

DRAFT OF MINUTES PROPOSED FOR ADOPTION BY THE GREENVILLE BOARD OF
ADJUSTMENT

May 22, 2008

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	
Mrs. Ann Bellis*	Mr. Charles Ewen X
Mrs. Wanda Harrington*	Mr. Thomas Harwell X
Mr. John Hutchens*	Mr. Scott Shook X
Mr. Charles Ward*	Mrs. Renee Safford-White*
Mr. Allen Thomas*	

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

VOTING MEMBERS: Wubneh, Bellis, Harrington, Hutchens, Ward, Safford-White, Thomas

OTHERS PRESENT: Mr. Mike Dail, Planner
Mr. Wayne Harrison, Planner
Mrs. Sarah Radcliff, Secretary
Mr. Les Everett, Chief Building Inspector
Mr. Chris Kelly, Engineering Assistant
Mr. Bill Little, Assistant City Attorney
Sergeant Dan Blanchard, Greenville Police Department

MINUTES

Motion was made by Mr. Thomas, seconded by Mr. Ward to accept the April 24, 2008 minutes as presented. Motion carried unanimously.

Chairman Wubneh stated that item 3 on the agenda had been withdrawn by the applicant and asked for a motion to amend the agenda. Motion was made by Mr. Hutchens, seconded by Mr. Thomas to amend the agenda. Motion carried unanimously.

REPORT ON ANNUAL REVIEW OF PUBLIC/PRIVATE CLUBS

Mr. Dail stated there was a representative from the Greenville Police Department to address the question from the previous meeting regarding the club Dynasty’s.

Sergeant Dan Blanchard came forward to address the board.

Mrs. Safford-White asked what “not an unusually high number of calls for service” meant.

Sergeant Blanchard stated he had a report from Major Smeltzer that listed several of the calls for service at Dynasty’s. He said that a lot of their cab calls list where officers check on and off duty at

that location because they have hired off-duty capacity officers to keep the peace at that location. He stated that it was also a convenient place for traffic stops and that accounts for some of the cab calls. Sergeant Blanchard said the majority of the calls are not citizen generated, where they actually get a complaint from a citizen.

Motion was made by Mr. Ward, seconded by Mrs. Safford-White to approve the report. Motion carried unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY DAVID MITCHELL

The applicant, David Mitchell, desires a special use permit to operate a private convention center pursuant to Sections 9-4-78(f)(8)l. of the Greenville City Code. The proposed use is located at 1002 Evans Street. The property is further identified as being Tax Parcel Numbers 11035, 07775, 07782, 07779, 07778 and 24824.

Chairman Wubneh asked anyone wishing to speak for or against the case to come forward and be sworn in.

Mr. Dail delineated the area on the map. He stated that the current zoning of this property, as well as the surrounding properties, is CDF, Downtown Commercial Fringe. Mr. Dail stated there was a condition that staff would like to add that was not noted in the findings of fact. He said that one of the parcels contained a single-family residence and that staff recommended that the house located at 114 West 11th street may not be used for any convention center activities.

Surrounding Zoning:

North: CDF (Commercial Downtown Fringe)
South: CDF (Commercial Downtown Fringe)
East: CDF (Commercial Downtown Fringe)
West: CDF (Commercial Downtown Fringe)

Surrounding Development:

North: Greenville Awning, Scott Cleaners, Various commercial and office uses along Tenth St.
South: Boyds Barber Shop, Single Family Residence, Central Heating and Air
East: Starbucks, Tech Shop
West: Vacant Commercial Building (Owned by ECU)

Description of Property:

The requested area consists of six parcels and is located within the block bounded by Tenth Street, S. Washington Street, Eleventh Street and Evans Street. The properties

have approximately 85 feet of frontage along Evans Street, 250 feet of frontage along S. Washington Street and 95 feet of frontage along Tenth Street with a total lot area of 1.03 acres.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on May 8, 2008. Notice of the public hearing was published in the Daily Reflector on May 12, 2008 and May 19, 2008.

Other Comments:

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

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Mr. Thomas asked what the potential uses were for a private convention center.

Mr. Dail stated that the intent was to have organizations rent the building for meetings and small parties, not anything to the extent of what the city’s convention center is used for.

Chairman Wubneh asked why a condition that was placed on the prior private convention center was not placed on this one.

Mr. Dail stated that condition was only for convention centers in the medical district.

Mr. Fred Mattox spoke in favor of the request on behalf of the applicant. Mr. Mattox stated the applicant saw potential in renting the facility out for meetings and dinners. He stated the applicant did not intend to have a bar or serve alcoholic beverages. He said that they had no problem with the condition that the staff wanted to place on the request regarding the single family residence located on one of the parcels. Mr. Mattox requested that the word “convention” not be allowed in the naming or advertising of the facility.

Mr. Ward asked if the owners saw an expanded use for the facility.

Mr. Mattox stated that was possible but understood they would have to reappear before the board if that was to happen.

Mrs. Bellis asked how the applicants planned to advertise the building and what they would call it if not a convention center.

Mr. Mattox stated he did not have an answer other than it would not be called a convention center.

Mr. Thomas asked if they were including so many parcels in the request because that was what the applicant owned.

Mr. Mattox stated that was so and they had consulted with the city as to whether to apply for one or more parcels due to possibly changing the location for parking.

Mrs. Safford-White asked the hours of operation.

Mr. Mattox stated it would be open any time that someone wanted to meet there.

Chairman Wubneh stated that in order to remain consistent, the board would also place the two conditions on this request that have been put on previous requests. First is that the word "convention" would not be allowed in the naming or advertising of the facility and second, if any alcoholic beverages are served or dispensed, the applicant shall obtain any and all ABC permits.

Mr. Mattox stated that would not be a problem.

Chairman Wubneh asked if there was anyone else to speak for or against the request. He then asked Mr. Dail the position of the city.

Mr. Dail stated that staff recommended approval of the request.

Chairman Wubneh closed the public hearing and called for discussion.

Chairman Wubneh read the criteria for granting/denying a special use permit. Chairman Wubneh asked for a motion to approve the findings of fact. Motion was made by Mrs. Bellis to approve with the conditions that state if alcoholic beverages are served, provided, sold or dispensed, the applicant shall obtain any and all ABC permits required for the facility and comply with any condition for such permits as required by the ABC Commission; the word "convention" be prohibited from use in the name of the center or in any advertisements; and the property containing the single-family residence may not be used for convention center activities. Motion was seconded by Mr. Ward. Motion carried unanimously.

Chairman Wubneh then asked for a motion to approve the petition. Motion was made by Mr. Hutchens, seconded by Mrs. Safford-White. Motion carried unanimously.

Based on the facts found by the Board and the evidence presented, the Board orders that this permit 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 TONYA NELSON-HESTER – WITHDRAWN

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY MONARCH

The applicant, Monarch, desires a special use permit to operate a personal service not otherwise listed (day treatment facility) pursuant to Section 9-4-78(f)(15)a. of the Greenville City Code. The proposed use is located at 150 E. Arlington Boulevard, Suites D and E. The property is further identified as being Tax Parcel Numbers 42706 and 42707.

Chairman Wubneh asked for all who wished to speak for or against the case to come forward and be sworn in.

Mr. Dail delineated the area on the map. He stated the current zoning for the property is CG, General Commercial, and gave the zonings of the surrounding areas. Mr. Dail stated the property was located along a major thoroughfare, East Arlington Boulevard, and other major thoroughfares close by, being Evans Street, to the west.

Surrounding Zoning:

North: CG (General Commercial)
South: OR (Office Residential)
East: CG (General Commercial)
West: CG (General Commercial)

Surrounding Development:

North: Various commercial and office uses along Arlington Boulevard
South: Various office uses along Commerce Street
East: Practicality Hair and Day Spa, Vet Center
West: Dixon, Allen & Garcia, PLLC, Merrill Lynch

Description of Property:

The subject property contains one commercial building with six units. The property has approximately 245 feet of frontage along Arlington Boulevard and 245 feet of frontage along Clifton Street with a total lot area of 1.37 acres. The applicant wishes to operate their business within two of the six units on this property. These two units contain approximately 6,832 square feet of floor area.

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 May 8, 2008. Notice of the public hearing was published in the Daily Reflector on May 12, 2008 and May 19, 2008.

Staff Recommended Conditions:

The facility must comply with all requirements, licensing, rules, health certifications, background checks and other requirements imposed or directed by the NC Division of Health, Human Services; the Commission or Council on MR/Developmental Disabilities; and Community Alternative Programs for DD/MR adults.

Other Comments:

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

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Ms. Eileen Bress spoke in favor of the request on behalf of the applicant. Ms. Bress stated she wanted to make a clarification regarding the listing as a day treatment facility. She stated that they were actually classified as a day activity program, which is considered supervision in an organized program during a substantial part of the day in a group setting. Participation may be under routine or occasional basis. She stated the service was designed to support the individual’s personal independence and promote social, physical and emotional well-being.

Mr. Ward asked how many people they dealt with at one time.

Ms. Bress stated it was very variable; however they could have up to 52 individuals.

Mr. Ward asked what the hours of operation would be.

Ms. Bress stated they would be open from 8 until 4; however individuals could come in and out throughout the day.

Mr. Ward asked if there had been a program of this type in Greenville before.

Ms. Bress stated there had not and felt they had never had the right agency to handle it. She stated that the facility in Craven County had been operating successfully for 20 plus years.

Mrs. Harrington asked what ages the facility served.

Ms. Bellis stated it was for adults 18 and older.

Mr. Thomas asked if the service area was for just Pitt County and the Greenville area.

Ms. Bress stated this facility would serve all of Pitt County and their facility in Craven County served 5 different counties. She also stated that they provide services for individuals in 35 North Carolina counties.

Chairman Wubneh asked if all activities would be held inside the building.

Ms. Bress stated it would be in the building or out in the community.

Chairman Wubneh asked Mr. Dail if parking was an issue.

Mr. Dail stated that there was sufficient parking available in the office complex to cover all of the businesses located there.

Ms. Bress stated that most of the people using the facility would probably be dropped off anyway.

Mr. Thomas asked if they had any vans or other transport vehicles.

Ms. Bress stated it was in their budget to have 2 vans.

Mr. Ward asked if any medication would be administered at the facility.

Ms. Bress stated there would be no medical intervention at all.

Chairman Wubneh asked if there were guidelines as to the type of people they can accept.

Ms. Bress stated they were typically referred according to their diagnosis.

Chairman Wubneh asked if there was anyone else to speak in favor or opposition to the request. He then asked Mr. Dail for the staff recommendation.

Mr. Dail stated staff recommended approval of the request.

Chairman Wubneh closed the public hearing and called for discussion.

Chairman Wubneh read the criteria for granting/denying a special use permit. Chairman Wubneh asked for a motion to approve the findings of fact. Motion was made by Mr. Thomas, seconded by Mrs. Harrington to approve the findings of fact with the conditions of the staff and the correction made by Ms. Bress regarding the type of facility. Motion carried unanimously.

Chairman Wubneh then asked for a motion to approve the petition. Motion was made by Mrs. Safford-White, seconded by Mr. Ward. Motion carried unanimously.

Based on the facts found by the Board and the evidence presented, the Board orders that this permit 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 CHRIS GOURAS AND MIKE RIVERA

The applicants, Chris Gouras and Mike Rivera, desire a special use permit to operate a public or private club pursuant to Sections 9-4-78(f)(6)m. and 9-4-86(f) of the Greenville City Code. The proposed use is located at 113 E. Fifth Street. The property is further identified as being Tax Parcel Number 12848.

Chairman Wubneh asked anyone who wished to speak for or against the case to come forward and be sworn in.

Mr. Dail delineated the area on the map. He stated the current zoning of the property is CD, Downtown Commercial, and gave the zonings of the surrounding areas. Mr. Dail stated the property was located along a minor thoroughfare, East Fifth Street, and in close proximity to a major thoroughfare, being Reade Street, to the east.

Surrounding Zoning:

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

Surrounding Development:

North: City Owned Parking Lot, Various commercial uses along Evans Street
South: Vacant Commercial, Downtown Athletic Club, 5th St. Distillery, The Corner
East: The Element, Boli's
West: Levels, Vacant Commercial

Description of Property:

The subject property is currently being operated as a conventional restaurant (Pirates Den). The property has approximately 62 feet of frontage along Fifth Street with a total lot area of 0.16 acres (6,969 sq. ft.).

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 May 8, 2008. Notice of the public hearing was published in the Daily Reflector on May 12, 2008 and May 19, 2008.

Staff Comments:

Definition of a *Public or Private Club* [zoning regulations]:

An establishment of which the principal use is entertainment and which:

1. May be open to the general public;
2. May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation;
3. May provide live or recorded amplified music;
4. May provide a floor show;
5. May provide a dance area;
6. May offer a full service bar;
7. May offer food services;
8. May provide food attendant (waiter/waitress) table ordering and busboy services; and
9. Does not qualify under the definition of “restaurant, fast food” or “restaurant, conventional” as contained herein.

If approved, the applicant shall comply with the following pursuant to Section 9-4-86(f), Specific Criteria:

- (1) (a) A special use permit for a public or private club is subject to revocation in accordance with the provisions of this subsection (f)(1). Nothing herein shall prohibit or restrict the authority of the board of adjustment to rescind or revoke a special use permit for a public or private club in accordance

with the provisions of section 9-4-83.

- (b) An annual review shall be conducted by the director of planning or his authorized representative of a public or private club which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes, and ordinances including, but not limited to, noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the director of planning or his authorized representative as a result of this annual review shall be compiled in a written staff report.

- (c) At a meeting of the board of adjustment, the director of planning or his authorized representative shall present to the board of adjustment the staff report of a public or private club for which the annual review includes a finding of one or more instances of non-compliance with applicable laws, codes, and ordinances including, but not limited to, noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (4) below shall be provided notice of the meeting and a copy of the staff report.

- (d) Based on the staff report, the board of adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit. An order for a rehearing shall be based upon a determination by the board of adjustment that either (i) the use of the property is inconsistent with the approved application, (ii) the use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code, (iii) the use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard, or (iv) the use is not compliant with any additional conditions of approval established by the board and set out in the order granting the permit. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the board of adjustment may grant a special use permit with conditions imposed pursuant to this subsection (f) and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the board of adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a public or private club.

- (e) The requirements and standards set forth in this subsection (f)(11) are in addition to other available remedies and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a public or private club shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 AM each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public right-of-ways or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a public or private club shall comply with the provisions of Title 11, Chapter 9 of the City Code whether or not the establishment is a nightclub, bar or tavern.
- (3) In addition to subsection (2) above, the board of adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a public or private club, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the director of planning an acknowledgement of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgement shall be made on forms provided by the planning office.
- (5) Any public or private club that has been issued a special use permit by the board of adjustment, that is subject to mandatory annual renewal, shall continue under the terms and conditions of the issued special use permit, until the expiration of said permit. All subsequent special use permit approvals for said location shall be subject to the specific criteria set forth under this subsection (f).

Staff Recommended Conditions in Addition to 9-4-86(f):

No amplified and/or non-amplified outdoor music allowed and no music audible on the outside from the inside of the establishment. Club may not be operated with the door open if music is being played.

No outdoor activities permitted.

Customers may not be permitted to stand in doorways or block the sidewalk.

A line divider must be used to guide patrons into the club from the sidewalk so people can walk by.

Must have door attendant with counterfeit id checker and make sure walking traffic doesn't congregate at door or on sidewalk.

Nightclub operator must clean alley way and the first 50 foot section of the parking lot behind the building.

Other Comments:

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

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Mr. Ward asked if the property was currently a restaurant.

Mr. Dail stated it was.

Mr. Ward asked if there was any outside dining.

Mr. Dail stated there was not.

Mrs. Bellis asked if this operation fell within the downtown overlay.

Mr. Dail stated it did not, that it was immediately adjacent to it, on the east side. He stated this operation was formerly Sports Pad and Café Caribe.

Mr. Mike Rivera spoke in favor of the request on behalf of the applicant. Mr. Rivera stated they are currently a full service restaurant that started opening for lunch in mid-March. He stated their biggest benefit of obtaining the permit would be that they would only be required to have the 30% food sales required by the ABC Commission.

Mr. Thomas asked what the current business hours were.

Mr. Rivera stated they were open from 11:30 am to 2:00 am.

Chairman Wubneh asked if there was anyone else to speak in favor or opposition to the application. He then asked Mr. Dail for the staff's recommendation.

Mr. Dail stated staff recommended the application for approval.

Chairman Wubneh closed the public hearing and called for discussion.

Chairman Wubneh read the criteria for granting/denying a special use permit. Chairman Wubneh asked for a motion to approve the findings of fact. Motion was made by Mrs. Bellis, seconded by Mr. Ward to approve the findings of fact with the conditions recommended by the staff. Motion carried unanimously.

Chairman Wubneh then asked for a motion to approve the petition. Motion was made by Mrs. Safford-White, seconded by Mr. Ward. Motion carried unanimously.

Based on the facts found by the Board and the evidence presented, the Board orders that this permit 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.

Mr. Dail stated he had confirmed with the Institute of Government that the annual training session would be held on June 19th at 6:30 and that we would be sending out a menu and order form for them to complete.

Mrs. Bellis asked that an email list be compiled so that members could be contacted regarding last minute changes to the agenda or other matters.

With no further discussion, the meeting adjourned at 7:48 pm.

Respectfully Submitted

Michael R. Dail, II
Planner