

January 26, 2006

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of the Municipal Building. The following members were present:

Dr. Multau Wubneh, Chairman	
Ms. Ann Bellis	Mr. John Hutchens
Mr. Charles Ward	Ms. Renee Safford-White
Mr. Scott Shook	Mr. Steve Estes
Mr. Thomas Harwell	Mr. Joe Wright

VOTING MEMBERS: Wubneh, Bellis, Wright, Hutchens, Ward, Harwell and Safford-White

OTHERS PRESENT: Mr. Ed Lynch, Planner
Ms. Kathy Stanley, Secretary
Mr. Les Everett, Chief Building Inspector
Mr. Tim Corley, Engineer
Mr. Bill Little, Assistant City Attorney
Mr. Larry Spell, Council member

MINUTES

Chairman Wubneh asked if there were any corrections to the minutes. Motion was made by Ms. Bellis, seconded by Ms. Safford-White to accept the December 15, 2005 minutes as amended. Motion carried unanimously.

RULES OF PROCEDURE – APPROVED

Chairman Wubneh stated that the first item of business is the adoption of the Rules of Procedure.

Mr. Bill Little, Assistant City Attorney, stated that at last month's meeting the Board made amendments to the Conflict of Interest provision in the Rules of Procedures based upon language that the General Assembly had changed. Mr. Little stated that the Board agreed to adopt the revised rules that would incorporate the revised changes. What is before the Board tonight is the revised rule and adopting the Rules of Procedure as a whole.

No one spoke in opposition.

Motion was made by Mr. Harwell, seconded by Mr. Ward, to adopt the Rules of Procedure as amended. Motion carried unanimously.

REQUEST FOR A SPECIAL USE PERMIT BY TARIF A. HATOUM – GRANTED

Chairman Wubneh stated that the next item is a request by Tarif A. Hatoum. The applicant, Tarif A. Hatoum, requests the renewal of a special use permit to allow the continued operation of a public/private club, pursuant to Section 9-4-78(f)(6)(m) of the Greenville City Code. The existing business is located at 511 S

Cotanche Street and is further identified as Tax Parcel 11036.

Chairman Wubneh declared the meeting a public hearing as advertised in The Daily Reflector on January 16, 2006 and January 23, 2006. Those wishing to speak for or against the request were sworn in.

Mr. Lynch delineated the area on the map. Mr. Lynch stated the applicant wishes to renew a special use permit to allow the continued operation of a public or private club at 511 S. Cotanche Street. The property is currently zoned Downtown Commercial. The property has approximately 40 feet of frontage on Cotanche Street and contains approximately 5,013 square feet in total area. The property is located within Vision Area "H" as designed by the Comprehensive Plan. Management actions for Vision Area "H" include the development of the "College Area" of downtown as the cultural, recreation, and entertainment center of the City. The proposed use is in general compliance with the Land Use Plan Map, which recommends commercial development for the subject property. Mr. Lynch read the definition of a public or private club and specific criteria the applicant must comply with if granted the renewal. Mr. Lynch asked that the proposed Findings of Fact be entered into the record.

Applicant: Tarif A. Hatoum

Request: The applicant, Tarif A. Hatoum, desires the renewal of a special use permit to allow the continued operation of a public or private club pursuant to Sections 9-4-78(f)(6)m and 9-4-86(f) of the Greenville City Code.

Location: The existing use is located at 511 S Cotanche Street. The property is further identified as being Tax Parcel Number 11036.

Zoning of Property: CD (Downtown Commercial)

Surrounding Development:

Zoning

North: Alfredo's Pizza	CD (Commercial Downtown)
South: Pantana Bob's	CD (Commercial Downtown)
East: City Parking Lot	CD (Commercial Downtown)
West: Red Rooster	CD (Commercial Downtown)

Description of Property:

The property has approximately 40 feet of frontage on Cotanche Street and contains approximately 5,013 square feet in total area.

Comprehensive Plan:

The property is located within Vision Area "H" as designed by the Comprehensive Plan. Management actions for Vision Area "H" include the development of the "College Area" of downtown as the cultural, recreation, and entertainment center of the City. The proposed use is in general

compliance with the Land Use Plan Map, which recommends commercial development for the subject property. The site is located outside the Downtown Subdistricts Overlay wherein special use permits for public/private clubs are prohibited.

Notice:

Notice was mailed to the adjoining property owners on January 12, 2006. Notice of the public hearing was published in the Daily Reflector on January 16, 2006 and January 23, 2006.

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:

- (11) (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 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. Jeremy King, Attorney at Law, representing the applicant stated this location has been a club previously. Mr. King stated that Mr. Hatoum is available to answer any questions.

No one spoke in opposition.

Chairman Wubneh then read the criteria in granting/denying a special use permit.

Motion was made by Mr. Wright, seconded by Mr. Ward, to adopt the proposed findings of fact and evidence presented. Motion carried unanimously.

Motion was made by Mr. Ward, seconded by Mr. Harwell, to approve the request. 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.

REQUEST FOR VARIANCE FROM THE SETBACK STANDARDS FOR OFF-PREMISE ADVERTISING SIGNS BY FAIRWAY OUTDOOR ADVERTISING – GRANTED WITH CONDITIONS (Verbatim transcript)

Chairman Wubneh: The next item on the Agenda is a public hearing on a request for a variance from the setback standard for off-premise signs at 711 Greene Street. The applicant, Fairway Outdoor Advertising, have requested a variance from the setbacks standards for off-premise advertising signs, pursuant to Section 9-4-236 of the Greenville City Code. The applicant proposes the placement of an off-premise

sign (billboard) at 711 N Greene Street, further identified as Tax Parcel 10898. This is a request for a variance so those who wish to speak for or against please come forward and get sworn. Mr. Lynch would you give us the preliminary report from the City.

Mr. Ed Lynch: Thank you sir. This is 711 North Greene Street, just across the river. The property is zoned CH. The property to the northeast and west is all vacant. The property to the south is White Concrete Company. The subject property is located near the convergence of two right-of-ways, the North Greene Street and the railroad. Therefore, the property is a triangular shaped, almost wedge like. It is .147 acres and the billboard is proposed to be located on the southern side of lot 32 shown in the attached survey. The property is located within the 100 year floodplain and development shall comply with flood prevention standards. Specifically, Section 9-4-236, the variance requested complies with the setback standards that are required in the CH district which it is located in and also the 10 foot setback of the side or rear property line. They are also requesting a variance from the setback standard of 300 feet from the nearest edge of the zoning boundary line which is used for residential purposes. So there are two variances that they are requesting the setback standards within the zoning district and the 300 foot separation standard from residentially zoned property. If you look at your zoning map the property is CH, to the west is RA20 and R6, which is residentially zoned. They need to be 300 feet away from that but as you can see the piece of property that they are requesting to be on is very small, so they need to meet the building setback standards. Does the Board have any questions yet?

Mr. Harwell: Yes sir. How far, the requirement is 300 feet. How far are they? From residential?

Mr. Lynch: Just over 100 I believe.

Mr. Phil Dixon: 130 feet, which is the width of the elevated railroad right-of-way
Mr. Harwell.

Mr. Harwell: 130 feet.

Mr. Dixon: The right-of-way of the railroad is 130 feet. That's what separates this from the adjoining residential area but the terrain is that it is elevated up above this area.

Mr. Harwell: The setback standards are what? 10 feet?

Mr. Lynch: Plus 10 feet from the rear and side property lines, it's actually 50 feet from the public right-of-way.

Mr. Harwell: And what is the limit on, where are they in relationship to those two figures?

Mr. Lynch: They would have to clarify exactly where this billboard is going to go on this property.

Mr. Dixon: If you look at the survey which might be the easiest way to look at this

you'll see at the widest portion of this triangular track is 58.22 feet. It's at that end where the billboard would be. You'll see a diagram that's included that shows basically the pole and then on either side would be a billboard that would be 25 feet in length. We would be sitting it off of the North Greene Street right-of-way 10 feet and in the back 23.2 feet, as you'll see, right there at that end where it's widest.

Chairman Wubneh: Why don't we just first let the City and then move on to the applicant. Are you finished?

Mr. Lynch: Let me finish. First of all, public hearings were notified in The Daily Reflector and notices were mailed to adjoining property owners on January 12, 2006. Staff Comments. Staff reviews each of the criteria for considering a variance request. All five criteria, I'll kind of go through them real quick. (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. Staff Comment – The property is small and bounded on two sides by public right-of-ways. (2) Unique Circumstances – The hardship of which the applicant complains results from unique circumstances related to the applicant's land. Staff Comment – The property does have a unique situation in which the lot is wedge shaped with street frontage on one side and railroad, thus providing limited buildable area on the lot. However, regardless of the irregular shape of the lot, the required 300' separation from residentially uses and residential zoning districts is not unique to this location. All residentially zoned property within 300 feet of the site is actually owned by the city of Greenville and functions as a neighborhood park (Meadowbrook Park). (3) Hardship by Applicant's Action - The hardship is not the result of the applicant's own action. Staff Comment – The hardship stated by the applicant is not one that was created by the applicant's own actions. (4) Does it comply with the 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. Staff Comment – The parcel of land allows the use that is being proposed. It is CH and does permit the use, therefore, it stays within the general purpose of the ordinance. (5) Does it preserve Public Safety and Welfare – The granting of the variance must secure the public safety and welfare and does substantial justice. Staff Comment – The variance will not negatively impact the adjoining and surrounding property values.

Applicant: Fairway Outdoor Advertising

Request: The applicant, Fairway Outdoor Advertising, has requested a variance from the minimum public street setback and side setback requirements of the CH district, as well as the residential zoning boundary setback, applicable to off-premise signs, of the Greenville City Code section 9-4-236(a)(6). This request is to allow the construction of an off-premise sign (billboard) at 711 N Greene Street, also identified as tax parcel 10898.

Location: The property is located at 711 N Greene Street

Zoning of Property: CH (Heavy Commercial)

Surrounding Development:

Zoning

North: Vacant	CH (Heavy Commercial)
South: White Concrete Co.	CH (Heavy Commercial)
East: Vacant	CH (Heavy Commercial)
West: Vacant Residential & RR R/W	R-6 (Residential)

Description of Property:

The subject lot is located near the convergence of the right-of-ways of North Greene Street and the Railroad. Therefore the property is a triangular wedge shaped lot with very little room for development.

The property in question consists of three lots, totaling .147 acres. The billboard is proposed to be located at the southern side of lot 32 in the attached survey.

The property is located within the 100-year floodplain and any development shall comply with the flood prevention standards.

Sec. 9-4-236. Off-premise advertising sign requirements.

(a) The following additional standards and regulations shall apply to all off-premise advertising signs.

- (1) Off-premise advertising signs shall be permitted only within the CH, IU and I zoning districts or as provided herein.
- (2) Provided further that no such signs shall be altered, expanded, enlarged or replaced except in conformance with this section and section 9-4-225(c)(2).
- (3) Where the premise or property upon which the sign is erected is changed to another zone other than CH, IU or I, such sign shall be removed within ninety (90) days from the effective date of such change.
- (4) Spacing. The minimum spacing requirement between each off-premise advertising sign shall be one thousand (1,000) feet from the center of the sign.
- (5) Size and height.
 - a. Such signs shall not measure more than four hundred (400) square feet of total sign area or display surface, and the display surface shall not be more than twelve (12) feet in the vertical dimension nor greater than forty (40) feet in the horizontal. Copy extensions of ten (10) percent or less shall not be included in the calculation of total sign display surface area.
 - b. A single side of a double face or V-type signs shall be regarded as the total display surface for purposes of calculating total sign surface area, provided such sides are separated by not more than twenty (20) feet at any point.
 - c. The top of the sign shall not exceed thirty-five (35) feet in height (exclusive of copy extensions) as measured from the surface elevation of the ground or main roadway surface elevation nearest the sign, whichever is highest.

- d. The minimum vertical clear distance between the property grade and the bottom of the trim or other frame support shall be not less than twelve (12) feet.
 - e. All support structure(s) shall be painted in a neutral color to blend with the surrounding area.
- (6) Setback.
- a. The setback requirements shall be the same as set forth in the CH, IU or I districts for the front yard, side yard and rear yard setbacks, provided, however, no sign shall be closer than ten (10) feet to a side or rear property line.
 - b. All off-premise advertising signs shall be set back at least three hundred (300) feet from the nearest edge of a zoning boundary which describes property zoned for residential purposes, including the R-6, R6A, R-6S, R-6N, R6-MH, R-9, R-9S, R-15S, RA-20, OR, CDF, MR and MRS zoning districts
 - c. No off-premise signs shall be located closer than one hundred (100) feet to the intersection of two (2) public streets.
 - d. All setback requirements as set forth above shall be measured from the extreme outermost edge of the sign as projected upon the ground and measured from this ground point to the nearest property line or nearest zoning district.
- (7) Construction.
- a. All off-premise advertising signs shall be self-supporting single-pole structures erected on or set into and permanently attached to concrete foundations. The sign's structure, electrical system and other construction elements shall be designed and built according to the North Carolina State Building Code as evidenced by engineering drawings drawn to scale by a licensed engineer or architect. Such signs shall be engineered to withstand a wind loading of thirty-six (36) pounds per square feet.
 - b. Off-premise advertising signs shall be located and constructed in such a way as to maintain horizontal and vertical clearance of all overhead electrical conductors in accordance with the North Carolina State Building Code and the National Electronic Code as incorporated therein; provided, that in no case shall an outdoor advertising sign be erected with any part closer than ten (10) feet horizontally or vertically from any conductor or public utility guy ware.
- (8) Additional requirements.
- a. The immediate premise shall be kept free from debris or undergrowth. A landscaping plan shall be approved by the director of planning and shall be maintained on the immediate premise by the sign owner. Such landscaping shall consist of ground cover, shrubs, trees or other permanent vegetation that will effectively screen the sign's base. For purposes of this article, the "immediate premise" shall be defined as an area surrounding the sign's structural support not less than ten (10) feet in all directions from such base.
- (9) Off-premise signs shall not be included in or count toward the total number of on-premise signs or the total sign surface area allocation calculation for on-premise signs. (Ord. No. 2337, § 1, 6-13-91; Ord.

No. 95-29, § 10, 3-9-95; Ord. No. 97-85, §§ 1, 2, 8-14-97; Ord. No. 02-63, § 3, 6-13-02)

Comprehensive Plan:

The proposed subject site is located within Vision Area “B” as designated in the Horizon’s Comprehensive Plan. The Land Use Plan Map designates the area for Commercial Uses.

Notice:

Notice was mailed to the adjoining property owners on January 12, 2006. Notice of the public hearing was published in the Daily Reflector on January 16, 2006 and January 23, 2006.

Staff Comments:

Staff has reviewed each of the criteria the Board of Adjustment must consider in order to grant variances and has listed comments on each.

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.

Staff Comment – The property is small and bounded on two sides by public right-of-ways.

2. Unique Circumstances – The hardship of which the applicant complains results from unique circumstances related to the applicant’s land.

Staff Comment – The property does have a unique situation in which the lot is wedge shaped with street frontage on one side and railroad, thus providing limited buildable area on the lot. However, regardless of the irregular shape of the lot, the required 300’ separation from residentially uses and residential zoning districts is not unique to this location. All residentially zoned property within 300’ of the site is actually owned by the city of Greenville and functions as a neighborhood park (Meadowbrook Park).

3. Hardship by Applicant’s Action - The hardship is not the result of the applicant’s own action.

Staff Comment – Any hardship stated by the applicant is not one that is created by the applicant’s own actions.

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.

Staff Comment – The parcel of land allows the use that is being proposed.

5. Public Safety and Welfare – The granting of the variance must secure the public safety and welfare and does substantial justice.

Staff Comment – The variance will not negatively impact adjoining or area properties.

Summary Comments:

It is staff's opinion that the granting of this variance would not be a significant deviation from the intent of the ordinance.

Chairman Wubneh: Thank you. Any questions for the staff from the Board? Would the applicant tell us.

Mr. Phil Dixon: May it please the Board as you know my name is Phil Dixon. I'm an attorney representing the petitioner/applicant. Seated to my right is Terry Harkins who is the Real Estate Representative with Fairway Outdoor Advertising of Triangle East down in Wilmington. They are the owner of the subject property and I'm representing them here tonight. I have two things that I'd like to reference. One is materials from a Board of Adjustment workshop sponsored by the Institute of Government and University of North Carolina which Bill Little and I always turn to for advice and counsel in these matters. Another is a booklet that is put out by them on the Zoning Board of Adjustment in North Carolina and I was very struck by the opening paragraph which says, "sometimes a lot is so small or so peculiarly shaped that the owner would find it very hard to comply with the yard requirements and yet erect a suitable building or structure. Sometimes contours of the terrain create hardships in complying with these requirements." That's really exactly what you have here. There was in fact a billboard on this site at one time that is no longer there. As you all know with the wonderful addition of a second bridge across the Tar River we changed a lot in that area and this particular property was reduced in size as a result of all that construction. It was purchased originally for this purpose, having a billboard, but it has made it more difficult to locate a billboard because of all that construction. When Mr. Lynch says that this was not a fault of the property owner you can see that really it is a product of the improvements that were made in that particular area. You will also see that this is an odd shape, less than 15 percent of an acre strip of land, which would be easy to fall prey to neglect and growing up and being an unsightly place aesthetically but also an unsafe place. We would submit to you first and foremost that by making some improvements, landscaping this, cleaning up this area, adding some lighting is going to be a very positive thing we believe at a very great location. When you look at the major function of the Board of Adjustment it is to sort of deal with these unusual situations and hardships. The one that I think is hardest to deal with perhaps for you would be the fact that typically we would like a billboard of any kind to be at least 300 feet away from a residential area. But let's think about the reason and the spirit behind that, the idea is that you don't want it to be something that is aesthetically a negative. You don't want the lighting, for example, to interfere with people's enjoyment of their property just as you might not want a Bojangles next door to a residential area. You want it to be insulated somewhat. If you look at the terrain which is mentioned in the materials as one of the bases for granting a variance, the terrain is such that the railroad is elevated way up in the air. It shields completely the residential area from this site so one will be able to see this billboard or what is constructed at this particular site. Forever, I would submit to you that it's probably worse to have a railroad next door than it is to have a billboard but it does shield it and in this case I

think works to accomplish what the original purpose and spirit of the ordinance was to accomplish. That is to make sure that this does not adversely affect any residential area. Although it ideally would be 300 feet away we would submit to you that when you put this huge railroad corridor right-of-way of 130 feet between our property and it and raise the elevation substantially you have accomplished, I believe, already what is sought to be accomplished by the original phrasing of the statute. We don't think that this kind of change and this exception that you're making, this permit that you're granting, is the kind of thing that would warrant going back and amending your ordinance because we don't think in most locations it would be appropriate to do this. We're saying that in this very unique location, through a unique set of circumstances, a variance from your requirements is what is necessary. I think you're clear on the unusual shape and size. I think you're clear on the practical difficulties of putting anything on this particular property. Quite frankly, I can't imagine anything that you could put on a strip of land that at its widest portion is 58 feet wide and narrows to a point and is 220-230 feet long. Essentially if we can't put a billboard on this property it has no utility to us. Keep in mind that when this property was purchased it was purchased as a larger tract. There was a billboard on this site one time so that the relocation of the billboard is really in some respects simply a replacement of a billboard that previously existed at a very attractive location for a billboard because there would be a lot of traffic that would come along there. A side benefit to the City I think is this would be a concern that we would all share is north of the river. We've had a lot of trouble with the flooding, neglect and disrepair and a lot of properties that have not been brought back to where we'd like them to be following the flooding. Here is an area in which we can clean up a major corridor I believe to the downtown area with, again, a nicely landscaped, well lit, well maintained site that I think would be a benefit and that probably goes to the heart of the final criteria that you have and that is that it secures the public safety and welfare. Mr. Harkins is here and I understand and appreciate the fact that you're a quasi-judicial body. He will tell you everything I just said to you and I will be happy to call upon him and ask him to state his name and his occupation and tell you everything I just told you if you would like. If it is acceptable to you I will simply tender him because I believe the rules require that simply he be made available for cross-examination and for questioning by you. If there is any particular issue that concerns you that you would like for us to address I would be happy to do so. I would submit to you that if you had misgivings about any of the setback or the plan as far as to where we put the sign we do have some wiggle room in that we could move the sign further back and have less room at the rear than the front. What we're doing then is moving the billboard back away from the travel portion of the road and we would prefer that the people riding by be able to see this billboard easily. Again, we're trying to make it as accommodating as we can with that I will tender Mr. Harkins and I will ask if he has anything he would like to add before I ask for questions. Anything that you'd like to add?

Mr. Terry Harkins: Well, I'd just like to say that I would not be able to cover all the material he just did but I would certainly try. I think Mr. Dixon has expressed how our company feels about it and I'm here to answer any questions that you might have.

Mr. Dixon: The thing that gave me the most concern because quite frankly I think as you know some of the decisions that you may have to make are somewhat subjective. When we talk about whether it's something that we're doing here, is it

in compliance with the spirit of the ordinance. I was real concerned about that because I wasn't sure what that vague term meant. I will tell you that in the materials that are provided by the Institute it does say that usually those variances that would be in conflict with the spirit of the ordinance fall in two categories. One is when you're trying to expand or extend a non-conforming use that has already been granted as an exception which is not the case here. The other broad category are those in which a use variance is sought where it is a variance permitting a use of the property that's forbidden by the zoning regulations. Since this is Highway Commercial that is not the case either so I didn't want you to stutter on that particular topic because I think it is covered when you look into it a little more deeply. Anyone who would have any questions.

Chairman Wubneh: Questions from the Board?

Mr. Harwell: Yes. I apologize for monopolizing. From your diagrams and information I frankly can't understand it. I'll tell you why.

Mr. Dixon: Well Mr. Harwell if it makes you feel any better because we know engineers and (unclear) don't think alike. I had the same problem and if you'll look at your diagram. I think what confuses us is you've got the triangle.

Mr. Harwell: 20 degrees approximately.

Mr. Dixon: You try to match it to the piece of property. It has nothing to do with the shape of the property.

Mr. Harwell: My first question is how long is the sign? In actuality.

Mr. Dixon: 25 feet.

Mr. Harwell: That means that if the sign is 25 feet then the space distance parallel to Greene Street is less than 25 feet. It appears to be a "V" sign.

Mr. Dixon: 58 feet wide at that particular point. 58.22 feet and our proposal would be to have 23.22 feet at the back side.

Mr. Harwell: That is not the way it will work as in accordance with your diagram if the sign is 25 feet. There is an approximately 19 degree angle in the back line. As you go further up that 23.22 goes down. I did not want you to get into a trap on that 23.22 feet in the back because as you go further that decreases.

Mr. Dixon: I see what you're saying and that is why I went to law school and didn't become a mathematician. I will tell you that generally that would be the placement that we propose and we are I am sure able to make this work anyway you think is appropriate to do so. We didn't take into account the angle which you're saying.

Mr. Harwell: You might want to in the diagram modify that to 23.22 minus.

Mr. Dixon: We'd be happy to do so.

Mr. Harwell: Because it's going to be about a foot or two difference when you get

up there.

Mr. Dixon: (Unclear) Mr. Harwell.

Mr. Harwell: If this were approved with the 23.22 you may be in violation.

Mr. Dixon: Well you're ordinance does provide and the regulations set forth in the statutes do provide that you make an accepted amendment and I would hereby propose an amendment to show that change if you don't mind. We would say roughly 21 feet,.....

Mr. Harwell: Plus or minus.

Mr. Dixon: Would that be acceptable, plus or minus. If that is in order Mr. Chairman I would ask that you make that change. I had a very difficult time figuring it out myself because I kept trying to take this triangle and fit it onto the piece of property somehow. The only place that you can absolutely put this sign is at the back where it is the widest and it makes a lot more sense because then on either side of the pole that would a very modern way of showing a billboard. I think the earlier billboard was one of the old style billboards. The modern way of doing it is you've got something on either side so coming and going you get to see this.

Chairman Wubneh: This would be a modification of the findings of facts and we can vote on that.

Mr. Harwell: Another questions is how high is the sign going to be built off the ground and then how high is the sign?

Mr. Dixon: I'm going to ask Mr. Harkins who is the expert here to tell us that.

Mr. Harkins: The height limit for the city is 35 feet to the top. We don't have to have that 35 feet we could build it 30 to the top if we needed to.

Mr. Dixon: Mr. Harwell I believe it's possible to impose conditions if you are concerned. There are something's that you could do.

Mr. Harwell: I just wanted to know... I don't .

Mr. Harkins: The height limit is 35 feet for signs, billboard signs.

Mr. Dixon: Our plan would be to comply with all requirements.

Chairman Wubneh: As a matter of fact, I also have a question along the same line so my question also goes to the city. The city has it's own ordinance with respect to signs. If we grant this variance is the applicant expected to comply with all those ordinances that the city has, that is height I believe proportional to the business, the square footage of the business the sign has to be.

Mr. Lynch: The only variance that you, the only thing you're considering is the setback issue versus off the right-of-way and off the rear and side property lines.

All the other stuff that relates to the sign has to comply. I will say that the height standard of 35 feet can be reduced. I would recommend not reducing it because the closer it gets to the ground the larger it appears.

Chairman Wubneh: Unless there is a need.

Mr. Lynch: Unless there is a need, that is correct.

Chairman Wubneh: I don't see why we should modify it then. Yes Mr. Dixon.

Mr. Dixon: I was simply going to say in terms of the character of the neighborhood if I may Ms. Bellis before you speak. We do have a park next door to so although it is residential I guess the park would be considered residential to is that right Ed?

Mr. Lynch: The park is residentially zoned, yes.

Mr. Dixon: The park is within itself a buffer as well.

Ms. Bellis: This 35 feet. Is that from the ground level because there is a ditch there or is that with respect to the road or with respect to the railroad?

Mr. Dixon: I believe it's ground level.

Mr. Lynch: It's ground level.

Ms. Bellis: That's with respect to the highway then.

Mr. Lynch: Our ordinance is at the grade of the ground. The Department of Transportation measures the height of the sign from the road so it's two different mechanisms.

Ms. Bellis: But it wouldn't be from the bottom of the ditch where the post will go.

Mr. Lynch: It will be from the bottom of the ditch is what the city measures it from.

Mr. Ward: How tall is the railroad tracks at that point?

Mr. Lynch: I do not know.

Mr. Dixon: It's huge. It's very large. I need Mr. Harwell out there helping me measure it but it's a significant buffer and shield which I think makes it more logical to consider it. Again, I believe this too, that if you did not have that natural shield it would be more difficult to address the issue. I think when you first look at it and you say 300 feet is our requirement, this is only 130 feet, you say well that's a pretty substantial variance but when you add to the fact the elevation of the shielding I think it does make a difference. After all the railroad is in within itself a much more objectionable use adjacent to the residential area. It always was when I lived next door one.

Mr. Lynch: I want to correct myself on the measurement of the height of the sign. I just flipped through our ordinance and the ordinance states that the top of the sign

shall not exceed 35 feet in height as measured from the surface elevation of the ground or main roadway surface elevation nearest the sign whichever is highest. So in this case it would be the road since it is higher.

Mr. Dixon: This would take the sign up higher is what you're saying (unclear) suggested earlier (unclear).

Mr. Lynch: Being down in the ditch.

Ms. Bellis: I want to ask about Greene Street. I guess I need to ask Ed about that. There is improvement afoot for Greene Street is that going to include widening?

Mr. Lynch: Of Greene Street? I would let our City Engineer address those issues.

Chairman Wubneh: Would you be able to tell us more?

Mr. Tim Corley: My name is Tim Corley. I'm an Engineer with the City. I'm not really speaking in favor or against. I just wanted to give the Board some information about the Greene Street Streetscape Improvements that we will be doing shortly. As a matter of fact, today we had our pre-construction meeting and construction should begin next week. The City received some grant money State and Federal monies along with some matching funds to do some improvements to the corridor of Greene Street from Mumford Road to the Greene Street Bridge. Involved in that project will be the removal of some driveways along there that are not needed right now because they are so excessive. The removal of some of the existing sidewalk, actually all the existing sidewalk. They will be placing new sidewalk down along with new landscaping. The big issue for me in relation to this will be the electric lines, Cox Cable and also Sprint, all those utilities will be put underground. I believe the vision of the project was to make it so it was an entrance for the people from the airport coming into the city. I've only been with the city for a year and a half so I wasn't in the early visions of how this was coming up. I don't know who came up with what was going to happen but with them putting the lines underground I would think that they were trying to keep things pretty as you come into the city. I don't know if that will affect how this is viewed but I just wanted to make the Board aware of what the project entailed and what we were doing.

Mr. Harwell: Is there a requirement for additional right-of-way?

Mr. Corley: No we won't be getting any additional right-of-way.

Mr. Dixon: Will there be lighting along that area because I'm thinking about a walkway, pedestrian walkway might need to be lit in that area.

Mr. Corley: I don't believe that right now that was in the initial enhancement project. I believe it was just the sidewalk, the big cost will be the utilities and the plantings will be landscaping all along from Mumford all the way to Greene Street Bridge.

Mr. Dixon: I have not heard this before this moment. I would submit to you that one of the deterrents would be to leave this site just as a vacant property where it is not attended to and not maintained and not landscaped and is blighted. When I was

in college here it was very common for us to go down on the water front, not only with a blanket with our girlfriend to watch a concert or to hang out, but also to walk down on the water front at night. I would be less willing to do that now because it might not be as safe. I think with us lighting this area and the lights of this particular billboard and I understand that most people don't really like billboards in general but on this particular tract of land the benefit of this is going to be to have a safer spot, better landscaped and a maintained site and I do think that improves the public safety and welfare. It will provide a real attractive feature that is at a very (unclear) as you enter Greenville. I'm very happy and excited about the treescape. I'm sorry I didn't know to address that tonight but I would hope with our treescape expansion one day we would have that lit so you would have a place that would be a safe place to walk and that might come as we see all the changes that are taking place in downtown. As the university expands we think you're going to see, I know the plan is to put people living downtown, apartments and there's even talk about having condominiums on the water front, so a lot of good positive things I think that are happening.

Mr. Estes: Will any of improvements that you're talking about change the size of the lot?

Mr. Corley: The size of the lot in question? We do actually have some, we're going to do the landscaping separate with the existing, with the sidewalk you see going on now around Stantonsburg also on Arlington and on Elm Street and part of Tenth Street. We're going to combine the landscaping for that project with the landscaping for Greene Street and do it as one project. There is some landscaping plan for that area. There is a guardrail our initial plan was to put some, I believe it's within our right-of-way, but that's the only thing I know of that we don't have to acquire any easement.

Mr. Dixon: The sidewalk will be across the road.

Mr. Corley: Our project will only be on the east side of Greene Street. It will tie in where it starts which is at (unclear) and go up there to about where Trade is now and will tie in and go all the way up to Mumford. All the utilities, all the poles will come down and all the utilities will be underground.

Chairman Wubneh: So as far as this piece of property is concerned there will not be any change from your. Any other questions?

Mr. Harwell: If that front is 10 foot was changed to 20 feet would that be better, worse, or advantages?

Mr. Dixon: I actually discussed this with the applicant and Mr. Harwell I think we can do that. We just move the sign back further away from the road where it might not be quite as visible. If there was a preference we would prefer to have it reversed. If it would make it more acceptable and make it more likely to pass I think we would certainly consider that. Am I correct?

Mr. Harkins: Yes we would. It just puts us closer to that road, residential property on the back and it does kind of drop down the visibility a little bit.

Mr. Dixon: Of course would it be possible to do 15, 15 or something Mr. Harwell where it's pretty much the same on both sides?

Mr. Harwell: I don't know.

Mr. Dixon: The thing is what does it take for vote I guess.

Chairman Wubneh: In our findings of facts Mr. Harwell may want to propose whatever measurements that he suggest.

Mr. Dixon: I would simply say in fairness to the applicant before these improvements took place at that site there was a billboard there. He did buy this property for that purpose and then had his site reduced in size. He has been very cooperative to work with people to see that a positive change be made in that area. As a practical matter there really is no other use for this property so if it really becomes an albatross around our neck to even own it if we don't have the ability to put a billboard at that site. With these consideration that we've mentioned where I think it can enhance the safety and public welfare, it can become more aesthetically pleasing, and it is at a location that is shielded and not adversely affecting the neighbors it is a reasonable request. I think just the type of thing that is contemplated by your ordinances and statutes on variances.

Ms. Bellis: I have a question about the landscaping Mr. Dixon. That's a tree area right now and for that sign to show up I would assume that whole one seventh of an acre will be cleared?

Mr. Dixon: It's less than 15 percent of an acre. I'm not sure it would necessarily be cleared. I know we would be adding vegetation and complying with all the requirements of the city in respect to that. Anything you want to say about this?

Mr. Harkins: We would do some clearing because the sign would, obviously we want the sign to be seen, so we would be taking down some of the trees but we would have to meet the city's landscaping for the signs. There is certain criteria that we have to meet so the site would be landscaped.

Mr. Dixon: When we were discussing it earlier one of things we talked about is that for the billboard to be aesthetically pleasing, as much as one can be I believe, that you really want to create it like a picture frame and the landscaping, the site and the lighting is really the picture frame for the billboard. I think the desire is to have something that would be very attractive. Anything that is underbrush, overgrown or really not sightly is going to take away from this particular marketability site as a site for billboards. We do what to heavily landscape it and fix it up very nicely. I believe that's what the city requirements will mandate.

Mr. Lynch: I was going to address that. Specifically, the ordinance requires landscaping which includes that the "immediate premise shall be kept free of debris and undergrowth. A landscaping plan shall be approved by the Director of Planning, shall be maintained on the immediate premise of the sign owner. Such landscaping shall consists of ground cover, shrubs, trees or other permanent

vegetation that will affectively screen the signs base for the purpose of this article. The immediate premise shall be defined as a area surrounding the sign structure not less than 10 feet in all directions of such base.” It is required to be kept clean of debris but only within the 10 foot radius.

Mr. Ward: Which is all there is.

Mr. Lynch: So it’s immediately underneath the sign.

Several members talking.

Mr. Harwell: Can we discuss it yet?

Mr. Hutchens: I have one question of the city. The Meadowbrook Park that is zoned residential can we assume that is permanently going to be a park?

Mr. Lynch: Yes. Majority of it is actually in the floodway and will never be developed.

Mr. Hutchens: So there is no actual residential property within 300 feet?

Mr. Lynch: There is not a residential use within 300 feet.

Mr. Hutchens: That’s what I’m asking, okay.

Mr. Harwell: My calculations show that this lot is about 780 square feet which is about a quarter of a house.

Chairman Wubneh: So we are considering two cases, let me understand that correctly. One is the 300 feet from the residential area and I think from your answer to Mr. Hutchens that it is not going to be a residential area with the exception of the other one on the railway side.

Mr. Lynch: Right.

Chairman Wubneh: The other is the setback from the property lines.

Mr. Lynch: Property lines. A reduction of the street setback which is required to be 50 feet to reduce to a setback of 10 feet which is what is proposed and 15 was also brought up and a rear setback, a side setback of 10 feet. On what would be the southern most property line and the western most property line, they are proposing a 21 foot setback which complies with that. Then the south side a 10 foot side setback so they’re complying with those two, the south side setback and the west side setback. It’s the front setback of 50 feet which they’re requesting a reduction of 40 feet in the setback.

Chairman Wubneh: From 50 feet to 10 feet?

Mr. Lynch: Right.

Chairman Wubneh: Okay. Other than that all other matters concerning requirements

it would have to comply with the sign ordinance of the city.

Mr. Lynch: That's correct.

Chairman Wubneh: In terms of height whether there is clearance to be done or any other requirements.

Mr. Lynch: That's correct. It's just the setback and the separation requirement from residentially zoned districts which was brought up that there is no actual residential uses within 300 feet.

Chairman Wubneh: Any more questions?

Mr. Harwell: One more question. Is this a thoroughfare?

Mr. Lynch: Yes it is. Greene Street.

Mr. Harwell: Is there a 10 foot buffer on that thoroughfare?

Mr. Lynch: I do not know I'd have to probably refer to our City Engineers as far as our thoroughfare information.

Chairman Wubneh: Mr. Corley.

Mr. Corley: Without the thoroughfare (unclear) I'm at a lost.

Chairman Wubneh: Mr. Harwell was your question answered or do you need further

Mr. Harwell: No sir not really but.... Yes, in general what happens on, if it is a thoroughfare there is a 10 foot buffer imposed on each side of the right-of-way for future expansion and we've had some cases come before this Board on that very same subject to encroach in that 10 foot. This would mean that if there is a 10 foot and a pretty high chance there is, that would be right at the edge of the buffer and offer some opportunities.

Mr. Harkins: With that in mind I would suggest moving it to 15 that way if there is that 10 foot in there we'd be behind that.

Chairman Wubneh: Would that be acceptable to you? You have now had

Mr. Harwell: My thought process is yes.

Chairman Wubneh: You now have 2 modifications that we will review and I believe we'll incorporate them as part of the findings of fact and we will vote on them separately.

Mr. Harkins: That would just make it 5 feet closer to the residential but yea I think that's...

Mr. Dixon: That would be 16 feet instead of 21.

Chairman Wubneh: Any other questions? I'll now close the public hearing on this case. What's the position of the city? Anyone here in favor of the applicant? There was so much discussion I forgot the procedures. Anyone here in favor of the application? Any one here opposed the application? Now we'll move on to the city. Sorry.

Mr. Lynch: That's okay. It is staff's opinion that the granting of a variance would not be a significant deviation from the intent of the ordinance.

Chairman Wubneh: Members of the Board I will now close the public hearing and call for Board discussion. No discussions? Before we move to the finding of facts I may need some help here Mr. Little. Do we adopt the changes that Mr. Harwell is proposing as part of the findings of fact or do we vote them later on? I believe there are two ways we did it the last time.

Mr. Little: Part of your findings of fact are going to be based upon the request of the applicant because under the current findings of fact they were saying 10 feet and 23.22 feet. They've come back and based upon discussions has said that their diagram is now changed to 15 feet and 16 feet. So findings of fact as you would list them would be as amended or as re-proposed by the applicant.

Chairman Wubneh: So we do not have to vote on that then.

Mr. Dixon: For the record, we're proposing that change and (unclear) to that so you don't have to impose that as a condition.

Chairman Wubneh: Thank you.

Mr. Little: It's now part of the findings of fact so that would just need to be officially noted by you as you're discussing that in the findings of fact there is a change. As you are reading the criteria that would then say that based upon these changes lets look at these issues on the findings of fact.

Chairman Wubneh: There was a second findings of fact change that Mr. Harwell, you proposed, or does that address your concern?

Mr. Harwell: That addresses both of them.

Chairman Wubneh: So if it's reduced from 22 feet was that.

Mr. Dixon: No, we said from 22 earlier

Mr. Harwell: The back portion they're saying plus or minus is how it fits with the 25 foot billboard and the front is the one that is important and that's the 15 foot setback. The other one that's important....

Mr. Dixon: It's 15 feet on the front and back side, 16 feet plus or minus.

Mr. Harwell: The other one that's of interest, only, is the 300 feet and that 130 feet is the railroad right-of-way so there would be roughly when we change it about 145

feet is what that is but I don't think that's significant.

Chairman Wubneh: So the only change that we're making here in the findings of fact is reducing it from 22 feet to 15 feet?

Mr. Little: 16 feet plus or minus.

Chairman Wubneh: 16 feet plus or minus.

Mr. Little: On the rear setback as in the diagram as part of the application that's all we're referencing, that's part of your findings of fact. Based upon their diagram that's part of their application that originally showed the rear setback has 23.33 feet which they have now re-proposed and resubmitted is now part of your findings of fact to 16 feet plus or minus. Then the front setback which is the one facing Greene Street they originally proposed as a 10 foot setback and they're now re-proposing and submitting as part of your findings of fact that it be a 15 foot setback that would cover then any setbacks or buffer as required by the city. Okay?

Chairman Wubneh: Thank you. Kathy I believe that's all recorded?

Ms. Stanley: Yes sir.

Chairman Wubneh: Thank you. I now close the public hearing and end the discussions. Members of the Board this is a variance request and I will read the categories and if you want a vote please stop me otherwise by your silence it is recognized that you are voting in favor of the variance request. Reasonable Return, Unique Circumstances, Hardship by Applicant's Action, General Purpose of the Ordinance and Public Safety and Welfare. Hearing no negative votes I'd like to get a motion to approve the findings of fact reflecting the change that were made earlier. In other words the setback in the back from 10 to be increased to 15 and in the front from 22 to 16 plus or minus.

Mr. Lynch: That's reversed

Chairman Wubneh: I'm sorry. Okay. In the front from 10 to 15 and in the back from 22 to 16 plus or minus.

Mr. Harwell: Motion.

Chairman Wubneh: Motion to approve the findings of fact, Mr. Harwell.

Mr. Hutchens: Second.

Chairman Wubneh: Second, Mr. Hutchens. All who are in favor of the motion of approving the findings of fact please indicate by saying "Aye". Opposed? I would now like to get a motion to approve the petition.

Mr. Ward: So moved.

Mr. Wright: Second.

Chairman Wubneh: Mr. Ward and second by Mr. Wright. All in favor of approving the petition please indicate by saying “Aye”. Opposed? Thank you. Your request has been approved.

REQUEST FOR A SPECIAL USE PERMIT BY MARK AND ROSEMARY HAYES – GRANTED

Chairman Wubneh stated that the next item is a request for a special use permit by Mark and Rosemary Hayes. The applicants, Mark & Rosemary Hayes, have requested a special use permit to allow the operation of a veterinary hospital, pursuant to Section 9-4-78(f)(7)(f) of the Greenville City Code. The proposed use is to be located at 3131 Mosley Drive, further identified as Tax Parcel 49219.

Chairman Wubneh declared the meeting a public hearing as advertised in The Daily Reflector on January 16, 2006 and January 23, 2006. Those wishing to speak for or against the request were sworn in.

Mr. Lynch delineated the area on the map. Mr. Lynch stated the applicant, Mark & Rosemary Hayes, wish to the operation of a veterinary hospital at 3131 Moseley Drive. The property is currently zoned CH, General Commercial. The subject property is an existing outparcel of the Eastgate Shopping Center fronting along Moseley Drive. The lot is approximately 20,000 square feet with 5000 heated square feet. There is parking available on site with overflow parking in the remainder of the shopping center. Veterinary hospitals and clinics require five spaces per practicing veterinarian plus one space per employee. The property is located within Vision Area "C" as designed by the Comprehensive Plan. Management actions for Vision Area "C" prohibits the expansion of commercial areas outside the existing commercial nodes. The Land Use Plan map recommends commercial uses for the property. Mr. Lynch asked that the findings of fact be entered into the record.

Applicant: Mark & Rosemary Hayes

Request: The applicant, Mark & Rosemary Hayes, a special use permit to allow the operation of a Veterinary Hospital pursuant to Sections 9-4-78(f)(7)f of the Greenville City Code.

Location: The existing use is located at 3131 Moseley Drive Street. The property is further identified as being Tax Parcel Number 49219.

Zoning of Property: CG (General Commercial)

Surrounding Development:

Zoning

North: Eastgate Plaza	CG (General Commercial)
South: Eastgate Plaza	CG (General Commercial)
East: Eastgate Plaza	CG (General Commercial)
West: Greenville Car Care	CG (General Commercial)

Description of Property:

The subject property is an existing outparcel of the Eastgate Shopping Center fronting along Moseley Drive. The lot is approximately 20,000 square feet with 5000 heated square feet. There is parking available on site with overflow parking in the remainder of the shopping center. Veterinary hospitals and clinics require five spaces per practicing veterinarian plus one space per employee.

Comprehensive Plan:

The property is located within Vision Area "C" as designed by the Comprehensive Plan. Management actions for Vision Area "C" prohibits the expansion of commercial areas outside the existing commercial nodes. The Land Use Plan map recommends commercial uses for the property.

Notice:

Notice was mailed to the adjoining property owners on January 12, 2006. Notice of the public hearing was published in the Daily Reflector on January 16, 2006 and January 23, 2006.

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.

Dr. Hayes stated that he operates Tenth Street Animal Hospital which is located adjacent to this property. Dr. Hayes stated that his present location is out of office space and retail space. Dr. Hayes stated that when this property became available he purchased it in order to have more office and retail space. The corporate office will be moved to this location as well as a meeting room for staff meetings. Dr. Hayes stated that there will not be any outdoor holding facilities. Dr. Hayes stated that all fire codes and building codes will be complied with.

No one spoke in opposition.

Chairman Wubneh then read the criteria in granting/denying a special use permit.

Motion was made by Ms. Bellis, seconded by Mr. Wright, to adopt the proposed findings of fact and evidence presented. Motion carried unanimously.

Motion was made by Mr. Ward, seconded by Ms. Safford-White, to approve the request. 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.

REQUEST FOR A SPECIAL USE PERMIT BY PAUL WOJCIECHOWSKI –

GRANTED WITH CONDITION (Verbatim transcript)

Chairman Wubneh: The last item on our agenda is a public hearing on a request for a special use permit to allow a public or private club at 222 East Fifth Street. The applicant, Paul Wojciechowski, requests a special use permit to allow the operation of a public/private club, pursuant to Section 9-4-78(f)(6)(m) of the Greenville City Code. The proposed use is to be located at 222 East Fifth Street and is further identified as Tax Parcel 20036. I now open the public hearing on this case. Those wishing to speak for or against this application please come forward and be sworn. Mr. Lynch would you give us the preliminary report.

Mr. Lynch: Thank you sir. This property is located at 222 East Fifth Street, downtown in the CD zoning district. North is the Stop Shop, to the south is a city parking lot, to the east is the ECU campus and to the west is Scores Sports Bar. The property is at the southwest corner of Fifth Street and Reade Circle. The structure is approximately 4100 heating square feet. Off-street parking is not required since it is in the CD, downtown district. The property is located within Vision Area "H" which is designed as the college area of downtown and entertainment center of the city. The proposed use is in general compliance with the Land Use Plan Map. The site is located outside the downtown subdistrict overlay. Notice was mailed to the adjoining property owners on January 12, 2006 and notice was published in the Daily Reflector on January 16, 2006 and January 23, 2006. By definition a public or private club is opened to the general public and may require a membership or cover charge. May provide live or recorded amplified music; may provide a floor show; may provide a dance area; may offer a full service bar; may offer food services; may provide food attendant (waiter/waitress) table ordering and busboy services; and does not qualify under the definition of "restaurant, fast food" or "restaurant, conventional". Specific criteria of a public/private club are that nothing herein shall prohibit or restrict the authority of the BOA to rescind or revoke a special use permit for a public or private club; an annual renewal shall be conducted by the Planning Department for the purposes of determining and ensuring compliance with applicable laws, codes and ordinances; at the meeting of the BOA staff shall present to the BOA the staff report of a public or private club for which an annual renewal includes a finding of one or more instances of non-compliance with applicable laws, codes and ordinances; based upon the staff report the Board of Adjustment by majority vote may either determine that a rehearing is not required for a special use permit or order a rehearing on that special use permit. The owner and operator of said club shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business no later than 7 AM each morning following any period of operation. The Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements. The special use permit shall be issued to a property owner as listed on the tax records of the county. 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. I'd like to enter the findings of fact into the record. Does the Board have any questions?

Applicant: Paul Wojciechowski

Request: The applicant, Paul Wojciechowski, a special use permit to

allow the operation of a public or private club pursuant to Sections 9-4-78(f)(6)m and 9-4-86(f) of the Greenville City Code.

Location: The existing use is Backdoor Skate Shop located at 222 East Fifth Street. The applicant proposes to use a portion of that building for the public/private club. The property is further identified as being Tax Parcel Number 20036.

Zoning of Property: CD (Downtown Commercial)

<u>Surrounding Development:</u>	<u>Zoning</u>
North: Stop Shop	CD (Commercial Downtown)
South: City Parking Lot	CD (Commercial Downtown)
East: East Carolina Campus	CD (Commercial Downtown)
West: Scores Sportsbar	CD (Commercial Downtown)

Description of Property:

The property is located at the southwest corner of Fifth Street and Reade Circle. The structure has approximately 4180 heated square feet. Off-street parking is not required since it is located in the CD (Downtown Commercial) zoning district. However, parking is available at the adjacent city parking lot to the south.

Comprehensive Plan:

The property is located within Vision Area "H" as designed by the Comprehensive Plan. Management actions for Vision Area "H" include the development of the "College Area" of downtown as the cultural, recreation, and entertainment center of the City. The proposed use is in general compliance with the Land Use Plan Map, which recommends commercial development for the subject property. The site is located outside the Downtown Subdistricts Overlay wherein special use permits for public/private clubs are prohibited.

Notice:

Notice was mailed to the adjoining property owners on January 12, 2006. Notice of the public hearing was published in the Daily Reflector on January 16, 2006 and January 23, 2006.

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:

- (11) (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 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.

Chairman Wubneh: Does the Board have any questions for Ed? Thanks you. Would the applicant tell us about your request.

Mr. Paul Wojciechowski: My name is Paul Wojciechowski. I'm just here to feel any questions that you might have. I'm just requesting a special use permit for a public/private club.

Chairman Wubneh: Any question from the Board to the applicant? Mr. Harwell.

Mr. Harwell: What is a video premier and art show?

Mr. Wojciechowski: The video premier, Ed told him I might feel some questions about this, we're not, it's not any kind of theater type thing. We're just going to show videos on the television. I own the Skate Shop that's on the bottom floor of that property. The Skate companies produce videos and we just want to have a venue where we can premier them, just show them to our customers.

Mr. Lynch: Are they copyrighted videos where you require licensing to show them to audiences.

Mr. Wojciechowski: No we won't be required in the licensing.

Mr. Lynch: Okay.

Chairman Wubneh: It doesn't require any licensing?

Mr. Little: Ed and I talked about this. If it is a copyrighted material they could not under the rules or copyrighted, and I'll give you an example, in restaurants if they have music that is not their own band playing the music, they had it piped in whether it be Musak or they have a stack of CD's playing there is an organization that they have to be a member of to pay royalties. What would happen if it is a copyrighted video, then they could not charge an admission and there would be an argument by the copyrighted by a motion picture industry, I'll use that term loosely or as a generic term, that the sale of a membership to that could not, will also violate that. If it is strictly going to be the skateboard or skating industry promotional video from that type of thing where it is something that you see on, for example in an airport you see a loop type of thing, you see that on and on, that's okay. You could not have cable pay-per-view type items and charge admission or something of that violates those particular rules. A motion picture house under the current ordinances for the CD, Commercial Downtown district, is no longer permitted. We have two theaters here long, long time ago, the Pitt and the Park, were here. The ordinances were changed and there is no longer a theater downtown. So it could not be under that kind of umbrella. On the other part in as a public/private club because there is a retail store that's a part of they would be required and he might be able to speak to that issue a little bit better about their entrance requirements and use from that. Also (unclear) questions along that

application and (unclear) talked about alcohol service. They are going to have to comply with ABC permits for the sale of alcohol even among club members. A good example is that the State General's Office and the ALE folks say if you had a bed and breakfast place where you had a evening happy hour, evening social, and only those people who were paying customers could participate in that free alcohol. That's a sale of alcohol. Anybody who came in off the streets would be entitled. For it to be true no cost type of item, here's alcohol for a evening social, could walk in and have a drink. Only the paying residents, in this case, if it's paying club members or somebody pays admission charge to come in they can't give away alcohol. They couldn't sell it without the license so ABC issues are also part of your consideration since it is going to be public/private club. In the application it mentioned the consumption of a glass of wine either while they're viewing the video or art to escape the club scene.

Mr. Wojciechowski: It is our intention to apply to Raleigh for the alcohol.

Mr. Little: That's part of your issue (unclear) conditions/requirements. Let's stick to the issue on the entrance requirements and use of retail for.

Mr. Les Everett: I'm not fully aware of how best to describe this to you but there is an occupancy issue. You do have a retail and assembly occupancy type situation. In reference to the entrances as Mr. Little was speaking of pending upon how the format is laid out, plan wise, and viewed there may be a requirement for complete separate entrances and exit requirements.

Mr. Wojciechowski: We have, they will be separated, with separate entrances and exits.

Mr. Everett: As far as.

Mr. Wojciechowski: The retail will be its own separate entity that will be closed most of the time when the other part is open. The retail is just a day business.

Mr. Everett: As far as Inspections I would like to express that they meet current building code requirements that are applicable.

Chairman Wubneh: I have a question just for our purpose. Is this something that we need to put as a condition or is it, for example, ABC requirements. When they apply they are suppose to comply with that, whatever ABC requires. Same thing when we use copyrighted materials, showing copyrighted materials, or the entrance or the separation of the entrance for both groups. Is this something that has to be included in the findings of fact for the purpose of this Board or this is something that will automatically they are required to comply with? In which case we don't have to put it as part of the findings of fact or requirements.

Mr. Little: I'm going to give you one of those lawyer's yes or no's, or yes and no answer. If as the applicant has stated what their intended purposes are then if you are going to approve the permit based upon their stated intention then the findings of fact and conditions that you may impose is that if they are going to serve alcohol as part. You can have a public or private club in which no alcohol is served. If

you're going to have, if they're going to have alcohol then they must comply with all ABC requirements. If they're going to show videos because it comes very close to being a video, I didn't say motion picture show, then they're not only going to have to comply with the in copyright standards but also comply with the ordinance relating to theaters in the downtown district. A good example maybe, let's say that a DVD came out on skateboarding or they got a new DVD or game Extreme Skateboarding a play station game. The customer wants to play that at this particular place and they're charging admission, they're charging club prices, then you have the argument. The City may not address and enforce the issue but we're not the only ones who make enforcement issues. There are people out here who represent that industry. They do spot checks. They will come in and if they observe the violation then they will seek an injunction to stop it especially in monetary. What you're doing is that, they may come back, the owner of the club and say the city said it's okay for me to do that (unclear) purpose. Again, it's a defense. What you're saying is that if they are going to do this things in their application they must comply with all licensing and other ordinance requirements dealing with theater, dealing alcohol, sales and consumption, with the building codes, since there is going to be two businesses in the same location and same goes for the fire codes.

Mr. Wojciechowski: I know the application that we have to submit to Raleigh for the ABC permits, I know we have to get the fire people to sign off on it and the building people to sign off on it. I know all that's going to have to be complied to. As far as the videos we do this in the retail store now. When a new video comes in we have a TV set up in the corner and we just put it in we don't charge admission for people to come see it. We just use it as an attraction to bring people to the shop.

Mr. Little: What you're doing is by changing the flavor or tenor of the business from retail to public or private club for a portion of the building. Then when you start showing videos of that nature that changes the flavor.

Mr. Lynch: By charging to get in.

Mr. Little: Membership.

Mr. Wojciechowski: I understand.

Mr. Little: Public or private clubs that's what, either you come in off the street and pay the cover charge (unclear) or might (unclear) off the streets.

Mr. Wojciechowski: If that's the case we'll comply with any type of licensing we need. We'll just have to contact.

Mr. Little: (Unclear) for your protection. We don't want somebody.

Mr. Wojciechowski: Really it didn't cross my mind that because we do it all day long. A new video comes in and everybody wants to see it so we open it up and put it in the TV and everybody comes and sees the new video. I thought it was just a

Some in Audience: When it comes down to it the companies put out these videos by their company and (unclear).

Everyone talking at once.

Chairman Wubneh: We would put those two conditions, in my opinion, ought be, when in doubt, to be on safe ground, I think it would be appropriate.

Mr. Little: Unclear (not near microphone)

Chairman Wubneh: In my opinion, ought be, when in doubt, to be on safe ground, I think it would be appropriate.

Mr. Little: Unclear (not near microphone)

Chairman Wubneh: Any questions to the applicant? Any one here in favor of this application? You're welcome to say if you want but you don't have to. Any one here opposed to this application. I'll now close the public hearing on this matter. Members of the Board please keep your mike open and we'll have discussions.

Mr. Little: You need to get staff recommendation.

Chairman Wubneh: What is the staff's recommendation?

Mr. Lynch: Staff is of the opinion that they can meet all developmental standards provided they meet all state, local and federal requirements for all licensures that would be applicable.

Chairman Wubneh: Thank you. I now will close the public hearing and call for a Board discussion. Please keep your mike open for any discussions. Members of the Board this is a special use permit and I will now read the criteria by the reference. If you want a vote please stop me otherwise by your silence it is recognized that you are voting in favor of the application. Conditions and Specifications, Comprehensive Plan, Health and Safety, Detriment to Public Welfare, Existing Uses Detrimental, Injury to Properties or Improvements, Nuisance or Hazard. Hearing no negative votes. I would like to state that the two amendments, conditions, that were articulated by Mr. Little should be included as conditions. The first one is that if they are going to serve alcohol they must meet the ABC requirements. If you are playing to show videos you have to comply with copyrights, licensing and other ordinances of the city dealing with theater. This would be the conditions that would be included. I now would like to get a motion to approve the findings of fact. Do we have to vote on those conditions?

Mr. Little: Yes sir. You have to vote to add those conditions in as part of the findings of fact.

Chairman Wubneh: Motion to

Mr. Harwell: Motion to add.

Mr. Wright: Second.

Chairman Wubneh: Motion by Mr. Harwell, second by Mr. Wright. All who are in favor of adding those conditions please indicate by saying "Aye". Opposed? Thank you. Now I would like to get a motion to approve the findings of fact with the

conditions.

Ms. Safford-White: So moved.

Mr. Hutchens: Second.

Chairman Wubneh: Moved by Ms. Safford-White and seconded by Mr. Hutchens. All who are in favor of approving the finding of facts, please indicate by saying "Aye". Opposed? Another motion to approve the petition.

Mr. Ward: Motion.

Chairman Wubneh: Mr. Ward.

Mr. Wright: Second.

Chairman Wubneh: Seconded by Mr. Wright. All who are in favor of approving the petition please indicate by saying "Aye". Opposed? Thank you. Congratulations your application is approved.

There being no further business the meeting adjourned at 8:30 PM.

Respectfully submitted

Ed Lynch, AICP
Planner

APPROVED

Multau Wubneh, Chair