

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
September 26, 2013

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 X

Linda Rich *

Justin Mullarkey *

Kevin Faison *

Claye Frank *

Sharon Ferris *

Bill Fleming *

Thomas Taft, Jr. X

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

VOTING MEMBERS: Mullarkey, Faison, Rich, Ferris, Frank, Shook, Fleming

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney
Mr. Michael Dail, Planner
Mr. Tim Corley, Civil Engineering
Mrs. Elizabeth Blount, Secretary
Mr. Jonathan Edwards, Communications Technician

OLD BUSINESS

Chairman Shook stated that Item #2, Public Hearing on a request for a special use permit by Keith Frizzell had been withdrawn. Ms Ferris made a motion, seconded by Mr. Frank, to accept the withdrawal letter from the applicant. Motion passed unanimously.

MINUTES

Mr. Mullarkey made a motion to approve the June 27 minutes as presented, Ms Rich seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A VARIANCE BY TRACY AND KATHY MUSE - APPROVED

The applicants, Tracy and Kathy Muse, desire a variance from the right-of-way setback in the R6S (Residential Single Family) zoning district, Section 9-4-94(E)(3) of the Greenville City Code. The subject property is located at 2141 Tulls Cove Road. The property is further identified as being tax parcel number 76363.

Mr. Dail delineated the area on the map. He stated that the property is located in the southern portion of the city’s jurisdiction. The applicant wishes to be granted a variance from the 25 foot right-of-way setback required along Sedbrook Lane because the single family dwelling was constructed 7.4 feet into the right-of-way setback along Sedbrook Lane.

A variance reducing the setback to 17.6 feet is required to make the dwelling conforming and is necessary to prevent the applicant from sustaining significant expenses and loss in removing the part of the structure located in the setback.

Zoning of Property: R6S (Residential Single Family)

Surrounding Zoning:

North: RR (Rural Residential) - *Pitt County Zoning District*
South: R6S (Residential Single Family)
East: R6S (Residential Single Family))
West: R6S (Residential Single Family)

Surrounding Development:

North: Vacant/Agricultural
South: Single Family Residential
East: Single Family Residential
West: Single Family Residential

Description of Property:

The subject property is located in Tulls Cove Subdivision. The property is a 7,765 square feet corner lot with frontage along Tulls Cove Road and Sedbrook Lane.

Comprehensive Plan:

The proposed use is in general compliance with the Future Land Use Plan which recommends medium density residential development for the subject property. It is located near a minor thoroughfare – Corey Road.

Notice:

Notice was mailed to the adjoining property owners on August 9, 2013 and September 12, 2013. Notice of the public hearing was published in the Daily Reflector on August 12, 2013, August 19, 2013, September 16, 2013 and September 23, 2013.

Variance Criteria:

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

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

Mr. Faison asked if the request was a construction matter.

Mr. Dail stated currently the ordinance requires a 25' right-of-way setback for new construction in the R6 zoning district and the subject home was built 7.4' into the setback. In order to receive a final certificate of occupancy (CO) from the Inspections Department, the applicant must receive a variance from the setback.

Ms Ferris asked if the home on the corner lot complied with the setbacks.

Mr. Dail stated that the house did meet the setbacks and has received their final CO.

Chairman Shook opened the public hearing.

Mr. Mike Baldwin, representative of applicant, spoke in favor of the request. He distributed pictures of the property. He stated that the city code stated setbacks for public street is 25'; however, the building permit stated side setbacks as 8' and the applicant set his house accordingly, not taking into consideration that the side of the house was located off a public street. He stated that the mistake might have been caught if the minimum building line could be placed on the plats. They have been prohibited by the planning department due to covenant restrictions. The applicant acted in good faith and that the variance would not cause determinant to the neighborhood nor will it cause the property to be out of harmony.

Mr. James Gordon, neighbor, spoke in favor of the request. He stated that the house looks in harmony with the neighborhood and that it would not cause any conflict.

Mr. Tracy Muse, applicant, spoke in favor of the request. He stated that the property will be their permanent residence. He built the house in accordance to the setbacks on the permit. He and his wife but in a lot of time and work into the house and would appreciate the approval of the variance.

No one spoke against the request

Chairman Shook asked for staff recommendation.

Mr. Dail stated that staff had no objection to the request.

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

No board discussion.

Chairman Shook read the required findings criteria. No objections.

Ms Rich made a motion to adopt the finding of facts with the stated conditions, Mr. Frank seconded and the motion passed unanimously.

Mr. Fleming 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 MONTEZ ROUNDTREE-APPROVED

The applicant, Montez Roundtree, desires a special use permit to operate a automotive major repair facility pursuant to Appendix A, Use (9)a. of the Greenville City Code. The proposed use is located at 2011 N. Greene Street. The property is further identified as being tax parcel number 36380.

Mr. Dail delineated the area on the map. He stated that the property is located in the northern portion of the city's jurisdiction.

Zoning of Property: CH (Heavy Commercial)

Surrounding Zoning:

North: CH (Heavy Commercial)
South: CH (Heavy Commercial)
East: CH (Heavy Commercial)
West: IU (Unoffensive Industry)

Surrounding Development:

North: Tabernacle Church
South: Cavalier Hose & Fittings
East: Ryder Transportation Services
West: Bennett Buildings, Warrens Hot Dogs

Description of Property:

The property is 0.51 acres in size, has 164 feet of frontage along N. Greene Street and contains two commercial buildings totaling 5,000 square foot. The applicant wishes to use the southernmost building on the property as the automotive major repair facility.

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 9, 2013 and September 12, 2013. Notice of the public hearing was published in the Daily Reflector on August 12, 2013, August 19, 2013, September 16, 2013 and September 23, 2013.

Related Zoning Ordinance Regulations:

Definition:

Repair; major. The following activities shall be considered major repair:

- (1) Engine overhaul or dismantling of subparts;
- (2) Body or frame repair;

- (3) Windshield or glass replacement;
- (4) Transmission, starter, alternator or other subpart rework service;
- (5) Welding or metal cutting; and
- (6) Any other repair other than minor repair.

Repair; minor. The following activities shall be considered minor repair:

- (1) Engine tune-up; changing of plugs, filters, oil, lubricants, belts, adjustments;
- (2) Change and rotate tires;
- (3) Brake services;
- (4) Electrical system services;
- (5) Radiator services;
- (6) Muffler services; and
- (7) Battery service.

Specific Criteria:

- (1) All wrecked or damaged motor vehicles and parts shall be screened so as not to be visible from adjoining property lines and street right-of-way.
- (2) All vehicles on the premises for repair shall be stored at the rear of the principal structure.
- (3) No vehicle shall be stored on the premises for more than 15 days.
- (4) There shall be no exterior storage of items other than vehicles.
- (5) Sale of vehicles shall be in accordance with Article B, section 9-4-22, definition of automobile, truck, recreational vehicle, motorcycle and boat sales, contained therein.
- (6) Rental or utility trailers, cars and trucks shall be permitted as accessory uses, provided that all units in excess of four shall be screened from adjoining street right-of-way and property lines in accordance with Bufferyard C or with a bufferyard of greater intensity as required by the bufferyard regulations.
- (7) Outdoor displays of products such as tires, oil, wiper blades or other similar products shall be permitted provided they are within ten feet of the principal structure and outside required bufferyards. Signage displayed in conjunction with such display shall be in accordance with the sign regulations.

(8) All services except fuel sales shall be performed within a completely enclosed building.

Chairman Shook opened the public hearing.

Mr. Montez Roundtree, applicant, spoke in favor of the request. He desired to open up a major automotive repair facility beside the dealership. He stated that the facility would not be hazardous to the environment. The work at the facility will involve welding and pulling with a frame machine.

Chairman Shook asked for staff recommendation.

Mr. Dail stated that staff had no objection to the request.

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

No board discussion.

Chairman Shook read the required findings criteria. No objections.

Ms Ferris made a motion to adopt the finding of facts with the stated conditions, Mr. Frank seconded and the motion passed unanimously.

Ms Rich 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 JACKIE PARKER & DEMETRICE WILSON-APPROVED

The applicants, Jackie Parker and Demetrice Wilson, desire a special use permit to operate a mental health day program facility pursuant to Appendix A, Use (8)ff(1). of the Greenville City Code. The proposed use is located at 609-D Country Club Drive. The property is further identified as being tax parcel number 50555.

Mr. Dail delineated the area on the map. He stated that the property is located in the center portion of the city's jurisdiction.

Zoning of Property: OR (Office Residential)

Surrounding Zoning:

North: OR (Office Residential)

South: R15S (Residential Single Family)

East: OR (Office Residential)

West: OR (Office Residential)

Surrounding Development:

North: Mid Atlantic Insurance, South Roanoke Baptist Association

South: Greenville Church of God
East: Smith Funeral Home
West: Little Sunshine Learning Center

Description of Property:

The subject property is 0.32 acres in size, has 90 feet of frontage along Country Club Drive and contains a 3,850 square foot office building with multiple units.

Comprehensive Plan:

The Future Land Use Plan recommends office/institutional/multi-family development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on September 12, 2013. Notice of the public hearing was published in the Daily Reflector on September 16, 2013 and September 23, 2013.

Related Zoning Ordinance Regulations:

Definition: *Mental health, emotional or physical rehabilitation day program facility.*

(1) An establishment qualified for a license by the State of North Carolina which provides a day treatment, day activity or other extended counseling service to persons who do not reside at the establishment and who are physically disabled, mentally retarded, developmentally disabled, persons recuperating from alcohol or drug related problems, persons adjusting to society as an alternative to imprisonment, children or adolescents who are emotionally disturbed and need special educational services, and persons recuperating from mental or emotional illness, but not including mentally ill persons who are dangerous to others. Persons receiving service at the establishment may be at the facility for no longer than 18 hours within any 24-hour period.

(2) Dangerous to others means that within the recent past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that his conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Professionals or paraprofessionals providing assistance to the occupants shall be allowed in addition to the maximum occupancy.

Staff Recommended Conditions:

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

At no time will clients of the training center be permitted to wait or be outside without being accompanied by a staff member of the training center to supervise and ensure proper behavior of the clients including but not limited to aggressive actions, littering, fighting, yelling, loitering or other unacceptable behavior.

Ms Demetrice Wilson, applicant, spoke in favor of the request. She stated that the program will involve adult clients with mental illness or substance abuse disorders. The clients will be supervised at all times. The program is a licensed program by the state of North Carolina. Mr. Dail stated that staff had no objection with the request.

Mr. Jackie Parker, applicant, spoke in favor of the request. He stated the current facility is one block away from the proposed location. They have been in the current location for two years without any problems or complaints.

Mr. Frank asked if the applicants would occupy the entire building.

Mr. Parker stated that they would occupy Unit D of the building.

Chairman Shook asked for the hours of operation.

Ms Wilson stated 9 am to 3 pm.

Chairman Shook asked if the clients were responsible for their own transportation.

Ms Wilson stated no, the company will provide the transportation. Staff will pick them up and bring them to the facility and take them back home. They will not transport consumers that have Medicaid transportation.

Mr. Mullarkey asked if the applicant dealt with violent offenders.

Ms Wilson stated no. The program they conduct provides a low level of care. They do not deal with consumers that are aggressive or take a lot of medication. High functional consumers are not eligible for the program. The majority of the clients live in assistant living facilities. Each consumer is screened.

Mr. Parker stated that the clients in the program are people who are learning how to get back into the community.

Mr. Mullarkey asked if the applicants ever deal with sex offenders.

Mr. Parker and Ms Wilson stated no.

Mr. Mullarkey asked if sex offenders were permitted in the program.

Ms Wilson stated that they do not discriminate but the program they conduct has not accessed any sex offenders. She is a sexual offender treatment specialist, but clients of that nature are referred to programs that specialize in that treatment. They only deal with mental illness and substance abuse disorders.

Mr. & Mrs. Edward Moore, neighbors of Pinehurst Drive, spoke in opposition of the request. He stated that a Daycare facility is directly across the street from the proposed location. The neighborhood is little to no crime and quiet. He is a deputy Sherriff who has worked with mental illness people for 35 years. He has not experienced the control of a mental health person and is concerned about them being in the neighborhood.

Ms Ferris asked if the opposing party were more comfortable about the proposal after hearing the applicant's plan.

Mr. Moore stated no. He stated that he had dealt with substance abuse people but do not think the treatment facility should be in a residential area.

Mr. Frank asked what the opposing party feared about the application.

Mr. Moore stated that you never know what may happen and that he would not feel comfortable.

Mrs. Moore stated that a lot of young children are in the neighborhood playing and to have a mental health day facility in the neighborhood is not a good choice.

Mr. Frank asked was occupied the building beforehand.

Mr. Moore stated the Red Cross and a medical supply before were in the small office.

Mr. Walter Salisbury, business owner, spoke in opposition of the request. He owns a real estate office down the street from the proposed location and he was concerned about safety. He wanted to make sure the clients did not propose a threat.

Mr. Parker spoke in rebuttal. He stated that the PSR (Psycho Social Rehab) program is the lowest level of mental health assistance. The clients will not be violent people.

Mr. Faison asked what the supervision rate is for the program.

Ms Wilson stated they will serve six consumers total. The ration is one to eight but most of the time it is herself and one or two consumers. She has been in mental health for twenty years and is a nonviolent certified instructor. She has never had an incident report nor had to restrain any consumers. All the social activities and time outside for the consumers are not at the facility. Activities at the facility are therapy sessions and connectivity to the services they need.

Mr. Faison asked if the applicant do mainly administrative work with the consumers.

Ms Wilson stated yes. The consumers do not drive and they would not have a reason to come back to the area once they leave. Most of the consumers have a 6-8th grade educational level. They will have no reason to linger around and they are supervised the entire time while in the program.

Mr. Faison asked how often they are open on weekends.

Ms Wilson stated that the facility is not open on the weekends. They are only open Monday through Friday, 9 am to 3 pm. Wednesdays are designated as the consumer activity days where the consumers are taken out to eat or to various community events. A personal care and mental health services did occupy the proposed location prior to the request.

Mr. Faison asked if the screening process screen for violent or sex offenders.

Ms Wilson stated that consumers with suicidal, sexual or violent tendencies will not qualify for the program. They would be referred to another agency.

Ms Ferris asked how long the applicant had been at their current location.

Ms Wilson stated over two years.

Chairman Shook asked if the applicant received a special use permit from the board previously.

Ms Wilson stated yes. They have been having a lot of problems with leaks.

Ms Frank asked for clarity concerning picking up clients and supervision.

Mr. Parker stated that the clients are supervised from the moment they are picked up and until the moment they leave.

Chairman Shook asked staff if they were aware of any issues or complaints affiliated with the applicant's previous special use permit.

Mr. Dail stated no.

Ms Ferris asked if there was a special use permit for the prior occupants of the proposed property.

Mr. Dail stated that he was not aware of a special use permit or of the service that the prior occupants provided. The business may have been located there for a long time and didn't require a special use permit.

Chairman Shook asked for staff recommendation.

Mr. Dail stated that staff had no objection to the request.

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

No board discussion.

Chairman Shook read the required findings criteria. No objections.

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

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

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY UMSTEAD ASSOCIATES, LLC-APPROVED

The applicant, Umstead Associates, LLC, desires a special use permit to operate a banquet facility pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 400 St. Andrews Drive. The property is further identified as being tax parcel number 00008.

Mr. Dail delineated the area on the map. He stated that the property is located in the center portion of the city's jurisdiction. It is the former Beef Barn.

Zoning of Property: OR (Office Residential)

Surrounding Zoning:

North: OR (Office Residential)
South: CH (Heavy Commercial)
East: OR (Office Residential)
West: OR (Office Residential)

Surrounding Development:

North: Dexter Center Office Complex
South: NC Dept. of Health and Human Services
East: American Legion, Sedgefeild Townhomes
West: Division of Community Corrections

Description of Property:

The subject property is 1.7 acres in size, has 320 feet of frontage along St. Andrews Drive and 260 feet of frontage along Dexter Street and contains a 8,920 square foot commercial building.

Comprehensive Plan:

The Future Land Use Plan recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on September 12, 2013. Notice of the public hearing was published in the Daily Reflector on September 16, 2013 and September 23, 2013.

Staff Recommended Conditions:

Shall not be a place of entertainment and shall not operate as a public or private club.

Chairman Shook asked for clarity concerning a place of entertainment.

Mr. Dail stated that a place of entertainment is a place that provides live music or entertainment on a nightly basis.

Mr. Faison asked if the applicant have live music for weddings.

Mr. Dail stated correct.

Ms Betsy Gray, property manager, spoke in favor of the request. The Beef Barn is distressed property. She felt a need in the Greenville area to give caterers and the client an opportunity to choose their service. The facility will be a private rental. The building has occupancy for 425 people to allow for corporate and social functions.

Mr. Fleming asked if the business provides a place for someone to come in and prepare food.

Ms Gray stated no commercial kitchen is on site. The facility has just a prep kitchen with a refrigerator and an ice maker. The facility will allow caterers that have access to a full kitchen to use the facility.

Ms Ferris asked what types of improvements were made to the property.

Ms Gray stated that the landscape has changed. The interior has remained the same.

No one spoke against the request.

Chairman Shook asked for staff recommendation.

Mr. Dail stated that staff had no objection to the request.

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

No board discussion.

Chairman Shook read the required findings criteria. No objections.

Ms Rich made a motion to adopt the finding of facts with the stated conditions, Mr. Frank seconded and the motion passed unanimously.

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

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY WALTER WILLIAMS-
APPROVED**

The applicant, Walter Williams, desires a special use permit to operate an automobile sales lot pursuant to Appendix A, Use (11)f. of the Greenville City Code. The proposed use is located at 4101 Old Tar Road. The property is further identified as being tax parcel number 49211.

Mr. Dail delineated the area on the map. He stated that the property is located in the southern portion of the city's jurisdiction. It is located on Firetower Road and Old Tar Road.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: RA20 (Residential Agricultural) & O (Office)
South: CG (General Commercial) & OR (Office Residential)
East: CG (General Commercial)
West: GB (General Business) *Winterville's Jurisdiction*

Surrounding Development:

North: Vacant
South: Vacant Convenient Store
East: Lighting by Design
West: BB&T, East Carolina Kidde College, Our Children's Clinic

Description of Property:

The subject property is currently vacant, is 0.959 acres in size, has 180 feet of frontage along E. Fire Tower Road and 250 feet of frontage along Old Tar Road. The applicant proposes to build a 1,200 square foot commercial building on the site.

Comprehensive Plan:

The Future Land Use Plan recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on September 12, 2013. Notice of the public hearing was published in the Daily Reflector on September 16, 2013 and September 23, 2013.

Related Zoning Ordinance Regulations:

Definition: *Automobile, truck, recreational vehicle, motorcycle and boat sales.*

Establishments engaged in the retail and/or wholesale of new and/or used automobiles, trucks, recreational vehicles and campers, motorcycles and motor boats including other watercraft, trailers, marine supplies and outboard motors, collectively referred to as vehicles for purposes of this definition. These establishments frequently maintain repair departments (see also major and minor repair) and carry stocks of replacement parts and accessories. For purposes of interpretation, the concurrent display for sale of not more than any five such vehicles upon a lot containing a legal nonresidential principal use may be considered an accessory use in accordance with applicable conditions set forth by definition. Specifically, the concurrent display for sale of not more than any five such vehicles upon any lot containing a legal vehicle-related major or minor repair establishment, or a bank, savings and loan or other lending institution engaged in the repossession of vehicles shall be considered an accessory use to the principal use.

Staff Recommended Conditions:

Site plan approval is required.
Display of automobiles for sale in the right-of-way or bufferyards shall not be permitted.

Other Comments:

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

Mr. Fleming asked the location of the entrance to the lot.

Mr. Dail stated that two curb cuts exist currently – one is by the convenient store and one will be shared with Lighting by Design.

Mr. Fleming asked if the city had any concerns with the location of the business making the intersection of Firetower and Old Tar busier.

Mr. Tim Corley, City Civil Engineer, stated that Department of Transportation (DOT) maintains both roads so they will review the site plan along with the City's traffic engineer.

Mr. Frank asked if the streets are labeled as residential thoroughfares.

Mr. Corley stated that the roads are designated as major thoroughfares.

Mr. Frank stated that there was a tremendous amount of density in the area and a lot of traffic which makes the intersection dangerous.

Mr. Corley stated that the density of the area will be considered in the review process. The city and DOT will work together to come up with the best possible solution in keeping the traffic moving.

Mr. Faison asked if the map in the package was the approved site plan.

Mr. Corley stated that a site plan has not been submitted.

Mr. Fleming asked if the island on Old Tar Road will be extended.

Mr. Corley stated that the island extension is a possibility. DOT will look at the distances in accordance to the state wide manual.

Chairman Shook asked for a list of other uses that would not require a special use permit.

Mr. Dail stated that a fast food restaurant, convenient stores can occupy the space without a special use.

Attorney Little stated that a Sheetz store on 10th Street is an example of how the entrance is restricted.

Mr. Faison asked if the permitted uses would have more traffic than a car dealership.

Attorney Little stated correct.

Mr. Mullarkey stated that the DOT has a trip manual and the trip counts for a fast food restaurant and convenient store are much higher.

Mr. Mike Baldwin, representative of applicant, spoke in favor of the request. The lot had been sitting dormant for years. A car dealership is a low intensity use with low traffic. The request is in compliance to the Comprehensive Plan. A car lot is low noise. The applicant plans on having high end, late model vehicles for sale. He distributed a

booklet of property pictures, tables of permitted uses and zoning maps. A berm is located on the southeast of the property for a buffer. Surveyors from Raleigh are working on Old Tar Road for the proposed widening. Mr. Frank asked if the widening of Old Tar Road affected the proposed property.

Mr. Baldwin stated that the right-of-way requisition had already been taken. They will make infrastructure changes but will not take any more property. The tables of uses in the package are from Winterville's zoning district which is located across the street. The property is separated from Tree Tops by a tract of land so it does not abut the property.

Mr. Frank asked how long has the property been zoned its current zoning.

Mr. Dail stated that he was not sure but it had been zoned General Commercial for a long time.

Mr. Frank asked if quite a bit of development, predominately residential had been in the area.

Mr. Dail stated that the most recent residential development was Paramore Farms. Tree Tops has been there quite some time.

Mr. Baldwin stated that there was not residential development at major intersections.

Mr. Frank stated that the goal should be to make sure the business was congruent with the residential area and not offensive to the neighbors.

Mr. Baldwin stated that the applicant was not requesting any new drive cuts. The operating hours would be 9 am to 7 pm. The height of the lights could be restricted along with the issue of the balloons.

Ms Ferris asked if the applicant would agree to specific restrictions.

Mr. Baldwin stated that the applicant left it up to him. The down lights will not be higher than 20', nor would balloons, spotlights or wind generators be allowed.

Mr. Faison asked if the balloons were just the 50'-75' high ones or the small ones on the antennas of the car.

Mr. Baldwin stated that he was referring to the big balloons only and that a car lot is the best use to go on the corner.

Chairman Shook stated that the condition could state that nothing over 20' high would be allowed. He asked if amplified music would be allowed.

Mr. Baldwin stated that no amplified sound would be allowed nor would loud speakers be located outside. He would like to allow the 18" balloons on cars. The request did meet the criteria for a special use permit. The traffic will be controlled by DOT and the City of Greenville. The applicant will submit a site plan and apply for driveway permits.

Mr. Ronald Chaffee, resident of Tree Tops, spoke against the request. He was concerned about the lighting, fencing, how the property will be maintained, and the structure for the sales office. He stated that very little is known about the layout of the lot and that he has not seen anything in writing. The residents had a lot of questions but no one had

given any answers.

Mr. Mullarkey asked if he felt more comfortable with the restrictions that the applicant agreed to and the berm.

Mr. Chaffee stated that there were too many questions left unanswered.

Mr. Mullarkey stated the purpose of the Board of Adjustment and the criteria that the decision is based on.

Ms Brenda Diggs, resident and representative of the Oaks Neighborhood, spoke against of the request. She stated that there is a lot of traffic at Firetower Rd. She was concerned that the business will add to the picture of a shabby, urban ghetto on the edge of the community. She was in favor of commercial development when it adds class and beautification like Bolden Limited. She read the comments of an email message from a nearby resident. None of the residents have had a discussion with the applicant about the proposed business. The neighborhood association had questions about the upgrade of the lot, structure of the sales building, landscape buffer, site vegetation, and the number of the cars on the lot. She contacted staff about the city's regulations concerning the questions and were given appropriate answers. She read a portion of a research study from a resident who is an East Carolina University associate professor. Ms Diggs stated that the market value of her home had decreased in the past year. She stated that the association welcomes developers who wish to have dialogue with nearby residents.

Mr. Fleming stated that he felt the applicant was trying to improve the neighborhood.

Ms Diggs asked if the applicant was imposing to do anything with the nearby strip mall.

Mr. Mullarkey asked if the association expected for the applicant to purchase the property and make improvements to someone else's property.

Ms Diggs stated that would be great because the lot with the clutter already at the area will not look good. She does not want to see cars parked on unapproved surfaces.

Mr. Faison asked if the neighborhood would be more comfortable if they have a meeting with the applicant.

Ms Diggs stated that would be a great idea.

Mr. Faison stated the board cannot ensure the traffic. The proposed business would not affect the traffic.

Ms Diggs stated that it would increase it.

Mr. Mullarkey stated that other permitted uses could be put in the spot and not require a special use permit.

Mr. Chad Bradley, owner of Lighting by Design, spoke in opposition. A lot of the evergreen trees for the buffer are planted on their back property line. They are concerned how the lot will look. They would like for the lot to be paved and have vegetation. They have a lot of unanswered questions. He also asked if the adjacent gas station was going to reopen and the codes to having a car lot close to a gas station.

Chairman Shook stated that there is no problem with having a gas station next to a car lot.

Mr. Mullarkey stated that there is a far amount of interconnectivity near the site and some paving issues that should be remediated.

Mr. Bradley stated that he has difficulty now to enter into his place of business.

Mr. Corley stated that the widening of Old Tar Road will help to alleviate the traffic congestion. The whole frontage to Old Tar will change.

Mr. Bradley asked if more land will be taken from the lot making it smaller.

Mr. Corley stated that he could not speak on that matter.

Chairman Shook asked if the lot becoming smaller should disqualify someone from occupying the land.

Mr. Bradley stated no and that he thought it will make it tight.

Ms Rich asked if Mr. Bradley owned the entire driveway between his property and the proposed lot.

Mr. Bradley stated that they own half of the driveway. He asked if the turn in would be on gravel or pavement with nice curbing like his property.

Mr. Corley stated that the driveway entrances will be required to be concrete or asphalt within the right-of-way. The cars will have to be parked and spaces marked. The only places required to be paved are the handicap spaces.

Mr. James Bradley, owner of Lighting by Design, spoke in opposition of the request. He was concerned about the traffic and the potential for more accidents. He did not think a used car lot was conducive to the business already located in the area.

Ms Joy Nethercutt, president of Home Owners Association of Tree Tops, spoke in opposition of the request. She stated that Firetower between Corey Road and Evans was a residential corridor and the buildings facing the roads will be banks or nice office buildings. A used car lot is not conducive to the residential corridor. She was concerned about the balloons, lights and loud speakers.

Chairman Shook stated that both the intersections are major thoroughfares and the property is zoned general commercial. He reiterated the seven criteria for special use permit approval. He stated in order to decline the request that the opposing party must submit admissible evidence. Information provided must be provided by an expert or otherwise it cannot be used.

Ms Sarah Taylor, president of single Family homes of Tree Tops, spoke in opposition of the request. She thanked the applicant for addressing many of her concerns but she still had the major concern about the traffic. There will be more traffic due to test driving. The intersection is extremely dangerous now.

Ms Jane Munson, resident of Tree Tops, spoke in opposition of the request. She had an issue with two points - Winterville being able to put a lot of uses on the opposite side of the street having no bearing on the issue at hand and the fact that it could be worse. She stated that the situation could be better. There are a lot of unanswered questions and safety is a huge issue in the area.

Ms Pam Matthews, president of Ash Circle Neighborhood Association, spoke in opposition of the request. She thanked Mr. Frank about his comments. She stated that the car lot would not be in keeping with the other businesses in the area.

Ms Nan Wynne, resident of Tree Tops, spoke in opposition of the request. She stated that the berm is behind the strip mall. Safety is an issue for the area and there was not a berm near Tree Tops so she heard a lot of the traffic.

Mr. Baldwin spoke in rebuttal to the request. The portion of Tree Tops near the proposed property was not a part of the Planned Unit Development; it was multi-family. The berm was in place. He advised the builder to make it steep. He also stated that the owners of the units closest to the proposed property were not present.

Mr. Mullarkey asked if a fast food business would be permitted and create more trips.

Mr. Dail and Mr. Corley answered yes.

Mr. Mullarkey stated that the board would not have a voice if the permitted uses purchased the property.

Mr. Baldwin stated that the parking lot will be asphalt; however the property next door has gravel on the side and in the back. He asked for a chance to allow the business to be setup similar to Bolden Limited. He stated that following restrictions they agreed upon: lights – not higher than 20'; balloons – no large balloons; no loud speakers to include no loud telephone; paved parking lot.

Mr. Fleming asked where the cars will be parked.

Mr. Baldwin stated that right-of-way line is 6' away from the curb, not where they can park the cars.

Mr. Faison asked about the location for parked cars and the bufferspace.

Mr. Dail stated that cars are not to be parked within the bufferyard or the right-of-way. Cars can only be parked on approved surfaces. Approved surfaces cannot be in the bufferyard.

Mr. Baldwin stated that there is the back of the curb, a strip of land that is owned by DOT, then the road right-of-way which is the proposed property line. Then there is a 6' bufferyard.

Mr. Faison asked if it approximately 20' between the road and where the cars can park.

Mr. Baldwin stated in different places. He stated that the request meets the merit. He could not give definite operating hours.

Chairman Shook asked if the back of the lot will be joining the adjacent gas station lot.

Mr. Baldwin stated they would agree to a 6' high chain link fence with flaps.

Chairman Shook stated that it would be up to the applicant to the type of buffer they would use. He asked what type of vegetation would be planted and where.

Mr. Dail stated that the proposed property would be required to meet site vegetation requirements- 5 large trees, 10 small trees and 25 shrubs per acre. Street trees would be along Old Tar Road and parking lot coverage trees but they would not be required to have screening.

Mr. Fleming asked if the whole lot would be paved.

Mr. Baldwin stated the bufferyard would not be paved.

Mr. Fleming asked if there was a runoff requirement.

Mr. Baldwin stated that anything over ½ an acre of disturbed area would have to comply with stormwater rules.

Mr. Fleming asked where the runoff would go.

Mr. Baldwin stated that it would probably go to a catch basin on the road. They are responsible for attenuation and treatment. By the time the site plan is submitted, it will comply with the new stormwater ordinance.

Mr. Faison asked if the applicant is concerned with the lot turning into a cut thorough.

Mr. Baldwin stated no. They will design the lot to make it hard to become a cut thorough.

Mr. Ferris asked what type of building will be on the lot.

Mr. Baldwin stated that he did not know. He reiterated that the restrictions on the request would include the following:

- No lights higher than 20'
- No loud speakers
- No tethered balloons- just birthday party type
- A 6' high fence of 100% visual barrier along the southern line of the property up to the common access easement shared with Mr. Bradley

Mr. Faison asked are the restrictions a part of the special use permit.

Attorney Little stated if the board accepts the restrictions as conditions of the Finding of Facts along with the conditions recommended by city staff then the applicant will have to abide by them.

Mr. Baldwin stated that the client stated his specific goal for the lot is for high end cars.

Chairman Shook asked for staff recommendation.

Mr. Dail stated that staff had no objection with the recommended conditions.

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

Mr. Frank asked if the board could obtain data from DOT concerning the traffic flow.

Ms Ferris stated that it is the applicant's responsibility to provide reasonable, factual information to support their claim and it is up to the opposing party to provide statistical and expert opinions such that would sway the board to deny the application.

Mr. Frank asked if the board could request information about traffic flow and accidents in the proposed area.

Attorney Little stated that the hearing is closed and the evidence before the board is the evidence they had received. The board's decision had to be based on the evidence that is material, competent, sustainable, and admissible and the evidence that had been presented.

Chairman Shook reiterated the conditions:

- No lights higher than 20' (to include the balloons)
- No amplified sound, loud music or paging systems
- Paved parking lot
- A fence along the southern line of the property up to the common access easement shared with Mr. Bradley
- Lights must be down lights

Chairman Shook read the required findings criteria. No objections.

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

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

Ms Ferris stated that the neighbors can pay attention to the way things go with the proposed property. If they see that the conditions are being violated, they can report it and the board will address the applicant.

Mr. Bradley suggested that the letters to the property owners be mailed earlier so that things like traffic reports can be obtained.

With no further business, Ms Rich made a motion to adjourn, Mr. Frank seconded, and it passed unanimously. Meeting adjourned at 9:28 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner