

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
February 28, 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*

Claye Frank *

Linda Rich *

Sharon Ferris X

Justin Mullarkey *

Bill Fleming *

Kevin Faison *

Thomas Taft, Jr. *

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

VOTING MEMBERS: Ewen, Taft, Rich, Shook, Mullarkey, Frank, Fleming, Faison (4th agenda item only)

OTHERS PRESENT: Mr. Merrill Flood, Community Development Director
Mr. Bill Little, Assistant City Attorney
Mr. Michael Dail, Planner
Mr. Chris Kelly, Engineering
Mrs. Elizabeth Blount, Secretary
Mr. Jonathan Edwards, Communications Technician

MINUTES

Mr. Taft made a motion to approve the January 24, 2013 minutes as presented, Mr. Fleming seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY BETTER CONNECTIONS INC. -APPROVED

The applicant, Better Connections, Inc., desires a special use permit to operate a mental health, emotional or physical rehabilitation day program facility pursuant to Appendix A, Use (8)ff(1). of the Greenville City Code. The proposed use is located at 101 W. 14th Street, Suite 10. The property is further identified as being tax parcel number 03624.

Mr. Dail delineated the area on the map. He stated that the property is located in the center portion of the city’s jurisdiction, at the intersection of E. 14th Street and S Evans Street.

Zoning of Property: CH (Heavy Commercial)

Surrounding Zoning:

North: CDF (Downtown Commercial Fringe)

South: CH (Heavy Commercial)

East: CH (Heavy Commercial)

West: CH (Heavy Commercial) & CDF (Downtown Commercial Fringe)

Surrounding Development:

North: Anderson & Sons Automotive, Mercer Glass
South: Evans Street Center, Evans Street Mini-Storage
East: Greenville Christian Fellowship
West: Womack Electric

Description of Property:

The subject property contains three commercial buildings housing a mix of office and commercial type uses. The applicants unit is located in the northern most building on the property. The subject property is 2.79 acres in size and has 215 feet of frontage along W. 14th Street and 360 feet of frontage along S. Evans Street.

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 February 14, 2013. Notice of the public hearing was published in the Daily Reflector on February 18, 2013 and February 25, 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.

Other Comments:

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

Mr. Fleming asked if the clients were adults.

The applicant stated all adults.

Mr. John Williams, applicant, spoke in favor of the request. He stated that he would like to open a developmental day vocational program for adults that are developmentally disabled or have a degree of mental retardation. The proposed site is isolated from the rest of the building and had a private entrance. The program is licensed with the Division of Health Service Regulations and East Carolina Behavioral Health (ECBH) and East Pointe for endorsements. The applicant has a similar program located in Tarboro, NC. The program will serve ten clients and one-on-one staffing.

Mr. Taft asked if the applicant would be the on-site supervisor and asked for his background.

Mr. Williams stated yes he would be the on-site supervisor. He stated he had been working with group homes since 1989 but was originally a special education school teacher.

Mr. Ewen asked what the applicant's program consisted of.

Mr. Williams stated they have life skill activities, vocational skill training and treatment plans from their mental treatment facilities the program had to follow.

Mr. Faison asked if the application for ECBH had already been submitted.

Mr. Williams stated yes.

No one spoke in opposition to the request.

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.

Mr. Ewen 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. Taft seconded and the motion

passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY GREER VENTURES-APPROVED

The applicant, Greer Ventures, desires a special use permit to operate a automobile sales facility pursuant to Appendix A, Use (11)f. of the Greenville City Code. The proposed use is located at 210 SE Greenville Boulevard. The property is further identified as being tax parcel number 07996.

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

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

- North: CH (Heavy Commercial)
- South: R15S (Residential Single Family)
- East: CG (General Commercial)
- West: CG (General Commercial)

Surrounding Development:

- North: Vacant Commercial (Former AAA), Joe Pecheles, Verizon
- South: Single Family Residences (Lynndale Subdivision)
- East: Psychic Reader, Henrys Nails, Greenville Guitar, Tipton Builders
- West: Greenville TV & Appliance

Description of Property:

The subject property contains a 3,673 square foot commercial building. The property is 0.92 acres in size and has 200 feet frontage along SE Greenville Boulevard.

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 February 14, 2013. Notice of the public hearing was published in the Daily Reflector on February 18, 2013 and February 25, 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:

Vegetative screening along the rear property line must meet Bufferyard E requirements and be approved prior to operation.

Other Comments:

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

Chairman Shook asked if the application included repairs and sales.

Mr. Dail stated it only included sales.

Mr. John K. Conway, applicant, spoke in favor of the request. He stated the request is to sell used and possibly new vehicles in order to reach new customers. All the facility work will be done at the main Nissan location.

Mr. Mullarkey asked if the request is a satellite location for Nissan.

Mr. Conway stated yes.

Mr. Frank asked when the buffer will be completed.

Mr. Conway stated the buffer will be completed as soon as the season allows for additional planting. He asked for flexibility with occupancy and a window of 60 days after opening to complete the vegetation.

Mr. Taft asked if the end of April would be a good timeframe.

Mr. Conway stated yes.

Chairman Shook asked how long the building had been vacant.

Mr. Conway stated over one year.

Chairman Shook asked what the building was prior.

Mr. Conway stated it was a piano shop and before that a McDonald's.

Mr. Ewen asked if the location will have any amplified sound.

Mr. Conway stated there will not be any outside amplification.

No one spoke against the request.

Chairman Shook asked for the city's recommendation.

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

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

Mr. Ewen asked if the 60 day extension need to be stated as a condition.

Attorney Little stated the 60-day extension for the buffer fill-in becomes a part of the facts. If the board approves the fact, then the condition for the vegetation to fulfill the Bufferyard E requirements by the end of April should be added to the motion.

Chairman Shook read the required findings criteria. No objections.

Mr. Ewen made a motion to adopt the finding of facts with the stated condition of having the vegetation completed by the end of April 2013, Mr. Frank seconded and the motion passed unanimously.

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

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY JEFFERY BROOKS AND DEONNA DALTON-APPROVED

The applicants, Jeffery Brooks and Deonna Dalton, desires a special use permit to operate a dining and entertainment establishment pursuant to Appendix A, Use (6)m(1). of the Greenville City Code. The proposed use is located at 123 E. Fifth Street. The property is further identified as being tax parcel number 54850.

Mr. Dail delineated the area on the map. He stated that the property is located in the center of the city's jurisdiction in the downtown core. It's located on the northwest corner of 5th and Cotanche.

Zoning of Property: CD (Downtown Commercial)

Surrounding Zoning:

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

Surrounding Development:

- North: The Halfway House
- South: 5th Street Distillery, 5th Street Annex, G-Vegas Magazine
- East: Hair By Rycke
- West: The Halfway House, Pirates Den

Description of Property:

The subject property is a 2,288 square foot commercial building and is located on the northwest corner of Cotanche and E. Fifth Street. The property is the former Bolis Restaurant and more recently the former Quarry Restaurant.

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 February 14, 2013. Notice of the public hearing was published in the Daily Reflector on February 18, 2013 and February 25, 2013.

Related Zoning Ordinance Regulations:

Definition: *Dining and entertainment establishment.*

An eating and entertainment establishment open to the general public and which meets all of the following:

- (1) May require a membership, cover or minimum charge for admittance or service during special periods of operation in accordance with this chapter;
- (2) Has sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
 - (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishments kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.
 - (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.
 - (c) A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state. For purposes of determining compliance under this subsection (2), the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the state;
- (3) Does provide sit-down dining area(s);

- (4) May provide food attendant (waiter/waitress) table ordering and busboy services;
- (5) May offer food in disposable containers;
- (6) May offer carry-out and/or off-site delivery services;
- (7) Does not offer drive-in attendant services;
- (8) May exhibit one but not both of the following operational functions or characteristics:
 - (a) Drive-through service; or
 - (b) Over the counter service. For purposes of this section, the term over the counter service shall include both customer ordering and the receipt of food, excepting beverages, condiments, utensils and the like, from an order/delivery station or counter remote to the on-site place of consumption.
- (9) May have one or more of the following activities or services, which is open to the establishments patrons and general public and is limited to the hours of operation of complete food services including regular menu food ordering, food preparation and on-premises food consumption, except as otherwise provided in this subsection (9): full service bar, live or recorded amplified music, floor show and dancing area. Complete food services including regular menu food ordering, food preparation and on-premises food consumption services may be suspended at the option of the owner/operator not less than one hour prior to the close of business each evening. For purposes of interpretation of this section, when a dining and entertainment establishment closes for business at 12:00 a.m. (midnight) complete restaurant services including regular menu food ordering, food preparation and on-premises food consumption shall be provided until not less than 11:00 p.m. of the same day;
- (10) Shall be limited to a maximum mechanically conditioned floor area requirement and shall comply with a minimum separation and security requirement as specified under sections 9-4-86 and 9-4-103;
- (11) Does not qualify under the definition of restaurant, fast food or restaurant, conventional as contained herein; and
- (12) Any dining and entertainment establishment that does not meet the aforesaid requirements shall be classified as a public or private club for purposes of zoning regulation.

Specific Criteria: *Dining and entertainment establishments.*

- (1) (a) A special use permit for a dining and entertainment establishment is subject to revocation in accordance with the provisions of this subsection (F)1. Nothing herein shall prohibit or restrict the authority of the Board of Adjustment to rescind or revoke a special use permit for a dining and entertainment establishment in accordance with the provisions of section 9-4-83.
- (b) An annual review shall be conducted by the Director of Community Development or his or her authorized representative of a dining and entertainment establishment which has received a

special use permit for the purpose of determining and ensuring compliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the Director of Community Development or his or her authorized representative as a result of this annual review shall be compiled in a written staff report.

- (c) At a meeting of the Board of Adjustment, the Director of Community Development or his or her authorized representative shall present to the Board of Adjustment the staff report of a dining and entertainment establishment for which the annual review includes a finding of one or more instances of noncompliance with applicable laws, codes, and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (F)1.(4) below shall be provided notice of the meeting and a copy of the staff report.
- (d) Based on the staff report, the Board of Adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit.
 - 1. An order for a rehearing shall be based upon a determination by the Board of Adjustment that either:
 - a. The use of the property is inconsistent with the approved application;
 - b. The use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code;
 - c. The use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard; or
 - d. The use is not compliant with any additional conditions of approval established by the Board and set out in the order granting the permit.
 - 2. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the Board of Adjustment may grant a special use permit with conditions imposed pursuant to this subsection (F)1. and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the Board of Adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a dining and entertainment establishment.
- (e) The requirements and standards set forth in this subsection (F)1. are in addition to other available remedies, and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.

- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots.
- (3) In addition to subsection (F)1.(2) above, the Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a dining and entertainment establishment, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the Director of Community Development an acknowledgment of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgment shall be made on forms provided by the planning office.
- (5) May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation.
- (6) Weekdays. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 11:00 p.m. each Monday, Tuesday, Wednesday, and Thursday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment.
- (7) Weekends. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 a.m. each Friday and Saturday night and before 11:00 a.m. of the next day, and shall not have amplified audio entertainment after 11:00 p.m. each Sunday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment.
- (8) Provisions for extended hours of operation for amplified audio entertainment.
 - (a) The allowable period for amplified audio entertainment for any dining and entertainment establishment in any zoning district may be extended, at the option of the owner/operator,

from the times specified under subsections (F)l.(6) and (7) above to not later than 2:00 a.m. the following day on December 31 (New Year's Eve).

- (b) The allowable period for amplified audio entertainment for any dining and entertainment establishment that meets the separation requirements as specified under subsection (F)l.(8)(d) below may be extended, at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above on each Thursday night to no later than 2:00 a.m. the following day.
 - (c) The allowable period for amplified audio entertainment for any dining and entertainment establishment that meets the separation requirements as specified under subsection (F)l.(8)(d) below may be extended, at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above to no later than 2:00 a.m. the following day on March 17 (St. Patrick's Day), May 5 (Cinco de Mayo); July 4 (Independence Day) and October 31 (Halloween).
 - (d) To qualify for extended hours of operation for amplified audio entertainment as provided in subsections (F)l.(8)(b) and (F)l.(8)(c) above, the dining and entertainment establishment shall not be located within a 500-foot radius, including street rights-of-way, of (i) a conforming use single-family dwelling located in any district, or (ii) any single-family residential zoning district. The required measurement shall be from the building or structure containing the dining and entertainment establishment to the nearest single-family dwelling lot line or single-family residential zoning district boundary line. For purpose of this subsection, the term "single-family residential zoning district" shall include any RA20; R15S; R9S; R6S; and MRS district.
 - (e) In no event shall the noise generated by amplified audio entertainment exceed the noise control provisions as provided in Title 12, Chapter 5, of the Greenville City Code.
- (9) Shall have sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
- (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishments kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.
 - (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.
 - (c) A membership, cover or minimum charge for admittance or service shall not be included in either

the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state.

- (d) For purposes of determining compliance under this subsection, the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.
- (10) Records related to the sale of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be maintained on premises for not less than one year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the Zoning Enforcement Officer. The Zoning Enforcement Officer may view the records on the premises of the establishment or may request copies of the written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (F)1.(9) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the Zoning Enforcement Officer shall constitute a violation of the zoning regulations.
- (11) A lighting plan shall be submitted to the Director of Community Development or authorized agent for review and approval, and lighting fixtures shall be installed and maintained pursuant to the approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the Director of Community Development, or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104.
- (12) A parking plan which conforms to the provisions of Article O shall be submitted to the Director of Community Development or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(B) shall not apply to a dining and entertainment establishment, and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.
- (13) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall contain more than 7,000 total square feet of mechanically conditioned floor area, including but not limited to any activity area, kitchen, restroom, interior walk-in storage room, hallway, foyer, bar and serving station, seating area, dance floor and sound stage.
- (14) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall be located within a 200-foot radius of an existing or approved dining and entertainment establishment located within any CN (Neighborhood Commercial) District as measured from the nearest lot line.
- (15) When a dining and entertainment establishment both: is located within a 500-foot radius, including street rights-of-way, of a residential zoning district as measured from the building or structure containing a dining and entertainment establishment to the nearest residential zoning district boundary;

and the establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 p.m. on any day, the establishment shall be subject to a security requirement during and after such period of amplified audio entertainment as follows:

- (a) Establishments that have an approved occupancy above 50 but less than 200 total persons as determined by the Building Inspector shall employ not less than one uniformed off-duty law enforcement officer, or not less than one uniformed security guard provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
- (b) Establishments that have an approved occupancy of 200 or more total persons as determined by the Building Inspector shall employ not less than two uniformed off-duty law enforcement officers, or not less than two uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
- (c) For purposes of this section, the term residential zoning district shall include the following districts: RA-20, R-6MH, R-6, R-6A, R-6A-RU, R-6N, R-6S, R9, R9S, R-15S, PUD, MR and MRS.

Other Comments:

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

Mr. Dail stated the difference of a dining and entertainment (D&E) establishment and a restaurant: 1) The food sales requirement for dining and entertainment is 30% versus 50% for a restaurant; 2) D&E establishments can operate with amplified sound on Friday and Saturday nights and some holidays during the year until 2 am and until 11 pm on other nights; 3) A dining and entertainment establishment has to maintain food sales up to one hour prior to closing. D&E can also charge a cover for entrance.

Mr. Taft asked if the request could include façade improvements.

Attorney Little stated it depended on the type of repair needed and the time frame for completion. Some of the buildings in the downtown area fall under historic guidelines and would go before the Historic Preservation Commission.

Mr. Mullarkey asked if signage in the windows could be limited in the future.

Attorney Little stated there must be a finding of fact to support that the signage proposes a nuisance or detracts from the basic business appearance.

Mr. Jeff Brooks, applicant, spoke in favor of the request. He stated that the dining and entertainment establishment was better suited for the request because of the volume of sales and the opportunity to charge a cover for live entertainment. He also stated that the intention of the Varsity Club is not to be a heavy drinking bar but a restaurant to attract business people during lunch and a nice, relaxed environment for the students at night. Intended hours of operation are until 1 am Monday through Wednesdays and until 2 am Thursday through Saturday. The primary menu is Boli's pizza, subs, salads, and wings. The applicant is currently working with staff through the façade improvement grant project to install awnings.

Mr. Ewen asked how the applicant would be different from its predecessors.

Mr. Brooks stated that they have hired good people and they have a great product. His vision is clear of what he wants the restaurant to be for the students and the City.

Mr. Ewen asked if a cover charge for admission would be in effect for live entertainment but the establishment will not be a club.

Mr. Brooks stated correct.

Mr. Fleming asked if the applicant hoped to draw in more customers or get some of the customers that currently frequent the downtown area.

Mr. Brooks stated to draw in more customers with competitively priced menu items.

Mr. Fleming asked if the main draw will be in the evening.

Mr. Brooks stated yes. They are buying the Boli's pizza recipe and perfecting it to fit their establishment in hopes to bring back the Boli experience.

Mr. Fleming stated that by allowing a dining and entertainment facility to open in the area, there will be an increase to the downtown problem of more alcohol consumption.

Mr. Brooks stated he could operate as a restaurant but realistically his clientele would consist of students who want to consume alcohol.

Chairman Shook asked the capacity of the facility.

Mr. Brooks stated the capacity per code is 125 but they are going to list it as 99.

Chairman Shook asked if the applicant understood that a cover could only be charged between 11pm and 2 am.

Mr. Brooks state correct.

Chairman Shook asked about the security for the establishment.

Mr. Brooks stated there will be a bouncer at the door and one additional security person if there is live entertainment. Security for any other days would have to be determined based on clientele but ID's will be checked at the door.

Mr. Faison asked if the applicant had to follow certain security guidelines.

Mr. Dail stated that the establishment only has to follow certain security guidelines when the establishment is close to a single residential zoning.

Mr. Faison asked if the applicant had to follow the bouncer training.

Attorney Little stated that the bouncer training is only required for public/private clubs. The applicant could send his bouncer through training but it is not mandatory.

Mr. Brooks stated he has gone through the Alcohol Awareness class and the signage in the windows is temporary.

Chairman Shook stated that the applicant could operate as a restaurant until 2 am any day of the week but could charge a cover charge Thursday, Friday or Saturday for three hours to benefit the alcohol sales permit.

Mr. Brooks stated that is correct.

Mr. Ewen asked the proposed opening date.

Mr. Brooks stated March 11. He stated they did not do a lot of renovations from the previous owners. They have hired some students from ECU's Hospitality Department as staff.

No one spoke in opposition of the request.

Chairman Shook asked for the staff's recommendation.

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

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

Mr. Fleming asked if Winslow's had a dining and entertainment special use permit.

Mr. Dail stated that Winslow's operates as a restaurant.

Mr. Fleming asked if Peasant's had a dining and entertainment special use permit.

Mr. Dail stated that Peasant's operates as a restaurant but they have applied to get a special use permit for a dining and entertainment establishment.

Mr. Faison asked if Pirate's Den had a special use permit.

Mr. Dail stated Pirate's Den is a public/private club that serves food.

Mr. Fleming asked if there were any places downtown that serve just alcohol and no food.

Mr. Dail stated public/private clubs.

Mr. Fleming asked how many public/private clubs are downtown.

Mr. Dail stated sixteen.

Mr. Faison stated there were seventeen at one time but some closed.

Chairman Shook stated that most of the public/private clubs pre-date the special use permit law so they are grandfathered in unless they ceased to operate for six months. There are also certain spacing rules for downtown public/private clubs. If they ever want to re-open then they have to apply for a special use permit.

Mr. Dail stated that the proposed location would not fit the 500 foot spacing requirement for public/private club. No new public/private clubs can be opened downtown nor can any expand.

Chairman Shook read the required findings criteria. No objections.

Mr. Taft made a motion to adopt the finding of facts, Mrs Rich seconded and the motion passed unanimously.

Mr. Mullarkey made a motion to approve the petition, Mrs Rich seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY INCOME INVESTMENTS, LLC.-APPROVED

The applicant, Income Investments, LLC, desires a special use permit to operate a dormitory development pursuant to Appendix A, Use (2)e(1). of the Greenville City Code. The proposed use is located at 600 Cotanche Street. The property is further identified as being tax parcel number 28624, 23585, 13451, 31724, 25898 and 24837.

Mr. Taft stated that he had a direct conflict of interest with the request and asked if he could participate but not vote.

Attorney Little stated that because of the direct involvement it was recommended that Mr. Taft not participate or vote. If the board decided to recuse Mr. Taft, then he would take a seat in the audience.

The Board all agreed to recuse Mr. Taft.

Chairman Shook stated that Mr. Faison would be voting on the proposed request.

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

Zoning of Property: CD (Downtown Commercial)

Surrounding Zoning:

North: CD (Downtown Commercial)
South: CD (Downtown Commercial)
East: OR (Office Residential)
West: CDF (Downtown Commercial Fringe)

Surrounding Development:

North: Chico's, Jimmy Johns, BB&T, Sheppard Library
South: Vacant Commercial, Single Family Residential, Campus Christian Fellowship
East: Campus Towers, East Carolina University Recreation Center and Dorms
West: Marathon, Thai 360, Greenville Museum of Art

Description of Property:

The subject property is the block bounded by Cotanche Street, Reade Circle, 8th Street and Evans Street and is 3.9 acres in size. The property currently contains the Georgetown Apartment Complex and two commercial buildings. The applicant plans to redevelop the property as a mixed use development containing 243 multi-family units, 11,484 square foot of retail area fronting along Reade Circle and an associated 430 space parking deck.

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 February 14, 2013. Notice of the public hearing was published in the Daily Reflector on February 18, 2013 and February 25, 2013.

Related Zoning Ordinance Regulations:

Definition: *Dormitory*

A building or group of buildings where group sleeping accommodations are provided with or without meals for persons not members of the same family group, in one room or in a series of closely associated rooms under joint occupancy and single management, such as a college dormitory or privately owned dormitory intended for use by college students.

Specific Criteria: *Dormitory development within the CD District.*

- (1) Minimum habitable (mechanically conditioned) floor area per each bedroom: 200 square feet. For purposes of this requirement, the term floor area shall include private living spaces and any connected common living spaces associated with the subject bedroom, provided however the common living space allocation devoted to a bedroom shall not qualify for or count toward the minimum floor area requirement of any other bedroom.

- (2) Minimum lot area: None.
- (3) Minimum lot width: None.
- (4) Minimum street, side and rear yard setbacks: None.
- (5) Minimum parking requirement: One-half space per bedroom.
- (6) Parking location requirements:
 - (a) Each required parking space shall be located:
 - 1. On the lot containing the associated residential use;
 - 2. Within a remote parking facility located within 800 feet of the use it is intended to serve, as measured with and along an improved pedestrian path from the most distant parking space to the building entrance; or
 - 3. Within a remote parking facility located in a Downtown Commercial (CD) District.
 - (b) Such remote parking facility shall be in accordance with the applicable provisions of Article O.
- (7) Off-street parking: All off-street parking areas designed for three or more spaces shall be in accordance with Article O.
- (8) Preservation design: In order to protect the architectural integrity of existing buildings within the CD Zoning District, and in so doing to preserve the continuity of scale and design within those areas, the following requirements shall be met:
 - (a) All slip covers previously applied to the facade of existing buildings shall be removed.
 - (b) All canopies, except for those made of canvas, shall be removed from the facade.
 - (c) Where evidence exists of original windows and door openings subsequently enclosed, the windows and doors shall be reopened in an operable manner and in a style in keeping with the building. Where other unique architectural features remain, including cornices, mid-cornices and window surrounds, they shall be repaired and/or replaced with elements of like design.
 - (d) Nothing in this subsection shall supersede applicable North Carolina State Building Code requirements.
- (9) Maximum residential occupancy limits:
 - (a) Residential occupancy within dormitory units shall be limited to one bed per each bedroom and one person per each bedroom.

- (b) Residential occupancy within dwelling units shall be limited to one family per each dwelling unit.
- (10) Signage: All signs shall be erected in accordance with Article N of this chapter, but in no event shall a sign be mounted over existing windows, doors or other architectural features described in subsection (MM)(8)(c) above.
- (11) Residential and nonresidential uses allowed: Subject to district standards, and requirements, development allowed under this section may include both residential and nonresidential use.

Other Comments:

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

Mr. Dail stated the difference between dormitory and multi-family development is the smaller size of the rooms in a dormitory.

Mr. Tom Taft, applicant, spoke in favor of the request. The request will be the only campus edge, mixed use purposed built student housing project in Greenville. The project is scheduled to be completed in Fall 2015. It will contain 243 units with 545 beds. Each bedroom will have a private bath and closet. Each unit will have a kitchen and a living room. The building will have state-of-the-art security and access control. It will also have 11,000 square feet of retail space. It will be managed by the Preiss Company in Raleigh, NC and financed by BB&T. The unit mix of the building will contain studios, one, two, three and four bedroom living units. The rent for the units is the highest in the market for those particular types of units. The parking deck will have a total of 430 spaces in which the majority will be dedicated to the residents of the building and the remainder for the public. The parking desk is pre-cast versus poured in place and the spaces will be rented to the residents for \$45 per month. The building will have a portico with a circular drive on Cotanche Street. The parking deck will have an entrance from 8th Street and Evans Street. A wrought iron fence will surround the active court yard to separate it from the public space. The retail space will be near the corner of Read Circle and Cotanche Street. The building will be five stories high. Four stories will be residential units located above the retail area. The project includes outdoor dining and seating near the retail area. The project will be an attribute to downtown and East Carolina University (ECU).

Mr. Faison asked if the project was independent of ECU and if students would be able to use financial aid to pay for accommodations.

Mr. Taft stated that students would be able to use student loan proceeds but it will hopefully be managed jointly with ECU. The details have not been worked out.

Mr. Ewen asked if there is an option to allow ECU to run the building.

Mr. Taft stated that they are currently in discussion with ECU about the relationship the investment company may or may not have with them. He stated that a lot of issues are affiliated with the relationship. The investment company would like to get the financing arranged before finalizing their decision.

Mr. Ewen asked if the Ham's building will be destroyed.

Mr. Taft stated yes.

No one spoke in opposition of the request.

Chairman Shook asked for the city's recommendation.

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

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

Chairman Shook stated that the proposed project is very transformational for downtown.

Mr. Faison stated that the project is very progressive and is similar to a facility in Durham, North Carolina for professionals.

Chairman Shook read the required findings criteria. No objections.

Mr. Fleming made a motion to adopt the finding of facts, Mr. Frank seconded and the motion passed unanimously.

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

Chairman Shook stated that he gave a report on behalf of the Board at the recent City Council meeting. He stated that the board was doing a fine job, staff was doing great and the Council appreciated the board for their efforts. He thanked everyone for their hard work for the City of Greenville.

With no further business, Mrs Rich made a motion to adjourn, Mr. Frank seconded, and it passed unanimously. Meeting adjourned at 8:01 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner