizes.

Mr. Williams answered that they would, just as if one who was playing the Monopoly game at McDonalds may be able to peel a game piece and find that they have won a million dollars.

Mr. Carraway said that he saw a little bit of difference in the two.

Mr. Richard Winkler spoke in opposition to the application. His family owns the other half of the building that is adjacent to the lounge and to Players Choice Billiards. He thinks that there will be a conflict of interest when the people that own the bar also own the property. He does not think that putting up a wall will prohibit customers from walking back and forth between the businesses. He said that they have had this problem before when it was just a bar and they had a few video poker machines; he said that his business had been broken into with the intent of breaking the drywall to get to the bar and take the money from the video poker machines. He feels that loitering will be a problem and he does not feel that his employees will be safe there. He does not feel that this will add to his property value and he feels that if he were to have to lease out his space, then the proposed business could deter potential renters. He has included 12 additional cameras to his business and he is concerned with the back door because there is heavy line of trees back there. He said that his business has been broken into a number of times from the back.

Chairman Shook asked if he has contacted the Police or City officials about these issues.

Mr. Winkler said that it is hard to distinguish what is the bar and what is the business because they are almost one and the same especially because they are owned by the same group. He noted that the cops respond quickly and he recounted how he had a break in the previous month and four police cars came. He said that a patron of the bar has kicked out his window and he wondered what would happen if someone who lost money at the business would do.

Mr. Baldwin spoke in rebuttal. He said that the first time that he had come before the Board for Players Choice

Billiards was in 1999. They had rented the space and bought it when it became available in 2001. He said that Mr. Winkler knew that the bar was in place when he bought his business. He felt that this business was going to be a quieter neighbor for him than if it were to stay with Players Choice Billiards. He noted that his business may have a lot of traffic from customers who are going in and out to pay their insurance bills.

Mr. Fleming asked if Café Duo was formerly in that space.

Mr. Williams answered that it was.

Mr. Fleming said that there was not a door there when Café Duo was there.

Mr. Williams said that there was a door but it was closed off.

Mr. Baldwin commended the other owners, Mr. Waylon Denton and Mr. Steve Denton, for having a successful business.

Mr. Dail said that staff did not have any objections to the request.

Chairman Shook closed the Public Hearing and called for Board Discussion.

Mr. Ewen asked Attorney about the letter that Alicia Hawke had sent in regards to the restrictive covenants.

Attorney Little said that he had received the letter just that day. Before the Board can consider the letter, they must first decide on whether it is substantial or competent. Typically, letters or emails are considered hearsay if the author is not physically present to testify. Even if it were to be accepted, restrictive covenants, agreements involving developers and homeowners/associations/property managers/occupants, do not supersede zoning ordinances. Even if the Board were to grant the permit, it would not permit the parties subject to the restrictive covenant from seeking court intervention to prevent the enactment. Attorney Little asked the Board to note that there is a specific agreement by the applicant that there will be no smoking; possession, sale or consumption of alcoholic beverages; and construction of a wall, which he said that the Board could set a deadline for.

Chairman Shook said that was a condition that staff recommended should happen prior to operation. He noted that they would have to go before the ABC Commission if they wanted their ABC license even though the City may not recommend it and he asked if that was a condition that the Board should consider.

Mr. Carraway said that he did not think that they would be able to do that because it is something that is regulated by the State.

Attorney Little said that the Board can not set a condition that would prohibit the applicant from applying for an ABC permit. The City will have a say because the ABC Commission has a space on their application for comments from the City.

With there being no further discussion, Chairman Shook read the criteria.

**Mr. Hutchens made a motion to approve the Finding of Fact with the conditions, Mr. Carraway seconded and the motion passed unanimously.**

**Mr. Hutchens made a motion to approve the application, Mr. Fleming seconded and the motion passed unanimously.**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY BILTMORE VENTURE GROUP II, LLC**

The applicant, Biltmore Venture Group II, LLC, desires a special use permit to operate a game center pursuant to Appendix A, Use (6)d. of the Greenville City Code. The proposed use is located at 240-B SW Greenville Boulevard. The property is further identified as being tax parcel number 63737.

Mike delineated the area on the map. He said that it is located at 240-B SW Greenville Boulevard and is zoned CG (General Commercial).

**Surrounding Zoning:**

North: CG (General Commercial)  
South: CG (General Commercial)  
East: CG (General Commercial)  
West: CH (Heavy Commercial)

**Surrounding Development:**

North: Murphy Fuels, Progressive Free Will Baptist Church  
South: Toys-R-Us  
East: Walmart  
West: Centurylink, Heath Motorsports, Mayer Electric Supply

**Description of Property:**

The property contains a 15,400 square foot commercial building with multiple units and is part of the larger Walmart Shopping Center along SW Greenville Blvd and Hooker Road. The applicants unit contains 1,400 square feet. Currently, Radio Shack, Perez Jewelry, Cato, Kut'n Up and Lendmark are operating within the other units of the applicants building.

**Comprehensive Plan:**

The property is located within Vision Area "E" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on October 13, 2011. Notice of the public hearing was published in the Daily Reflector on October 17, 2011 and October 24, 2011.

**Related Zoning Ordinance Regulations:**

Definition:

*Game center.* Any establishment that has more than five coin/token operated or other amusement devices or whose principal purpose is the operation of a game center regardless of the total number of amusement devices. For purposes of this definition, the term amusement devices shall include electronic games and

similar machines, and any other game table or device. Bingo parlors shall be considered as game centers regardless of the number of participants. See also definition of billiard parlor; pool room.

**Staff Recommended Conditions:**

No loitering permitted outside of the establishment.

Trash receptacle must be placed outside of the establishment.

**Other Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy.

The police department issued a general objection to the proposed business. The objection was not specific as to this business at this location but as to the type of business involved. Historically this category of business has created quality of life issues for surrounding businesses and residents; however, there is no specific information concerning this specific location and business.

Mr. Hutchens asked if there is any difference between this application and that last application.

Mr. Dail answered that there was not.

Attorney Phil Dixon spoke on behalf of the applicant. The applicants have been leasing a space at the Statonsburg Shopping Center from Brody Co. and they have been at the store since 2010. He said they have a letter of reference from Brody Co. which indicates that they are outstanding tenants. He said that the business has been very steady and most of their customers are females between the ages of 46-52 years old. He said that they had leased the premises located at 240-B SW Greenville Boulevard in August. They applied for a Business License from the City and they were not told that they would need a Special Use Permit to operate their business. In September they received a call from the City advising them that they would need to obtain a Special Use Permit. He noted that since they were not required to obtain a Special Use Permit for their first store, so they did not think that they would need it for their second store. He said that his clients do not mind the process, but it has put them at a disadvantage because they have had some expenditures in running this second store. He said that they had hired Mike Baldwin to help them and he asked if they could use his testimony from the previous case.

Attorney Little said that it would be up to the Board and if they would accept it then it would be incorporated.

Chairman Shook said that the Board did not have any objections.

Attorney Dixon said that he had also brought Bruce Sauter to address concerns about how this business will affect the adjoining properties.

Mr. Sauter stated that he is a local real estate appraiser who specializes in commercial properties. He was asked by Attorney Dixon to look at the property and neighboring properties to give his opinion on adverse impacts on property value.

Attorney Dixon said that they had requested that he look at similar facilities around town and he asked if he had

complied.

Mr. Sauter said that he had. He said that things that he usually considers on property evaluations are access, zoning compliance, condition and age of the property, and the general land use development pattern around it. He said that there are two main entrances into the Wal-Mart center from Hooker Road, there is ample access in front of the store, there is parking behind Toys 'R Us, and there is also overflow parking in the Wal-Mart center. He said that the building appears to be in compliance with development and zoning ordinance in regards to the setbacks, parking and access. He said that the building is probably 10-12 years old and he listed the neighboring businesses in that building. He mentioned that Brody Co. has given the applicant a favorable recommendation and, without an exhaustive study, he could not see why this business would have an adverse impact on any of the businesses there.

Attorney Dixon asked if he is a member of Appraisal Institute.

Mr. Sauter confirmed that he is and he has worked on both sides of the table sometimes for property owners and sometimes for the state. He said that he did not have a personal interest in this case. He said that one of the canons of the Appraisal Institute is to be biased and that has been his approach.

Attorney Dixon said that he did not ask for a particular result and he had asked him only for his opinion.

Mr. Sauter confirmed that was correct.

Attorney Dixon pulled out one of the pictures from the materials that he had provided to the Board. He said that these types of businesses have a reputation of being seedy and having a bar-like atmosphere. He showed them a picture of the applicants business; he said that they have flat screen TVs and nice leather sofas. He said that the average number of customers would be between 5 -8 people. He said that the business is for adults and minors are not allowed.

Mr. Paul Atkinson, one of the managing partners of Biltmore Venture Groups, LLC, came forward to address the Board. He said that he was glad that the City had put more standards in place because it allowed companies like theirs to rise above the rest. He said that they pride themselves on their locations and they have trained employees; they feel that it is a nice environment to come and do your entertainment. He feels that they are a catalyst for other businesses and they do a lot of cross-marketing with other businesses to promote the other businesses' services as well as their own. He thinks that their gaming center is not like the other ones in the area and many of the patrons come in to surf the internet and he said that they do offer the gaming, which is the main part of the business. He said that they have a lot of systems in place and their software is compliant with North Carolina law. He said that they have security measures in place to protect their employees, clients and the area around them. Mr. Atkinson said that they chose this location because it is similar to their first location. He noted that there are some clients that come in and play in groups. He pointed out that they select employees from the area and he feels that they pay them well. He said that they are not near a bar and they do not allow minors into their business. He said that they have about 5 – 8 people on average, with most of their clients being female. He noted that they service a number of hospital employees and he said that they would not apply for an alcoholic permit. He feels that this something positive to the community.

Attorney Dixon said that there was another manager for the business present if the Board would like to ask further questions. He said that there are many vacant properties around Greenville and this allows an idle space

to be rented out. He recalled how, in the capacity of the Town Attorney for the Town of Ayden, they had first heard the first mention of Internet Cafes and the hysteria around it and he compared it to the hysteria of billiard tables and how it was felt that it might corrupt the youth. He said that they payout is better because the business keeps 30% versus the 65% that the lottery keeps.

With there being no further speakers in favor or against the application, Chairman Shook called for staff recommendation.

Mr. Dail said that staff did not have any objections to the request.

With there being no comments made during Board Discussion, Chairman Shook read the Criteria.

**Mr. Hutchens made a motion to approve the Finding of Fact with recommended conditions, Mr. Fleming seconded the motion and it passed unanimously.**

**Ms. Rich made a motion to approve the application, Mr. Fleming seconded the motion and it passed unanimously.**

**With no further discussion, motion was made and properly seconded to adjourn at 9:01 p.m.**

Respectfully Submitted

Michael R. Dail, II  
Planner