

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT

August 28, 2014

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

Scott Shook, Chairman \*

Charles Ewen \*

Claye Frank \*

Bill Fleming \*

Justin Mullarkey \*

Thomas Taft, Jr. X

Kevin Faison \*

Bill Johnson \*

Michael Overton \*

Jeremy Spengeman \*

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

VOTING MEMBERS: Shook, Ewen, Fleming, Mullarkey, Frank, Faison, Spengeman

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney  
Mr. Michael Dail, Planner  
Mr. Thomas Weitnauer, Chief Planner  
Ms. Amy Nunez, Secretary  
Ms. Elizabeth Blount, Planner  
Mr. Corey Barrett, Code Enforcement Officer  
Mr. Les Everett, Chief Building Inspector  
Mr. Tim Corley, Civil Engineer  
Mr. Jonathan Edwards, Communications Technician

**MINUTES**

Mr. Fleming made a motion to approve the July 24, 2014 minutes as presented, Mr. Mullarkey seconded and the motion passed unanimously.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY GREENVILLE COMMUNITY SHELTERS, INC.- APPROVED**

The applicant, Greenville Community Shelters, Inc., desires a special use permit to operate a shelter for the homeless pursuant to Appendix A, Use (2)m. of the Greenville City Code. The proposed use is located at 207 Manhattan Avenue. The property is further identified as being tax parcel number 28949.

Mr. Dail delineated the area on the map. He stated that the property is located in the central portion of the City near downtown. It is located near the major thoroughfare of Dickinson Avenue. The Community Shelter already exists at this location but is a non-conforming use. In 2012 City Council added community shelters to the OR (office-residential) district as a special use. The Community Shelter wants to tear down one of the buildings on the property and rebuild but needs to get a special use permit in order to be a conforming use.

**Zoning of Property:** OR (Office Residential)

**Surrounding Zoning:**

North: R6 (Residential)

South: CDF (Downtown Commercial Fringe)

East: R6 (Residential)  
West: R6 (Residential)

**Surrounding Development:**

North: Single Family Residences  
South: Single Family Residences, Home Builders Supply  
East: Single Family Residences  
West: City of Greenville Dream Park

**Description of Property:**

The subject property contains the Greenville Homeless Shelter. The property fronts on Myrtle Street, Manhattan Avenue and Chestnut Street and is 2.26 acres in size. The Greenville Homeless Shelter consists of two buildings. The Shelter wishes to demolish the northern most building and build a new facility.

**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 office/institutional development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on August 14, 2014. Notice of the public hearing was published in the Daily Reflector on August 18, 2014 and August 25, 2014.

**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.

Chairman Shook opened the public hearing.

Mr. Mike Baldwin, spoke in favor of the request on behalf of the applicant. He stated this is the best thing to happen in this area of Greenville. The Shelter has acquired funding for the new building. The existing building is about 10,000 square feet and is in need of repair. The new building will have 15,000 square feet and will house more people. This request fully meets criteria.

Mr. Faison asked if this was a small annex tear down or the whole big building.

Mr. Baldwin stated it was the whole big building. The other building is the administrative building.

Mr. Ewen asked what will happen during construction.

Mr. Baldwin stated the facilities will stay open. The site plan has been submitted and reviewed.

No one spoke in opposition of the request.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

No comments made during board discussion.

Chairman Shook read the required findings criteria. No objections.

**Mr. Faison made a motion to adopt the finding of facts with the stated conditions, Mr. Fleming seconded and the motion passed unanimously.**

**Mr. Ewen made a motion to approve the petition with the stated conditions, Mr. Mullarkey seconded and the motion passed unanimously.**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY THE SABRE COMPANY-  
APPROVED**

The applicant, The Sabre Company, desires a special use permit to operate a child day care pursuant to Appendix A, Use (8)a. of the Greenville City Code. The proposed use is located at 1511 E. Arlington Boulevard. The property is further identified as being tax parcel numbers 62610 and 73284.

Board member Michael Overton requested to be recused due to financial conflict of interest. He stated he is the real estate agent receiving the commission on this project.

**Mr. Mullarkey made a motion to recuse Mr. Overton from The Sabre Company public hearing, Mr. Faison seconded and the motion passed unanimously.**

Mr. Dail delineated the area on the map. He stated that the property is located in the southeastern portion of the City. It is located along the major thoroughfare of E. Arlington Boulevard.

**Zoning of Property:** OR (Office Residential)

**Surrounding Zoning:**

North: OR (Office Residential)  
South: OR (Office Residential)  
East: OR (Office Residential)  
West: OR (Office Residential)

**Surrounding Development:**

North: Multi-family (Breezewood Condos), Vacant  
South: Vacant, Various Office Uses  
East: Multi-family (Hyde Park Condos & Tara Court Condos)  
West: Various Office Uses

**Description of Property:**

The subject property is currently vacant, has approximately 680 feet of frontage along E. Arlington Boulevard and 200 feet of frontage along Hyde Drive and is 4.8 acres in size. The applicant intends to construct two buildings totaling 29,355 square feet to be used as a child day care facility.

**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 office/institutional development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on August 14, 2014. Notice of the public hearing was published in the Daily Reflector on August 18, 2014 and August 25, 2014.

**Related Zoning Ordinance Regulations:**

Definition: *Day care*; child. An establishment which provides for the care and supervision of six or more children away from their homes by persons other than their family members, custodians or guardians for periods not to exceed 18 hours within any 24-hour period.

Specific criteria:

- (1) All accessory structures, including but not limited to playground equipment and pools, must be located in the rear yard.
- (2) The minimum lot size shall be increased by a ratio of one hundred (100) square feet per child in excess of five (5).
- (3) Outdoor play area shall be provided at a ratio of one hundred (100) square feet per child and shall be enclosed by a fence at least four (4) feet in height. Further, all playground equipment shall be located in accordance with the bufferyard regulations.
- (4) If located in a residential district, a residential appearance of the site shall be maintained to the greatest possible extent.
- (5) Employee parking shall be at the rear of the structure when a child day care facility is located in a residential district.

**Staff Recommended Conditions:**

Day care facility must comply with all state licensing requirements and regulations prior to operation.

Site plan approval is required.

**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.

Chairman Shook opened the public hearing.

Mr. Ken Malpass, spoke in favor of the request on behalf of the applicant, The Sabre Company and Mr. Bill Walton who operates three Children's World facilities in Greenville. The request is convenient since there are about 11,000 people within a one mile radius and 70,000 within three miles. The proposed facility would be approximately 20,000 square feet in the first phase. There would be a maximum of about 220 children and 30 employees. There are two proposed additional driveways on Arlington, 4 already exist, and one additional driveway on Hyde Drive. There would be approximately 40,000 square feet of outdoor play area, which is almost double the size of the requirements.

Mr. Fleming asked if there would be a driveway onto Hyde Drive.

Mr. Malpass stated yes. The 4 existing interconnect with Bradford Park Offices along Arlington Boulevard.

Mr. Fleming asked if it would be difficult to get in and out at 5pm. He stated his office is across the street and there is a lot of traffic around 5pm.

Mr. Malpass stated that there would be many ways in and out. He stated the traffic would be staggered since pick up times range from 4-6 pm.

Mr. Faison asked if this would be the biggest child care center in Greenville.

Mr. Malpass stated yes.

Mr. Faison stated that 220 children are a lot.

Mr. Malpass stated that some of the care would be after school and they are not expecting 220 children all day.

No one spoke in opposition of the request.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

Mr. Fleming stated it would be a great asset to Greenville and good location although busy road area.

Mr. Faison stated the playground is fenced.

Chairman Shook stated that the Hyde Drive driveway would help with traffic.

Chairman Shook read the required findings criteria. No objections.

**Mr. Fleming made a motion to adopt the finding of facts with the stated conditions, Mr. Frank seconded**

and the motion passed unanimously.

Mr. Frank made a motion to approve the petition with the stated conditions, Mr. Fleming seconded and the motion passed unanimously.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY GARY NOBLES-APPROVED**

The applicant, Gary Nobles, desires a special use permit to operate a tattoo and body piercing shop pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 4056 S. Memorial Drive. The property is further identified as being tax parcel number 22582.

Mr. Dail delineated the area on the map. He stated that the property is located in the southwestern portion of the City. It is located along the major thoroughfare of S. Memorial Drive.

**Zoning of Property:** CG (General Commercial)

**Surrounding Zoning:**

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

**Surrounding Development:**

- North: AAMCO
- South: Burger King, Pitt Community College
- East: Vacant, Sheetz
- West: Community Square Shopping Center

**Description of Property:**

The applicant's unit is currently under construction and is located within the Community Square Shopping Center. The shopping center fronts on S. Memorial Drive and Reedy Branch Road, is approximately 7.0 acres in size and contains several commercial buildings with multiple units.

**Comprehensive Plan:**

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

**Notice:**

Notice was mailed to the adjoining property owners on August 14, 2014. Notice of the public hearing was published in the Daily Reflector on August 18, 2014 and August 25, 2014.

**Staff Recommended Conditions:**

Must obtain a permit from the Department of Public Health as required by NCGS§130A-283 and comply with any other health department requirements including but not limited to sanitation, first aid, vaccinations, health certifications, disposal of needles and other bio hazard waste materials.

No outdoor seating or loitering permitted outside of business.

Shall comply with the City of Greenville Sign Ordinance.

**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.

Chairman Shook opened the public hearing.

Mr. Gary Nobles, applicant, spoke in favor of the request. He stated he has been in business in Pitt County for over 25 years. He is being forced to move from current location at Carolina East Centre since it has been sold. New location is about one mile down the road. He stated he has six employees.

Mr. Fleming asked if the new location was new construction.

Mr. Nobles stated yes and that it is being built specifically for them, a drycleaner, a Thai restaurant and a nail salon. He does not know what unit will be his. He applied for the special use now so that there would be no delay later when he moves.

No one spoke in opposition of the request.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

Mr. Mullarkey stated that it appears the applicant has operated a very clean establishment for a long time. The conditions state no loitering.

Chairman Shook stated no loitering or outdoor seating permitted.

Chairman Shook read the required findings criteria. No objections.

**Mr. Mullarkey made a motion to adopt the finding of facts with the stated conditions, Mr. Ewen seconded and the motion passed unanimously.**

**Mr. Faison made a motion to approve the petition with the stated conditions, Mr. Mullarkey seconded and the motion passed unanimously.**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY TIM FERRUZZI-WITHDRAWN**

The applicant, Tim Ferruzzi, desires a special use permit to operate a recycling facility pursuant to Appendix A, Use (14)y. of the Greenville City Code. The proposed use is located at 829 West Star Street. The property is further identified as being tax parcel numbers 50066 and 50067.

Mr. Dail delineated the area on the map. He stated that the property is located in the southwestern portion of the City. It is located in the West Star Commercial Park. It is located near the major thoroughfare of Dickinson Avenue and minor thoroughfare of Frog Level Road.

**Zoning of Property:** CH (Heavy Commercial)

**Surrounding Zoning:**

- North: CH (Heavy Commercial)
- South: RA20 (Residential Agricultural)
- East: CH (Heavy Commercial)
- West: CH (Heavy Commercial)

**Surrounding Development:**

- North: Trugreen, Advanced Mechanical
- South: Agricultural, Stokes Mobile Home Park
- East: Vacant Commercial
- West: Tim Webb Electrical

**Description of Property:**

The property is located within West Star Commercial Park, is developed with four commercial/warehouse buildings totaling 15,500 square feet and has 340 feet of frontage along West Star Street with a total lot area of 2.4 acres.

**Comprehensive Plan:**

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

**Notice:**

Notice was mailed to the adjoining property owners on August 14, 2014. Notice of the public hearing was published in the Daily Reflector on August 18, 2014 and August 25, 2014.

**Staff Comments:**

The current use of the property in staffs opinion is a not a recycling facility. Staff would classify the current use of the property as a junkyard. The City of Greenville Zoning Ordinance defines a junkyard as follows:

*"Junk yard.* Use of land or buildings or other structures for indoor and outdoor storage, collection, demolition, dismantling, processing, abandonment, sale or resale of junk including scrap metal, rags, paper, other scrap materials, used lumber, used building materials, salvaged house wrecking, salvaged structural steel, salvaged materials, salvaged equipment, automobiles, and boats or other vehicles or machinery or parts thereof. This definition shall also include automobile graveyards."



Outdoor storage, collection, demolition, dismantling, processing, sale or resale of junk including other scrap materials, used lumber, used building material, and salvaged house wrecking is taking place at this site as evidence in the photos. Piles of salvage lumber, building materials and other scrap materials are being stored on the site in a half hazard manner and have been for a long period of time.

To further support this opinion it is important to note that the business is not registered with the North Carolina Department of Environment and Natural Resources (NCDENR) as a recycler and NCDENR staff have expressed to City staff that they would not recognize the current manner of operations as a recycling facility. NCDENR staff would consider the current use a transfer station.

Chairman Shook asked if it was City requirement to be registered with NCDENR to be a recycler.

Mr. Dail stated it is a state requirement.

The use as a junkyard at this location constitutes a zoning violation because junkyards are not permitted within the CH (Heavy Commercial) zoning district. There is a zoning violation for operating a junkyard here.

Mr. Ewen asked where junkyards are permitted.

Mr. Dail stated in the industrial district.

Mr. Faison asked if staff feels like the applicant is operating as a junkyard and is suppose to be a recycler.

Mr. Dail stated the applicant is calling himself a recycler.

Mr. Faison stated that he is not licensed from the State.

A further zoning violation, which is also a building code violation and an North Carolina Division of Public Health violation that exists on the site is the storage of two modular buildings. Neither of these modular buildings has received site plan approval and neither has been permanently set up according to building code regulations. The modular buildings sit on the septic system drain field. The applicant has received a violation notice from Pitt County Health Department on April 25, 2014 that states the units must be removed from this area. The picture was taken this week and indicates that they have not been removed.

Also because of the current condition of the site violations of the City of Greenville Public Nuisance Ordinance exist. Section 12-3-3 NUISANCES PROHIBITED; ENUMERATION of the City Code reads as follows:

"The following enumerated and described conditions are hereby found, deemed and declared to constitute a detriment, danger and hazard to the public health and the public safety of the inhabitants of the city and are found, deemed and declared to be public nuisances wherever the same may exist, and the creation, maintenance or failure to abate any nuisances is here by declared unlawful:

(A) Any condition which is a breeding ground or harbor for mosquitoes or a breeding ground or harbor for rats or other pests;

(F) Any concentration of combustible items such as mattresses, boxes, paper, automobile tires and tubes, garbage, trash, refuse, brush, old clothes, rags or any other combustible materials or objects of a like nature;

(G) Any concentration of building materials including concrete, steel or masonry which are not suitable for building construction, alterations or repairs, and which are in open places;"

To mitigate these violations there has been a history of enforcement action taken by City staff to stop the use as an illegal junkyard, to remove public nuisances, and to ensure the modular office buildings meet city and building code requirements.

Ms. Elizabeth Blount stated that Code Enforcement notified her on April 22, 2014 about citizen complaints concerning the business at 829 West Star Street. On the same day, she made a visual inspection with Code Enforcement and found the following: piles of lumber at front of the business property and sheetrock piled up under a shelter at the rear of the property. During the site visit, she spoke with Mr. Ferruzzi who stated that he was a recycling facility. His company sign stated that he was affiliated with Recycling America. She also noted the two modular units on the property that were not permanently setup. He was verbally told that he would need to begin cleaning the site up and was given approximately 45 days to do so. After the site visit, she compared what she saw and what Mr. Ferruzzi classified his business as to the actual City ordinance and the definition of a junkyard. There is used building materials, used lumber, automobiles, etc. Since Mr. Ferruzzi stated he was a recycling facility, she noticed in the tables of uses that a Recycling collection facility requires a special use permit in the CH (heavy commercial) zone. Code Enforcement later informed staff about the lack of progress in cleaning the site. She determined his use was a junkyard after he failed to comply with Code Enforcement warnings. A junkyard is not permitted at all in CH (heavy commercial) zone. She verified that the modular units were in violation of the zoning ordinance because the structures were located on the property without site plan approval. Mr. Ferruzzi also did not have a special use permit to operate as a recycling facility. On June 10, 2014 a meeting was scheduled with Mr. Ferruzzi and Code Enforcement to discuss a letter he received from Code Enforcement and to issue his first written letter from zoning. The zoning letter stated that a special use permit is required for a recycling facility to operate in the CH zoning district and that he had 20 days to apply for one. He was also instructed that he had to submit a site plan within 30 days of receiving a certified soil report that he was waiting on. To acknowledge receipt of the zoning violation letter she asked Mr. Ferruzzi to sign the letter and he stated that he wanted his attorney to review it first. He was given one week to contact staff. He did not so a second notice of zoning violation was mailed to him on June 19, 2014. There was a second visual inspection conducted on June 20, 2014 which revealed Mr. Ferruzzi started installing blue slats in his chain link fencing. Piles of wood could still be seen and the modular units were still there. On June 23, 2014 Mr. Ferruzzi did come in and signed the letter and later submitted a special use permit to operate as a recycling facility. She consulted with an environmental senior specialist from the Department of Environmental Natural Resources [DENR] who noted that the applicant's business was not registered as a recycle facility with the state of North Carolina and suggested that they visit the site together. That visit was August 25, 2014 and the property still had piles of wood. She visited that day with the representative from DENR who noted that the applicant's business would require him to register with the state. In summary, the applicant has two zoning violations- operating an illegal junkyard and having structures on the property without site plan approval.

Mr. Faison asked what the original use for the property was.

Mr. Dail stated that Mr. Ferruzzi owns the property and has been in the construction business. The site is in the ETJ

and falls under the City Zoning Ordinance but the original use is unknown since a business license is not needed.

Chairman Shook asked if Staff's opinion that operating as a junkyard would be in compliance with the Comprehensive Plan.

Mr. Dail stated no, it is not a permitted use in the zoning district where he is located. It's an illegal use.

Mr. Spengeman asked if he had applied to DENR for the license.

Mr. Dail stated not to his knowledge and he has been in contact with DENR this week.

Mr. Spengeman asked if DENR stated if the site would not comply.

Mr. Dail stated that DENR would not consider it a recycling facility due to the nature of what is going on at that site.

Chairman Shook asked if Staff had anything in writing from DENR.

Mr. Dail stated it has been verbal communication.

Mr. Ewen asked if there were any previous violations.

Mr. Dail stated he was not aware of any besides the fire extinguisher violations from the Fire Department which have been corrected.

Mr. Frank noticed various businesses on the sign and asked if any of the materials were related to those other businesses.

Mr. Dail stated that was a question for Mr. Ferruzzi. He did receive a violation from Pitt County Health Department for the modular units sitting on the septic greenfield in April. This has been going on for 4 ½ months.

Mr. Corey Barrett stated they visited the site on April 22 and gave a verbal warning to Mr. Ferruzzi to clean up due to numerous violations on site. He went back to the property on numerous occasions and none of the violations had been addressed. He sent a letter to Mr. Ferruzzi on June 2<sup>nd</sup> advising him of the violations and had 10 days to comply. They met and he stated he was aware that 10 days was not enough time and would work with Mr. Ferruzzi. He stated Mr. Ferruzzi has only addressed a small portion of the violations. The violation is the significant amount of trash or debris both inside and outside the fenced area that is a breeding ground for rodents/pests, a concentration of combustible materials, and a concentration of building materials in open places and not suitable building, construction, alteration or repair. He has visited the site numerous times, including today, and states more debris/wood has been added. He previously asked Mr. Ferruzzi not to add more debris since it is a fire hazard. There is no ingress/egress and would more likely be a fire trap. He stated he told Mr. Ferruzzi numerous times to fix the issues and that he would start issuing citations. (Copies of 2 citations were passed out to Board members.) He stated he only has cited for 2 violations and trying to work with Mr. Ferruzzi on the rest. As of today, he has not complied.

Mr. Fleming asked how Mr. Ferruzzi responded to his requests.

Mr. Barrett stated Mr. Ferruzzi stated he would work with him. He has done very little to comply.

Mr. Fleming stated that it would be a very big expense to clean it up. He asked if he had employees.

Mr. Barrett stated he has seen 2-3, but did not know exact number.

Mr. Fleming asked where the materials came from.

Mr. Barrett stated it appears to be scrap wood, but he did not know.

Mr. Fleming asked if he was paying to collect the materials and what the purpose was. He asked how he would make money accumulating scrap.

Mr. Barrett stated he did not know.

Mr. Dail stated he does know that the applicant has been in the construction business and that it would be typical for a business with outside storage for construction material to have a small pile of debris to be sorted. As from the information and pictures presented, there is a lot of debris on site. That is why Staff feels it is a junkyard.

**Staff Recommendation:**

In staff's opinion a recycling facility would operate in the following manner:

- materials to be recycled would be brought to the facility,
- materials would be sorted,
- unwanted or unrecyclable materials would be discarded,
- materials determined to be recyclable would be stacked in an orderly fashion or placed in bins
- materials would be sold or recycled into a new product and then sold.

If the board, based on an appropriate evidentiary finding, determines that the applicant has satisfied the criteria for the issuance of a special use permit for a recycling facility then Staff recommends the following conditions be placed on the permit to ensure the use transitions from a junkyard to a recycling facility:

1. The business must register as a recycling facility with the North Carolina Department of Environment and Natural Resources (NCDENR) and must maintain compliance with all applicable state codes.
2. The operation of a junkyard and other business operations must cease immediately and no operations occur until all permits and approved facilities to operate a recycling facility are in place and have been inspected and approved.
3. Applicant must obtain a building permit for a change of use on the property and pass all required City inspections before operation.
4. The yard shall be fenced with a visual screen eight (8) feet in height in order that no recycling materials can be seen from the street or surrounding properties.
5. All public nuisance violations must be mitigated.
6. All existing piles of materials shall be sorted. Unwanted materials shall be removed from site.

7. An area for new materials drop off and storage until sorting shall be delineated on a site plan. This area shall not be in the rear yard and shall be on an improved surface.
8. Materials must be sorted within two weeks of coming to the site.
9. Unwanted or unrecyclable materials must be placed in bins and the bins must be emptied every month.
10. Sorted materials must be stacked or kept in an orderly manner. Sorted materials shall not be stored in disorganized piles or in such a fashion as to create a public nuisances or breeding ground.
11. If any indoor woodworking is to occur, sprinklers must be installed per building code requirements.
12. Operating hours of the facility shall be limited to 8 am to 5 pm Monday thru Friday and 8 am to 1 pm on Saturday with no operation on Sunday permitted. Associated office uses of the facility may operate at any time.
13. No automobiles may be brought to this facility to be recycled.
14. Existing modular's currently stored on site must be removed from site, recycled or located and set up according to zoning and building code requirements. If the applicant wishes to set them up on site, a siteplan must be submitted and approved, a building permit must be issued, inspections must be completed and a final certificate of occupancy must be issued for their use.
15. A three month review will be held by the Board to determine compliance by the applicant of the issued special use permit and conditions.

Mr. Dail stated three months seems like a short period of time, but Staff action has been taking place since April and not much progress has taken place. It has been 4 ½ months and more stuff has been added but not much taken away.

Mr. Fleming stated the Code Enforcement violations are from August and asked if there were any previously.

Mr. Dail stated there were verbal warnings in April.

Mr. Fleming asked if these were the first warnings with fines.

Mr. Dail stated yes that fines started this week. He stated that is typical of the City to try to work with people and verbally ask them to clean up a property. If no progress is made, then multiple letters are sent, and then fines begin as a last resort. The applicant could be fined \$50.00 the first day, \$100.00 the second day, and \$250.00 every day thereafter for zoning violations.

Mr. Faison asked if Staff Recommendations #8 and #9 also apply to other the recycling facility.

Mr. Dail stated it was specific to this request due to the nature of this site. At the other facility site we have not seen a junkyard occur. A recycling facility should not be a stagnant operation.

Mr. Faison asked how it would be monitored.

Mr. Dail stated the time limit indicates that it is imperative that it be done in a timely matter and consistently. The three month review will report what is being seen and done. Also the neighbors that are here tonight will also report what they see and keep Staff notified. He stated the City is not against Mr. Ferruzzi but the situation needs to be remedied.

Chairman Shook opened the public hearing.

Mr. Tim Ferruzzi, applicant, spoke in favor of the request. He provided handouts to the Board members. He said he is trying to do the right thing. He is a business man, has a degree in Finance and a MBA from ECU. He has been in business 27 years with Handy Helpers, a construction business. A section of his property is materials he has accumulated as a contractor. About 1 ½ years ago he started thinking about recycling since he is an environmentalist at heart. The property was originally in the county. He assumes when it was built that it was marked as heavy commercial zone. It is called West Star Industrial Park and he assumed he could build a lot of things there. The listed uses for this property are similar to what is seen on Greenville Boulevard. This area is nothing but contractors with a couple of churches that have squeezed in. LKQ, an automobile scrap yard, is across the street. Foss Recycling, also across the street, takes in steel and has huge piles. The junkyard classification is a bit insulting, but he understands it is a catch all for outside storage. The whole neighborhood would be considered a junkyard if you consider outside storage.

Mr. Fleming asked what he is trying to do, what is his business.

Mr. Ferruzzi stated he has his contracting business, Handy Helpers. He also has Highland Roofers and takes down old tobacco barns. On the right side of the property is all new construction debris.

Mr. Fleming asked if all the material is left over material from new construction.

Mr. Ferruzzi stated yes. He stated he started this 1 ½ years ago and was vigilant. He called DENR and they visited his site. The new construction debris is from other contractors.

Mr. Mullarkey asked why he was keeping the new construction debris.

Mr. Ferruzzi stated he is trying to salvage it.

Mr. Fleming asked if he was getting paid or paying the contractors to have the debris dumped there.

Mr. Ferruzzi stated no. His goal is to recycle the material.

Mr. Mullarkey asked the applicant to describe a typical day of recycling on this property in detail.

Mr. Ferruzzi stated all clean wood comes in, de-nail it, sort it, and stack it on pallets stored with like materials. He has experimented building double studs out of scrap pieces that is being used in Arkansas. The materials can be burned as hard waste like mulch. Everything that comes in is sorted. He has limited room, so the small pieces are put in a trailer and taken to the landfill. A portion of all materials brought in, after sorted, is taken to landfill and they create hog fuel from it for industries to burn rather than oil or gas.

Mr. Fleming asked how he is making money.

Mr. Ferruzzi stated he is not making money with that business. He is experimenting and wants to do some custom palettes for companies. He stated he is organizing and putting things under shelters.

Mr. Fleming asked how he makes a living.

Mr. Ferruzzi stated by Handy Helpers and Highland Roofing.

Mr. Mullarkey asked if the scrap materials were coming from his businesses.

Mr. Ferruzzi stated no that is comes from about 70% of the contractors of Greenville.

Mr. Faison asked what his operation at this facility is.

Mr. Ferruzzi stated he is a contractor and runs his business there.

Mr. Faison asked if he considered it a storage facility.

Mr. Ferruzzi stated a good portion of the property is recycling.

Mr. Mullarkey asked how he recycles.

Mr. Ferruzzi stated by salvaging it.

Mr. Mullarkey asked what happens with the stuff he keeps after de-nailing and sorting.

Mr. Ferruzzi stated he built double studs and built one building.

Mr. Mullarkey asked what happens with the three loads a day coming in.

Mr. Ferruzzi stated it is not three loads a day. Nothing will come for a month and then 10 loads come in a week.

Mr. Mullarkey asked what happens with contractors, since some take it to the landfill where it is sorted and keeps one environmental problem contained on one site.

Mr. Ferruzzi stated it comes to him pre-sorted, clean wood.

Mr. Faison asked if he had applied for the state license as a recycling center.

Mr. Ferruzzi stated yes 1 ½ years ago he contacted the state and representatives came out to the site.

Mr. Faison asked what is preventing him from getting the license.

Mr. Ferruzzi stated he was told if he was bringing in clean pre-sorted wood, a permit is not needed and that recycling facilities do not have to receive a permit from the state. He was in Raleigh on Tuesday and spoke with Ed Musler.

Chairman Shook asked if he visited the site.

Mr. Ferruzzi stated he showed him pictures. He stated he has a letter dated today with that information. He stated he has worked with the City more so than what is being said. He has done a lot of things since April 22<sup>nd</sup>. What caused

an issue were the two modular units he brought to his site over Easter weekend that he plans to refurbish. The piles of wood have been there a while and he had planned putting up screening and now has done so.

Mr. Fleming read from the DENR letter “The Section is reviewing this request, in light of recent visits and discussions among the various parties. We are sorry we can’t give a definite answer on your specific case at this time. Regardless of any permit, for you to conduct the activity of recycling wood and other materials on your site, you would have to be properly zoned.” Mr. Fleming stated that he is not properly zoned.

Mr. Ferruzzi stated he did not know he was not properly zoned until April.

Chairman Shook stated that the zoning is for recycling and not for a junkyard. It doesn’t indicate that in Greenville he would need a special use permit.

Mr. Fleming read from the DENR letter “A majority of the recovered material at a facility shall be sold, used, or reused within one year.” Mr. Fleming stated it looked like the materials have been there longer than one year.

Mr. Ferruzzi stated there is a small portion that has. He stated he had pictures to show that it had been organized and stacked.

Chairman Shook stated there are code violations that are still current.

Mr. Ferruzzi stated he had not seen them until 10 minutes ago.

Chairman Shook asked if he would acknowledge that he is in violation.

Mr. Ferruzzi stated he was shook up about this and had not read them.

Chairman Shook asked staff how and when the violations were sent.

Mr. Barrett stated on the dates indicated and via mail.

Chairman Shook stated there are criteria to be met in order to get a special use permit. The Board of Adjustment is a quasi-judicial board and people have to be sworn in to speak. The Board has to take sworn testimony and evidence. The applicant responsibility is the burden of persuasion to persuade the Board members that he meets the criteria. Regarding conditions and specifications, evidence has been shown that it is not a recycling facility but fits more as a definition of a junkyard. He asked what specifically does he have to persuade the Board that he is in compliance as operating as a recycling facility versus what the City says is a junkyard which is not a use in heavy commercial zoning.

Mr. Ferruzzi stated they don’t know what to call me since he is not a bona fide recycler in their eyes.

Chairman Shook stated they are the ones that are statutorily given the authority to make that determination. Regarding the conformity of the Comprehensive Plan of the City and its extraterritorial jurisdiction (ETJ), he asked what he had to persuade them that he is in compliance.

Mr. Ferruzzi stated he is in the commercial business, he is a contractor and roofer, and is accumulating clean



building debris.

Chairman Shook stated that accumulating is not recycling. The next criteria is health and safety. He stated they have the citations that state it is a fire hazard and a violation from the health department that he cannot maintain a modular unit over a septic field. He asked if the modular units were still at the site.

Mr. Ferruzzi stated yes.

Chairman Shook asked if they are in the same location and over the septic field.

Mr. Ferruzzi stated yes.

Chairman Shook stated the next criteria was detriment to public welfare. Being a fire hazard or having something over a septic field are valid concerns and the modular units are still there. Existing use is detrimental. He stated the applicant's current use is not a recycling facility but accumulation. Injury to properties or improvements. He stated the applicant has been cited for fire hazard. Nuisance or hazard. He stated again it is a fire hazard. He stated these are levels he has to get over. He stated he understands how difficult it might be to deal with the City on this while trying to run a business. There is a lot to overcome to persuade the Board. Anyone opposing the applicant has the burden of proof. The citations are burdens of proof and there is not a lot of burden of persuasion. He asked if he wanted to move forward while still in violation.

Mr. Ferruzzi stated he hasn't had a chance to present his case.

Chairman stated he will have a chance but that the Board bases their decisions on the criteria he stated.

Mr. Ferruzzi stated, that according to the letter, DENR doesn't think he needs a permit and he thought that he is okay doing what he is doing.

Mr. Fleming stated he interpreted the letter differently.

Mr. Mullarkey agreed with Mr. Fleming and stated he thinks that DENR does not know what to classify him as.

Mr. Ferruzzi stated to let DENR determine it since they are still discussing it. He stated in April he hired a Soil Scientist named Scott Stone.

Chairman Shook asked if that was before or after the City contacted him.

Mr. Ferruzzi stated after.

Chairman Shook asked if the City contacting him made him contact the soil scientist.

Mr. Ferruzzi stated yes. The septic tank and repair area is based on 350 gallons a day of use. He uses 30-40 gallons a day for the last 12 years. He does not need a septic tank that takes up 25% of his property. He hired Scott Stone, Soil Scientist, who provided a draft letter that said the septic tank is too big.

Chairman Shook asked if he was here this evening.

Mr. Ferruzzi stated no and asked if he had to be here.

Chairman Shook stated they would need to be here in order for the Board members to ask questions.

Mr. Fleming asked if it was done in April.

Mr. Ferruzzi stated he was working on it since April.

Mr. Fleming asked when he did he get the results.

Mr. Ferruzzi stated today. It took that long.

Mr. Fleming asked if the Soil Scientist is telling him to disconnect some of his lines.

Mr. Ferruzzi stated the he said his system is too big for what he is using. He took water readings for 90 days and provided the soil scientist with utility bills for the last 10 years. He said he was told that he would be okay to disconnect some of the lines and reduce them and that the modular units are fine where they are. It should resolve the issue if the Environmental Health office approves the Soil Scientist findings.

Mr. Fleming stated that the City said for him to stay there as a recycling center he would need to get rid of stuff and start operating as a recycling center. That means processing the stuff and getting it out of there and according to the letter the debris cannot stay there more than a year. He asked if he was in the position to do that and if he had any customers.

Mr. Ferruzzi stated that inventory needs to be accumulated initially before he can move forward.

Mr. Fleming stated it needs to be accumulated in an orderly fashion.

Mr. Ferruzzi stated part of the lot is for his contracting business and the other is for the recycling.

Mr. Faison stated that the Staff has made their recommendation laying out what he needs to do to be a recycling center. He asked if he was willing to come into compliance with those requirements.

Mr. Ferruzzi stated yes. He stated there were a few items he would like grace on. Three months during a holiday season is difficult.

Mr. Mullarkey stated this started in June, no April.

Mr. Ferruzzi stated he has already complied with some of the things. He stated he cleaned up the entire back of the facility and put up a screened/double slated eight foot fence that you can't see through. He stated the person who does the three-month review could be very subjective.

Mr. Fleming stated he was dragging his feet and stalling for more time when the City has tried to get him to do something since April and he has done nothing.

Mr. Ferruzzi stated that was not true. He hired the soil scientist, has been talking with DENR, he cleaned up the whole area behind the fence, put up all the fencing and slats, and has continued to organize. He has an insurance policy for this place and the agent took pictures a year ago. He has been okayed by fire marshal inspections since he has fire hydrants and paths.

Mr. Fleming asked if he had any customers.

Mr. Ferruzzi stated not yet.

Mr. Fleming stated it looks like he has contractors bringing him building materials and he has grand ideas about doing recycling but has no customers. Now the site is an eyesore and a fire hazard and that he has no urgency.

Mr. Ferruzzi stated he has done a lot of things and spent a lot of money. He stated the reason he got the current citation was because it displeased Code Enforcement that he brought in about 5 piles of clean wood. He stated he did not know he could not do that since he thought it was okay since he applied for the special use. He stated that he had a tenant for 7 years, Best Distributing, who had shingles and siding piled up outside. He stated that you could see the two modular units in a photo.

Chairman Shook asked if he acknowledged that the modular units there are in violation.

Mr. Ferruzzi stated yes. He stated, and showed in a photo, there are fenced areas on the properties and a garden he is working on. The back of the property is farmland and behind the fence is clean except for fire wood stacked up and cedar shack roof pieces to be reused.

Mr. Ewen asked what use he had for the fire wood.

Mr. Ferruzzi stated for a kiln or personal use. He also has trailers with stuff in it that gets turned over about every five days. He stated he has painted and repaired the modular units.

Mr. Fleming asked if he was going to sell the modular units.

Mr. Ferruzzi stated no and that he would like to make one a wood shop. The building on site is cared for and the parking lot is clean. He stated about three or four dumpsters of debris have been removed from the site since April. He also has shingles and slate roofing stacked for repair jobs. He also has vinyl siding piled for recycling by using it on utility building he builds.

Mr. Fleming asked where the shingles came from.

Mr. Ferruzzi stated there are new but excess from previous jobs to use as repair jobs.

Chairman Shook stated what he is describing is a stock pile for himself and for his own use. It might be fine to do that, but not in the zoning area the property is in.

Mr. Ferruzzi stated the only thing he is not in compliance with is if he is a junkyard.

Chairman Shook stated he is describing it pretty well.

Mr. Ferruzzi stated as a business man he can be resourceful in reusing materials.

Chairman Shook stated that there comes a point where the line is crossed. To be a recycler you must be in the business of recycling. Stock piling and using it for your own use is not recycling. The current zoning here says you can't do that. He stated he has the burden of persuasion and the City has the burden of proof. Their proof is citing him and going through steps since April. He stated he is in violation and he has no clear plan to get out of violation. He asked what his specific plan to get out of violation is. It is hard to issue a permit when he is in violation.

Mr. Ferruzzi stated he will meet the obligation with the Soil Scientist and get the site plan done. He will get an answer from DENR. He will follow the conditions of the special use permit if granted. He stated he will do whatever the Board decides.

Mr. Fleming asked how he stays in business by hoarding stuff since he sees good stuff and won't through it out.

Mr. Ferruzzi stated he does through stuff out.

Chairman Shook stated that he can be resourceful. The issue is, under the current zoning, the permit is not for what you are currently using it as. The City has given a lot of conditions which is not typical. The shortened time frame for follow up is probably due since this began back in April. In order to get a special use permit to operate a recycling facility who have to have concrete plans.

Mr. Ferruzzi stated he thought that working with the State, having a Soil Scientist, having insurance, working with the fire marshal, cleaning and organizing were positive things. He stated he has not resisted the City. He gains nothing by resisting the City.

Chairman Shook asked what specifically does he have that has not been already said tonight.

Mr. Ferruzzi stated, and showed a picture, of a small wood building he built on site.

Mr. Fleming asked what he was going to do with the building.

Mr. Ferruzzi stated he would use it for his operations.

Mr. Fleming asked what type of operations.

Mr. Ferruzzi stated he was not sure.

Mr. Ewen stated that if this is to be a recycling facility, he could not be the only one recycling the material. It needs to be seen that it is actually part of a business.

Mr. Faison stated that he said he is willing to be compliant with everything the City has put in front of you. He stated that number two of the staff recommendation states that the operation must cease immediately and no operations to occur until all permits and facilities are approved.

Mr. Ferruzzi stated he is willing to do that.

Mr. Faison stated that if the special use was granted, he would need to cease and begin complying with the listed conditions immediately. He would have to shut down until everything was completed and approved.

Mr. Spengeman asked how to delineate from the junkyard/recycling from his other businesses.

Mr. Fleming stated that most contractors don't have this type of material or accumulate stuff like that.

Mr. Spengeman asked if he could get around condition number two if it was his construction business.

Mr. Fleming stated he has a major expense in cleaning this up, very labor intensive. He asked if he could do that.

Mr. Ferruzzi stated yes over time.

Mr. Fleming asked how much time.

Mr. Ferruzzi stated he has piles of organized 2x4s, 2x6s, and 2x8s to make pallets. He would like to continue that.

Mr. Fleming asked where the market for used 2x4s is.

Mr. Ferruzzi stated right now it is hog waste-chip it up and burn it to be used as fuel for big factories.

Mr. Fleming asked if he wants to run a recycling operation.

Mr. Ferruzzi stated yes. He wants to get the product closer back to its original use because that is true recycling.

Mr. Fleming stated he needs to find customers because he doesn't have any.

Mr. Ferruzzi stated he is working on that. He needs some grace from the board because it will take some time.

Chairman Shook stated the violations need to be cleared up. He asked Attorney Little about the special use fee paid to come to the Board and if the case was continued or withdrawn could the money be used for a later purpose.

Attorney Little stated if the case was continued or withdrawn before being heard, the fee is generally refunded. Since the case has been heard to this point, it would begin a new process. The Board can continue the public hearing for an amount of time but may want to hear all the other testimony so the people would not have to come back.

Chairman Shook asked if the case was withdrawn now, would he have to reapply and pay.

Attorney Little stated the practice in the past has been yes. There probably could be an exception.

Mr. Faison asked the only way he could be heard again without paying again is if the Board continued the case.

Chairman Shook stated he could withdraw and get an exception. He still has the violations. He asked Staff if the violations comprise most of the issues of the nuisance and hazard as it is currently stated.

Attorney Little stated that was a Code Enforcement violation and the Zoning violation citations have not begun. The Public Health has not decided on how to weigh in regarding citations for the modular units on the septic system.

Chairman Shook stated that no matter what he is in violation and nothing granted tonight will get him out of violation. If he is denied and wants to come back later to the Board, he will have to pay again.

Attorney Little stated if he was denied and came back with a corrected application and compliant proposal, it is possible Staff could give him leeway. Community Development would have to look at their rules and procedures.

Chairman Shook stated that it would be on record for everything an applicant was denied for. If applied for again then all of those factors would have to be mitigated.

Attorney Little stated that would be correct.

Mr. Ewen stated that they heard the City and Mr. Ferruzzi and now should let others speak.

Chairman Shook asked if he had anything else to say before we move on.

Mr. Ferruzzi stated it looks like he should ask for a continuance and maybe come back with pictures in 90 days.

Chairman Shook asked Attorney Little if the applicant should ask for a continuance or a withdrawal.

Attorney Little stated at this point in time it would have to be a withdrawal because the hearing has already started and cannot grant a continuance during the course of the public hearing.

Chairman Shook asked if the Board has to vote to allow him to withdrawal.

Attorney Little stated yes by simple majority. The Board could hear the other speakers or the applicant can make a request to withdraw it now and not hear the others. It would be appropriate to vote on that. If the withdrawal is approved then the process will stop and have to start all over.

Mr. Faison asked if he withdraws, is he allowed to stay in operation.

Attorney Little stated no because he is in violation.

Mr. Faison asked if he should cease.

Mr. Dail stated he is in violation until he removes the junkyard because it is an illegal use in the zoning district. He needs to cease.

Chairman Shook stated no action they take tonight will speed up or slow down that process. The only way for him to get out of violation is based on his own actions.

Mr. Dail stated correct.

Chairman Shook asked if he chooses not to act then there is a more stringent process including fines.

Mr. Dail stated he believed so and that Staff has no other options.

Mr. Fleming asked what if he is not in the financial position to clean the site up and how long does the City wait until something is done.

Attorney Little stated there is no determined time period. If the nuisance is not abated, the City could abate and place a lien on the property and all properties owned by Mr. Ferruzzi; or the City could obtain injunctive relief and demand compliance by having the Court make a determination and hold him in contempt and have him jailed until he is ready to comply.

Mr. Faison stated he has to show reasonable progress.

Attorney Little stated yes and that would be a more drastic approach. He would be given a direct order to cease and desist.

Mr. Ferruzzi requested to withdraw the application and stated he will resubmit in the future.

Mr. Mullarkey stated that when he resubmits he will need to articulate a reasonable effort with firm persuasion. He stated he has wasted the Board's time tonight. It appears to be an eyesore. He has been by the site various times in the past 4 years and each time it looks worse. He stated he does not think he is the person to represent himself and if there is no progress, do not waste the time resubmitting.

Chairman Shook asked for board discussion regarding the applicant's request to withdraw.

**Mr. Ewen made a motion to accept the applicant's withdrawal, Mr. Frank seconded and the motion passed unanimously.**

### **ELECTION OF CHAIR AND VICE CHAIR**

Attorney Little stated a new Chair and Vice Chair will need to be elected. He stated the Board could vote to have a new Chair and Vice Chair or make a motion by acclamation to continue the current Chair and Vice Chair which would be by simple majority.

**Mr. Fleming made a motion by acclamation to continue the current Chair and Vice Chair, Mr. Faison seconded and the motion passed unanimously.**

**With no further business, Mr. Ewen made a motion to adjourn, Mr. Frank seconded, and it passed unanimously. Meeting adjourned at 8:57 p.m.**

Respectfully Submitted

Michael R. Dail, II  
Planner