

DRAFT OF MINUTES PROPOSED FOR ADOPTION BY THE GREENVILLE BOARD OF ADJUSTMENT
May 28, 2009

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

Dr. Mulatu Wubneh * Chairman

Ann Bellis *	Charles Ewen X
Wanda Harrington *	John Hutchens*
Scott Shook *	Charles Ward X
Renee Safford-White *	Linda Rich *

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

VOTING MEMBERS: Wubneh, Bellis, Harrington, Hutchens, Shook, Safford-White, Rich

OTHERS PRESENT: Mr. Mike Dail, Planner
Mr. Wayne Harrison, Planner
Mr. Niki Jones, Planner
Mrs. Sarah Radcliff, Secretary
Mr. Bill Little, Assistant City Attorney
Mr. Chris Kelly, Engineering Assistant
Merrill Flood, Director of Community Development
Major Kevin Smeltzer, Greenville Police Department

MINUTES

Motion was made by Ms. Rich, seconded by Ms. Harrington to accept the March 26, 2009 minutes as presented.
Motion carried unanimously.

PUBLIC REHEARING ON THE SPECIAL USE PERMIT ISSUED TO C.A. FRIEND, INC.
(VERBATIM TRANSCRIPT)

Chairman Wubneh: The Board of Adjustment will rehear the special use permit issued to C.A. Friend, Inc. The special use permit was issued to operate a public or private club pursuant to Section 9 Section 9-4-78(f)(6)m. of the Greenville City Code. The use is located at 507 N. Greene Street. The property is further identified as being Tax Parcel Numbers 35573 and 04223. All those wishing to speak for or against this case please come forward and get sworn.

Ms. Radcliff: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth so help you God?

Mr. Frizzell, Ms. Sutton, Mr. Dail, Mr. Harrison, Mr. Huggins, Major Smeltzer: I do.

Chairman Wubneh: Okay, Mr. Dail, will you tell us about this application please?

Mr. Dail: Sure. The red star indicates the general location within the city’s jurisdiction. It’s just north of the river along Greene Street, not too far from our present location. This is an aerial view that shows a more specific location along North Greene Street, north of the river. The property itself is zoned CH, (Heavy Commercial). The properties

to the north and to the east are also zoned CH (Heavy Commercial) and the properties to the south and to the west are zoned RA20 (Residential Agricultural). Surrounding development to the north is White's Concrete Company, to the south is vacant and is undevelopable land. It is in the floodway. To the east is a Trade gas station and other vacant properties, and to the west is vacant and is also undevelopable because it's in the floodway. The property contains a 20,312 square foot commercial building and has approximately 710 feet of frontage along North Greene Street with a total lot area of 5.89 acres and is made up of two parcels. The property is located within Vision Area B as designated by the Comprehensive Plan and the proposed use, or the current use, is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property. The property is located along a major thoroughfare being North Greene Street. This is a view of the property from Greene Street and you see the building itself and the associated parking areas. This is another view of some of the parking area just to the south of the building. This is a view looking north along Greene Street. This is a view looking south along Greene Street going back into the downtown area. This is a view of the properties to the west. I've corrected something on your Findings of Fact. Notice was mailed in March and in April prior to this case being heard tonight, but it was also mailed again on May 14th of 2009 and notice of the public hearing was placed in the Daily Reflector on May 18th and May 25th, so that's what it should read. I've included in the Findings of Fact the definition of a public and private club and also the specific criteria that a special use permit public/private club is to adhere to. We've got several other items under the Findings of Fact that aren't normally there. We have comments from the Inspections Department, from the Fire/Rescue Department, Police Department and Financial Services Department as well. I spoke with Gary Coggins of the Fire and Rescue Department today and he said all the violations have been rectified at this property except for an additional roof repair that needed to be done and the applicant has thirty days to get that completed. Under the police comments, I'd like to note that the police have recommended denial of this special use permit and they have also said that if the board chooses to re-grant the permit that they would like it to be done with the listed conditions that they have written on the next page. If you guys would like me to read over those, I will do that, or not. It's your choice.

Chairman Wubneh: I believe at this point, let's wait and see if the board needs to go into that...

Mr. Dail: Okay.

Chairman Wubneh: ...because there is a long list.

Mr. Dail: Right. And there's Financial Services comments. And if you have any questions, I'll be happy to answer them at this time. And in the Findings of Fact there's also attached the police report and some of the citations that have been issued by the Fire/Rescue Department in the past. If you have any questions, I'll be happy to answer them.

Chairman Wubneh: Okay. Any questions for Mr. Dail?

Mr. Shook: One question Mr. Dail. Section four in the specific criteria notes the special use permit will be issued to the property owner, then there are some others, if it transferred to a new owner by sale or other means that the new person is going to have to sign a form. Was that required in this case and did the person sign it or is the owner the same, or explain this.

Mr. Dail: What we received is a privileged license that shows change of ownership and we treated that in the same respect as that form.

Mr. Shook: Okay.

Chairman Wubneh: Alright, any other questions?...Questions?... Okay, thank you. Will the applicant please come forward and tell us about this case?

Mr. Frizzell: Good evening board. I'd like to pass out a handout to you if possible.

Chairman Wubneh: Of course any information that you provide to us will be part of the record. Is that correct Mr. Little?

Mr. Little: Yes.

Chairman Wubneh: Okay.

(Pause while board members review handout.)

Okay, can you tell us about any other thing that you would like to tell us other than this statement?

Mr. Frizzell: Basically, it's my first time ever doing this so I really don't know the procedure, but we're just asking, I understand the concerns with the Greenville Police Department and those are some of my concerns, too. We don't have a problem with complying with the conditions. We would just like to see if we could modify two of them. We don't have a problem at all.

Chairman Wubneh: Okay.

Mr. Frizzell: The two is number four and number five.

Chairman Wubneh: Alright, any questions from the board?

Ms. Bellis: I'm not sure I understand condition number 4. It said...

Mr. Frizzell: We're just asking if we could close about thirty minutes later than downtown. It will give, I think the resources of officers that work at night downtown, it will give them the chance if something happens at both places, it'll give them a chance to clear out downtown at two and in thirty minutes they can come and assist us if there's a problem. That's all we're asking for number four.

Chairman Wubneh: So what you are saying is basically you'd like it to be to 3:00, 3 am.

Mr. Frizzell: Til 3:00, correct, to clear the parking lot by three. To have the parking lot cleared by three.

Chairman Wubneh: Alright, any other questions?

Mr. Frizzell: I think in number 4 that was discussed to close at 2 and clear the parking lot by 3, but it only takes about 15 to 20 minutes to clear the parking lot normally and if something happens in the parking lot, by chance, it'll give, every officer won't be tied up downtown.

Chairman Wubneh: Alright, any other questions?

Mr. Shook: Mr. Frizzell, have you read the police comments? I don't know if you had a chance...

Mr. Frizzell: Yes, I have.

Mr. Shook: Okay. On the police comments it says based on the review and feedback provided in the discussions, and it talks about discussions with impact in other departments or subsets in the police department, it's the opinion of the Greenville Police Department that Club Gas presents a significant concern to law enforcement. One of the conditions that's cited in here on number 5 is one of the ones that you say that you want to modify, and it says the permittee shall employ a minimum of six security guards and you said that you want to have two. How does that offset what the police refer as a significant concern to law enforcement?

Mr. Frizzell: Well, we're asking to have off-duty officers if possible instead of six security guards. We're probably the only club in Pitt County that has a security guard that's licensed and bonded by the State of North Carolina with weapons, so that's why we're asking if we get two off-duty officers instead of six security guards.

Mr. Shook: Okay. How long have you had the security guards there that have been licensed and bonded?

Mr. Frizzell: He's been there for, I don't know how long he was there before I was, but I know he's been there a year.

Mr. Shook: Okay, how long have you been there?

Mr. Frizzell: A year in April.

Mr. Shook: And is he there, is that the same one that's there every single time that you're open?

Mr. Frizzell: He's there every time its open, he's there. He's the head security guard. He's always there. The club has never been open since I've been there and him not be there.

Mr. Shook: Was he working on December 29th of 2008, or December 26th?

Mr. Frizzell: Yes, sir.

Mr. Shook: Okay. And then again, January 11th of 09'?

Mr. Frizzell: Yes, sir.

Mr. Shook: And both of those times is cited in here as strong arm robbery and assault with a deadly weapon. It didn't mention in the police report, and I'm just looking at...

Mr. Frizzell: I don't recall those two incidents at all, the strong arm robbery; I don't recall those two incidents. I mean, most of the time I'm even out in the parking lot helping assist them and I don't have no recollection of those two incidents.

Mr. Shook: Okay. Because one was on December 26th, the day after Christmas, the victim reported he'd been stabbed earlier that night. I don't know...

Mr. Frizzell: Well, I'm sorry, I do recall that, and he was, if you had that complete report, I think he was stabbed at the Credit Union.

Mr. Shook: Okay, so it wasn't at your property?

Mr. Frizzell: No, but he said that he had left the club in the statement but he wasn't stabbed....

Mr. Shook: On the premises...

Mr. Frizzell: Right, and he was, I think he later went to Sheetz, and that's when he called the police.

Mr. Shook: Okay.

Chairman Wubneh: Okay, any other questions from anyone else?

Mr. Shook: There was also an incident noted in the police report, in the police statement, of some incident including a firearm. What happened?

Mr. Frizzell: Well, like I said, I haven't read that report because it was several times, I mean, in the checking cars in the parking lot we often find firearms and we call them in and I'm not for sure if those are reports found. I mean it was an incident where a gentleman had a firearm on the premises and my licensed and bonded security went to search him and I walked across the street and asked the Greenville Police to assist him. They assisted him and found the firearm. So a lot of those cases of firearms is if we get a firearm and we call it in and if it's not registered properly we turn it in, and if so, then at the end of the night we give it to the person as they are leaving the lot, at the edge of the lot.

Mr. Shook: You say when you find a firearm, you talking about when somebody's having it concealed, is that what you're talking about?

Mr. Frizzell: Well, if the proper procedure isn't done with concealed or non-concealed, I mean the officer goes by the proper procedure; in any case he takes the firearm for that night. And, if it's returnable, he returns it at the end of the night, and that's when he normally does it, when the last person leaves the parking lot, have that person be the last person. He returns the firearm if he has the proper paperwork. They are always called in to the Greenville PD. If it's not then the weapon is turned in the next day.

Mr. Shook: When you say it's called in are you also telling, or given ID of the person that's got the firearm?

Mr. Frizzell: Oh yeah, you take their ID.

Mr. Shook: Do you have a sign on the premises saying “No Weapons Allowed”?

Mr. Frizzell: Yes we do.

Chairman Wubneh: Any other questions or concerns?

Ms. Harrington: How often does your officer find guns on some of your patrons?

Mr. Frizzell: It’s probably once every two or three weeks we find one. Sometimes it may be a month and you don’t find one, but normally they do a pretty good search.

Chairman Wubneh: It’s not just only the Police Department that you heard from, Mr. Dail, that has concerns. They’re concerns from the Fire Department, and we understand that some of that has been corrected except the roofing. There has been a concern from Inspections, I believe that’s what he said, Financial Services, so have you tried to work out these issues and problems with them?

Mr. Frizzell: Yes.

Chairman Wubneh: Apparently this has been going on for a very long period of time.

Mr. Frizzell: Not that long. We have corrected everything with the Inspection Department. We have corrected the part of the roof that the Fire Department asked us to. He gave us a thirty-day, a sixty-day extension to fix the rest of the roof and we are probably three quarters of the way of being finished with the roof. We work on it every day that it’s not raining. And, Financial Services, I got with Mr. Little yesterday and I just received all of the statements this morning and I’m going tomorrow to see if I can speak with Mr. Little about making some arrangements to take care of the bill and going to be doing an upfront payment plan.

Chairman Wubneh: Does this mean you were not aware of those statements before?

Mr. Frizzell: No.

Chairman Wubneh: Mr. Dail, Inspections, I didn’t hear you report on Inspections. Maybe you did and I missed that. I understand that as far as the Fire Department is concerned is the fact that everything else is fixed except the roof which according to Mr. Friend, he has sixty days.

Mr. Dail: Right, it’s...

Chairman Wubneh: How about Inspections? Are they happy with what’s going on?

Mr. Dail: There is a memo from the Inspections Department attached to the Findings of Fact from the Inspections Department and it kind of states what their findings were when they went out there. It’s from Les Everett, Chief Building Inspector. It says, “I have accompanied the Fire Marshal during a previous inspection and roof repairs were

required. Minor repairs were made, however, after another visit it had rained and a sag and leak were noticed during the inspection. This roof area will need to be properly repaired to eliminate the sag with proper support along with sealing the leak.” It says a couple more things, but basically it reflects what the Fire Department had found was wrong with the roof.

Mr. Frizzell: And it’s in an area that’s not being used by clients or during everyday operation. It’s storage. It’s not the part of the building, it’s in the back of the building, it’s not the part of the building that’s being used on an everyday basis when we open.

Chairman Wubneh: Mr. Little, the financial situation, do you think that can be worked out? According to Mr. Friend, it looks like he’s making an effort.

Mr. Little: Mr. Frizzell and I spoke briefly yesterday about making a payment arrangement once we had all the invoices. So once we’ve got all the invoices he and I will meet to make a repayment arrangement for the City to evidence his ability to comply with the requirements.

Ms. Safford-White: I have a question for Mr. Little. These invoices, were these a part of bills that were under his management or stretch back to...

Mr. Little: None of those were his management for this particular operation. And just for a point of clarification, the C.A. Friend, Inc., which was the original special use holder, that corporation no longer exists in the State of North Carolina. If the Board renews the special use permit, it will be renewed in the name of Club Gas Complex, LLC, which is Mr. Frizzell’s business; but the debts owed to the city were not related to this particular site, but they are liens that by statute and by ordinance are treated as property tax on all properties to which he has an interest. So indirectly it applies to that property, but not directly to the property.

Chairman Wubneh: Okay.

Mr. Little: Did that answer your question?

Ms. Safford White: Yes.

Chairman Wubneh: Alright, any other question anyone has?

Mr. Hutchens: Two questions Mr. Chairman. If my memory serves correctly, your case was postponed last month while you were seeking legal advice. Did you seek legal advice?

Mr. Frizzell: Yes.

Mr. Hutchens: Do you have representation here tonight?

Mr. Frizzell: No, sir.

Mr. Hutchens: Second question, you've read through the report I'm sure. Can you sum up your defense of the claims made in the report?

Mr. Frizzell: Which claims?

Mr. Hutchens: Just give me a summary. I haven't heard any defense of any of the claims.

Mr. Frizzell: Okay.

Mr. Hutchens: Just in summary. What is your response to the nature of these claims?

Mr. Frizzell: The conditions? Each condition? Each condition that the City has?

Mr. Hutchens: Yes.

Mr. Frizzell: One, the six months and the eighteen months review, I don't have a problem with that.

Mr. Hutchens: How about the circumstances which brought about the need for these conditions? Do you have any response to those?

Mr. Frizzell: I didn't understand.

Mr. Hutchens: The circumstances that brought about the need for these conditions.

Mr. Frizzell: No, I don't have a problem with any of them, if I'm understanding you correctly.

Mr. Hutchens: Okay, thank you.

Mr. Shook: I think what the gentleman is asking, you know, one of the, in the police comments section they're recommending that we not grant this permit...

Mr. Frizzell: Okay...Oh okay, I'm sorry.

Mr. Shook: And what he's saying...

Mr. Frizzell: What defense do I have?

Mr. Shook: Yea, what the big word in that is "presents a significant concern to law enforcement". That's one of law enforcements major contention is what it boils down to.

Mr. Frizzell: And I think when you ask the questions I answered some of those. I think that some of the reports are correct but there's a story behind it. I think that if me and the City of Greenville or Greenville Police Department sit down and met, I think that we could work through this; and we have briefly yesterday. I think that it would be a better understanding between the two if we sat down and met instead of one person voting their opinion and another

person voting their opinion. And I think that out of all the calls that they have as far as help that we've done a pretty good job of securing weapons and clearing our parking lot. I think we've pretty much met all of the conditions. I think we have less of a problem than any other nightclub in town, and I can only speak for the time that I've been there. I don't think any stabbings or actual shootings have been done and I think if we work as a team and I listen to some of the things that they can tell me and they listen to some of the things that I may know from just the experience of a year, that we both can come together and make it a lot safer place than it is now. I'm willing to do whatever it takes to sit down with City and to build a good relationship with them.

Ms. Rich: Mr. Frizzell, according to our reports that we were given, you've been operating this club with one time ABC permits under different LLC's. I know that you did apply in March for a permit under Club Gas, which is still in a temporary status. Why, what took you so long to apply for one?

Mr. Frizzell: Well, we applied right away, when ownership switched, we applied right away. It takes about, the City has up to 15 days to give their report on whether they agree upon you doing this or not. We applied right away and it took about 15 or 20 days and the license that we have now is a temporary license but we did the application for the permanent and it takes you 60-90 days to receive a permanent license, and that's for anybody.

Ms. Rich: So you should be hearing something soon.

Mr. Frizzell: Anytime, right.

Mr. Shook: When you say you applied right away, when did you apply right away?

Mr. Frizzell: I don't know the exact day, but when the other owner left, we applied the next working day.

Mr. Shook: Was this last year, or?

Mr. Frizzell: No, no, no.

Ms. Rich: March the 13th.

Mr. Frizzell: 13th.

Mr. Shook: Okay, and when did the other owner, how long have you been, you've been in the establishment for a year, is that what you said?

Mr. Frizzell: No, I've been in the establishment for a year, but I was maintaining the club for someone else and they were, had the alcohol license. They left and I applied. They left one Sunday and I applied that Monday. Like I said it takes about 15 days, the City has, if I'm not mistaken, either 10 or 15 days to reply, to do their inspection and reply. As a matter of fact, before the City even came out and got the paperwork, we asked the Fire Marshal and the City Inspector to come out and take a look at the building.

Mr. Shook: How long have you been managing this facility?

Mr. Frizzell: In my name, or just managing?

Mr. Shook: In your name.

Mr. Frizzell: About three months.

Mr. Shook: Okay, three months.

Mr. Frizzell: Not quite three months.

Mr. Shook: Approximately, okay. So you haven't been the owner and main director for more than a year and three months, but you've been there...

Mr. Frizzell: For about a year. Oh, yea, April make a year.

Chairman Wubneh: Mr. Dail, I'm looking at this statement by the police and it's a little history. "A number of years ago the Board imposed restrictions on the special use permit and the problems ceased almost immediately". That's the third paragraph on the police report. "The club owner's responsible operation of the club led the board to eliminate the required special conditions". Apparently from that, what I am reading is, problems developed as a result of eliminating those special conditions. Is that correct, my understanding?

Major Smeltzer: This property and this club have had significant problems in the past. It changed managements to a gentleman named Sean Mac, I don't know if that's his real name but that's what I always knew him as, and we came together and worked out those conditions and the problems ceased. The conditions were removed after some time but he was still operating the club basically using the same conditions, they just weren't imposed on him. The problems returned when Mr. Mac passed away, actually he was a victim of a homicide, and the problems started shortly after that.

Chairman Wubneh: So were the conditions any different from these eighteen conditions that are recommended now?

Major Smeltzer: The original ones? There were several more conditions on that time I'm speaking of several years ago, but they were specific to...the one's that we removed are the ones that were very specific to some specific concerns from some neighboring business or neighbors that no longer exist. That was prior to the flood; this is now, after the flood.

Chairman Wubneh: No, I was talking in terms of concerns of the police department.

Major Smeltzer: Correct. Yes, sir.

Chairman Wubneh: So, there are now seven, I believe eighteen conditions...

Major Smeltzer: We are recommending that if, right now there are none anymore than any other club, we are recommending that if you grant a special use permit that those conditions be imposed so that...we're not opposed to

a club operating there. If somebody runs the club and runs them under those conditions I don't think we'll have a problem is our stance.

Ms. Rich: Question, in your report you state there was a felony worthless check charge. Do you, when was that? Has it been over three years?

Major Smeltzer: Yes.

Ms. Rich: It has. Okay.

Mr. Hutchens: One more quick question. The gentleman has stated that he has met with the police recently and perhaps is seeking an understanding. Are you aware of such meeting?

Major Smeltzer: Yes, I was at that meeting.

Mr. Hutchens: Would you agree with that statement?

Major Smeltzer: You know, like I just said, if all those conditions are met and somebody seriously goes to meet those conditions I think the club can be operated safely. We discussed the change to number 4, which would be club would close at 2:30 as opposed to 2. He's correct, operationally for the police department, it would be better for the club to close after the downtown cleared for our resources; however, and as I expressed to Mr. Frizzell, one of the concerns is the noise in the neighborhood and you've heard that from a number of different clubs we've had. It's better for our operation, but I also don't live down the street and that was one of the reasons for that time. We are not opposed to that from an operational standpoint. 2:30 or 3 would actually be better for us, but being advised that there are neighborhood concerns about the level of noise when the club closes and all those kind of issues. The issue as to the security, he has applied for off-duty officers. To this point, no officers have volunteered to work there. You'd have to ask all the officers as to what their reasons would be. But, also, one of the reasons is the condition I placed on the off-duty coordinators that they, due to the financial reputation, they pay upfront. To my knowledge, at this point, they have not paid up front.

Mr. Shook: Major, they're also wanting to adjust the number from six, and he mentioned, and in here it's private security guards to patrol the parking lot. He's saying that they have two private security guards to patrol the parking lot, but some are licensed and bonded security guards verses off-duty police. Can you give us your professional opinion as to the difference in say a licensed, bonded security guard that can carry a firearm verses an off-duty police officer? Are they one in the same? Give us some clarification.

Major Smeltzer: Well, an off-duty police officer has police powers and can make arrests. Any type of security guard can handle problems, but if it rises to the level where somebody refuses to leave where an arrest has to be made, then the police department has to be called. But certainly any security on site is better than none and can handle most problems, a good security guard, can handle most problems without having to call the police department. Currently they do have a security guard, but the level of incidents that are happening there; we are pretty much having to put people like you mentioned across the street almost every Friday and Saturday night to respond and keep an eye on the situation. That's resources we really don't have, at this time I don't.

Mr. Shook: So what you're saying is hey, if we're going to do this, and that's kind of where you're coming at from six private, you know you want off-duty officers there that can provide arrest and support directly. Is that kind of...

Major Smeltzer: Correct. As well as direct radio contact with the police department. But, I don't know that that can be arranged.

Mr. Shook: Now, of six private security guards, do you, I mean how did you come up with that number is kind of what I'm getting at?

Major Smeltzer: You just kind of estimate based on the size of the crowd and the type of crowd that our officers have observed. I don't think, certainly one, I wouldn't want to work there by myself.

Mr. Shook: Two?

Major Smeltzer: If you notice the size of the building and the size of the parking lot and the poor lighting in the parking lot; the fact that there's parking that sometimes when it's crowded extends across the street. So, the issue just isn't in the club and in the parking lot, it can extend across the street and up the street as well.

Mr. Frizzell: I mean, when I said two officers, I meant two security guards in the parking lot. On an average night we have from six to eight in one side of the building so; and if we open both sides of the building we have twelve to fourteen security inside the building, so it's not just one or two controlling...

Mr. Shook: I'm sure you've got security, but there's a difference between security and an officer, right?

Mr. Frizzell: Oh yea, it's a big difference, because the radio makes a big difference.

Major Smeltzer: Can I address one other issue as well?

Mr. Shook: Yes, sure.

Major Smeltzer: You asked how we come up with the number six. We are asking in our request if you read the conditions that the vehicles are searched prior to entry. Searching people before they go in the club is certainly excellent for inside the club; but if everyone in the parking lot has a gun in their car and they run out to their car, and that's where shootings traditionally have occurred at this club as well as others, that's when the problems begin. Somebody asked how often do they find guns. I don't know how hard their searching, but if the club has the reputation of you can bring guns here or I need to bring a gun here, then people are going to bring guns. You have to shut down the mentality that I need a gun there and that I can bring a gun there and it's going to be given back to me at the end of the night, all those kind of issues. And I'm going to be allowed to come back the next week. If there's a sign on the property that says no guns, then there should be no guns. That's when you're going to have, it's not searching people at the door, which is important, but it's searching people before they come in the parking lot.

Mr. Shook: Sure. And isn't it against the law to carry a firearm to a location that has, that's selling alcohol?

Major Smeltzer: Concealed permit or not. That's correct. And if you're going to search those vehicles and have the security necessary, I don't know if six is a magic number, but it's more than two to stop cars, search them, and do all those kind of other things.

Mr. Shook: And in yours, I don't know what the number is about searching the cars. I mean, if he's saying two, do you feel comfortable having two people out there searching? I mean, you're going to search everybody's car that's coming on the property. You realize that's what he's asking you to do, is that correct?

Mr. Frizzell: Yes.

Major Smeltzer: And if two people are searching cars, who's watching the rest of the parking lot?

Ms. Rich: How many customers, patrons, do you have typically on a Friday or Saturday night?

Mr. Frizzell: Friday night from four to six hundred. On Saturday night it could be as many as eight hundred.

Ms. Rich: Two's never going to be enough.

Ms. Bellis: Major Smeltzer, I have a couple of concerns about the requests for those conditions. When he is requesting that it close at 2:30, it sounds like the reason for this is for the police to be clear of downtown. Isn't this putting an unfair burden on the police department, his depending on..? I read it, and of course I'm not supposed to make assumptions, but it looks to me like he's saying if there's trouble, he wants the police to come in and take care of it, instead of his own security people.

Major Smeltzer: I guess the best way I can answer that is he's asking for the same services that we provide every club downtown, and it's easier for us to provide them if downtown's already cleared. Does that make sense? We clear out the downtown, or assist in clearing out the downtown. It puts a strain on us if we have to clear out somewhere else as well. Again, like he said, operationally we have the people that do that work until 3, 4 in the morning. If they can clear out town and then have to go somewhere else, it's better to do it after or before rather than at the same time. He's asking, just by the nature of the clubs if you go downtown at that time, it requires a fair amount of police resources just to clear the downtown, as well as clear a club parking lot. I interpret it he's asking for the exact same service we provide, basically free of charge, for the downtown clubs.

Mr. Shook: Major Smeltzer, how many officers, duty officers, uniformed officers are working on any given Friday or Saturday night in the City of Greenville? Ball park?

Major Smeltzer: In the town, or working clubs in downtown?

Mr. Shook: How many are on duty in a police car that are riding around not have been hired, but you know, I mean yes. I mean all your resources any given Friday or Saturday night.

Major Smeltzer: Ball park, thirty to forty. Probably closer to forty. We have at least one impact unit which is eight people working downtown. Almost every Friday and Saturday night we pay overtime to six to eight additional officers, and on the heavy ECU weekends, the second impact unit, which is another eight officers. So we generally

have anywhere from twelve to twenty-four officers who are exclusively duties revolve around the night clubs in and around Greenville, the downtown area, clearing out parking lots and dealing with these kinds of issues. It is a fairly significant portion of the total resources of the Greenville Police Department.

Mr. Shook: And the reason why I'm asking is the impact officers are not in vehicles where if the call comes in to Club Gas or any other club that we have out on Tenth Street, I mean there not the first responders on site if they have to uproot from this location and go all the way across town to anywhere on Firetower Road or anywhere else. Is that correct?

Major Smeltzer: They have vehicles; however, Club Gas is close enough to where they can get out there and that's why, again operationally, take the sound the noise and the lateness for the people living in the neighborhood, they could uproot, after clearing downtown, a portion of them could uproot and go provide that same service at Club Gas at 2:30 in the morning. It would be easier with resources to do it that way.

Mr. Shook: I'm saying, if there is a major event on Firetower Road or something, just totally unrelated to bars and downtown and everything else, they're not the first ones to get in the car and leave downtown and go across the city?

Major Smeltzer: That's correct. That would be the on duty shift officers. Correct.

Mr. Shook: So they're dedicated more or less just to the downtown, just to the club and nightclub...

Major Smeltzer: Downtown and the surrounding areas as well as some of, they do have officers on vehicles as well.

Mr. Shook: Sure.

Ms. Bellis: Could you make an estimate to what you would consider to be the bare number of security guards that would make that a reasonably secure place? In the parking lot; not inside, just the parking lot.

Major Smeltzer: I'd say a bare minimum, four.

Ms. Bellis: And there would still be more in addition to that inside.

Major Smeltzer: Correct. Traditionally what you'd call a bouncer inside the club. Not necessarily a licensed security guard, but somebody who is providing some security services, generally inside.

Chairman Wubneh: Alright, any other questions for the major or for the applicant? Thank you Major. Thank you. Anybody else here to speak in favor of this application?

Mr. Huggins: Mr. Chairman, members of the Board of Adjustment, I want to commend you all in your dedication to the City and the services you provide to the City. I'm here to speak on behalf of the club and Mr. Frizzell and what he's offering to the community. There are an awful lot of youth that they have at that club that would be somewhere else that particular night, and this gives a certain segment of our community a place they can go and remove these kids in this area. I've had the opportunity to go out to this club and if you want to see something go out there. I knew those guys. Those guys stopped my car just like everyone else. They went in the trunk and they went all over it

before I went in that club. When I went in the club I was patted down again. But, I've had the opportunity; I'm here on behalf of the Southern Christian Leadership Conference in Greenville, the Pitt County Chapter. I'm the president of that Chapter. I've had the opportunity to go out there and talk to those young people and was invited by the club. I've also had opportunities to have meetings out in the parking lot. So the club has opened itself to the community to provide anything that the community could do to help them with these young people. These young people have to have a place to go and there's no perfect world and that's not going to be a perfect world. We're going to have problems out there, but no more than the same amount of problems we have in downtown Greenville and those people have to have a place to go and I support that also. But we must provide the resources that is needed for someone that is willing to take this venture and willing to abide by the rules that are put before them. And Mr. Frizzell has been very actively involved in the community with our young people and that's the same type of dedication that he's going to take out there at the club. Hopefully, I will continue to be heavily involved in my organization because we have to give these young people an opportunity to be heard and we're constantly talking about them and we're not talking to them and this club gives my group the opportunity to talk to them by bringing the group together. So I ask for your support. He has assured me that any stipulation or obligation that's put on him that he will abide by them. Thank you for this opportunity.

Chairman Wubneh: Thank you Mr...

Ms. Radcliff: What was your name, sir?

Mr. Huggins: Rufus Huggins.

Ms. Radcliff: Thank you.

Mr. Huggins: I'm sorry, you have a question?

Chairman Wubneh: Yea, I want the board to get an opportunity to ask any questions they have.

Mr. Huggins: Oh okay, I'm sorry about that.

Chairman Wubneh: That's alright.

Mr. Huggins: Thank you again.

Chairman Wubneh: Anyone else here to speak in favor of this? Please tell us your name for the record so we don't have to ask.

Ms. Sutton: I'm Sonya Sutton and I'm one of the owner's of the original club when it was C.A. Friend, Inc. We own the building and we would like to keep someone in there rather than it be vacant and it create revenue for the community and provide the service as they said of an alternate club, you know in the area and away from the downtown area and congested traffic. I had had Mr. Sean Mack Williams as a tenant and it's very unfortunate that he passed and we had a transition period. Mr. Frizzell was involved in some of that but through that, luckily I feel confident enough to let Mr. Frizzell completely take the club his self and when he applied for the liquor license recently and things like that, I feel more confident with him running it. I feel like we can get it back to the basis that

we had it with the police department at one time, you know back where there will not be so much trouble. I was concerned so as a landlord I let the other partner go and me and Mr. Frizzell have tried to work together to get this back in the same format that it needs to be to be an asset to the community, you know not a burden and we would try to work things out with you the best that we can and take any suggestions that you might have because I think it can be a positive thing again in the community. It's just taken some little time to work some kinks out. You know, I'm not in the position to run a club, so you know, but I do feel confident in having him there.

Chairman Wubneh: Thank you. Any questions for Ms. Sutton?

Mr. Shook: Yes, can you speak a little bit more to the transition? I mean, I sat on this board and heard the original review with the prior owner, certainly disappointed and heart struck about his passing, and that was I guess about a year ago in February kind of time frame, is that about right?

Ms. Sutton: Sean and Walt were partners and best friends and rather than me look for someone else, Walt wanted it and wanted to step up. He and I butted heads on a lot of issues because there were things I asked him not to do that he did and I knew that there were some, you know, there were some security problems and having when it was the Texas Two Step, even though I wasn't there at night, I still knew what kind of requirement we needed as a club, things like that and I didn't feel like Walt was doing what he needed to do to have it secured. Keith and I talked because Keith apparently had money invested and was doing work on the club. He's done a lot to the appearance of that club and he had already started working on some of these repairs that needed to be done for the Fire Marshal and things like that. I never increased Sean's rent the entire time he rented but that was so he could keep that building up. That is like a white elephant to keep that building up. You've got to keep it shaded and fed and bathed and you know a flat roof on any building is going to be a constant upkeep all the time and I just didn't think that Walt was doing the things that he needed to do. Through my continual visits and talking with Walt, I ran into Keith and we talked about some of the issues and concerns that we had and I told him, I said rather than pull out as a partner, I need somebody to take it over and I really do feel confident from just what he did, I consider voluntarily, before he even managed the club his self completely, I feel like he'll carry through with those things. And, the safety issues, we've talked about things like that. Just anytime you're dealing with people and alcohol you've got to take certain precautions.

Mr. Shook: And so you stepped in asked the other landlord...

Ms. Sutton: I asked him to leave.

Mr. Shook: You asked him to leave and that was about three months ago? Is that...

Ms. Sutton: It happened on a Sunday and coincidentally, the next night they were broken into and it's, you know, it's been a few little things like that you know. Any major things...

Mr. Shook: That was in February I guess, right?

Ms. Sutton: That's right.

Mr. Shook: I noticed that was on a Sunday night into Monday.

Ms. Sutton: That's right and I called and they suggested that that was more of a civil issue than anything else. He knew that the locks were changed. You know I confronted him and talked to him, you know the locks were changed. I asked Mr. Frizzell to take over and apply for these licenses and to go to the police department and go to the Fire Marshal and see what we can do to get it back like it should be because there's a big tax base on that building too, and you know, none of us need to lose any kind of income. But you know for the county we can get that like it should be. There's an SBA Government Loan that had to be taken out when the flood came that has to be repaid. So I consider it, it's income for local and federal government and it could be income as far as ABC and things like that if we can just keep the problems to a minimum and I feel like he'll do his best to work with you.

Mr. Hutchens: You have read through the eighteen special criteria that staff has recommended?

Ms. Sutton: I have, it's been a few weeks.

Mr. Hutchens: And you think they can be complied with?

Ms. Sutton: I think they can be complied with. I do. He's made an effort with me and like I say he had started some of that effort long before I even knew he was in the picture. You know some of the repairs and things like that he had taken on his self.

Chairman Wubneh: Thank you.

Ms. Sutton: Thank you.

Chairman Wubneh: Anyone else here to speak in favor of this application? (pause) Anyone opposed to this application? (pause) Okay, members of the board I now close this public hearing and call for Board discussion. Please keep your mic open. Any discussion?

Ms. Bellis: I think if this is approved that we should go along with the recommendations of the police department. They are the most familiar with it and if Major Smeltzer thinks a ball park estimate or minimum of four security guards is needed I think that's what we should recommend.

Mr. Hutchens: Looking through the eighteen criteria that have been recommended by the staff, I'm trying to look at them objectively and I'm saying to myself, "is this a physically doable plan?" I'm a little skeptical.

Mr. Shook: About which part, I mean, specifically? I mean, obviously there's a lot but...

Mr. Hutchens: It's a big job.

Mr. Shook: Yea.

Ms. Safford-White: It's a huge job.

Chairman Wubneh: This is a matter that the board will have the opportunity to review again in six months.

Mr. Hutchens: Or sooner if we desire.

Chairman Wubneh: But I think it's worth discussing whether this...

Ms. Harrington: John, which items were you referring to in here specifically?

Mr. Hutchens: Well, for example, searching every vehicle in the establishment's parking lot excluding those of its employees. Just think of a night when you have eight hundred people and you're going to search every vehicle. Is that a physically doable task without causing congestion on Greene Street? Which is also part of the criteria.

Ms. Safford-White: They'll be checking them before they go into the parking lot, right? So you got them coming out on Greene Street.

Mr. Hutchens: Are these things physically doable, I guess is what my question is.

Ms. Bellis: Didn't we understand Mr. Frizzell to say that's what he's doing now? Should we ask him?

Mr. Hutchens: That's true.

Ms. Safford-White: I believe he said he's doing that once they get into the parking lot.

Major Smeltzer: I can answer that. It's been done. At the peak times it does cause a little bit of congestion, but you don't search it right at the road. If you set up a one way in where you have to kind of funnel in to where you get searched and then you double the cars going in at that, then you can get a fair number of cars and only at the very peak, peak times does it go out onto Greene Street. It is feasible, like you said though, to do this requires a lot of responsibility and dedication and a focus. That's why I said you can have six security guards but if they're not doing what they're supposed to, it's a waste. So, it really comes down to people taking it seriously and are their searching the cars and are they doing it seriously and setting up, kind of like I said before, is this the type of location that has the reputation that I want to even try to bring my gun to. And, I think that we got to the point with Sean Mack that they knew I can't go there if I take my gun and that's what we'd like to get back to. But, yes, it is feasible, that one, you just kind of have to, if we set it we have to understand that there may be times when it will go out on to Greene Street and work with them on that.

Mr. Shook: I guess the other issue is if any of the other businesses are open or closed, somebody seeing that they're searching so they park at the Trade Station right across the street and walk over.

Major Smeltzer: That's something the club has to not allow that except for in times of overflow and understand that that person is probably doing it for that reason. And then that's the type of clientele that if they're serious about security at their club they don't want at their club. Going back to what I said before, somebody brings a gun you just tell them this is your last time, you're never coming back. That's somebody who's serious about not wanting a gun on their property. It's more of a, almost a mindset as much as it is actually what you're doing. Does that answer your question?

Chairman Wubneh: Thank you. Any other matter that the board needs to discuss?

Ms. Rich: I think Chief Smeltzer said none of his off-duty policemen had signed up for this duty because of their concern over the financial matters of getting paid.

Ms. Safford-White: Right.

Mr. Hutchens: Well the criteria states simply six private security guards, it does not specifically state off-duty policemen.

Ms. Rich: So if you can find the security guards...

Chairman Wubneh: Yea, he has to have six, that's according to the recommendation.

Mr. Shook: That's from both the police and the City of Greenville.

Ms. Bellis: Would there be some consideration of reducing that to four since Major Smeltzer seems to think that would be...

Chairman Wubneh: I think their recommendation number five says six private security guards.

Mr. Shook: He did mention four.

Ms. Rich: He said a minimum of four.

Chairman Wubneh: Minimum of four.

Ms. Safford-White, Ms. Harrington: A bare minimum of four.

Ms. Safford White: Which I really don't think we should entertain. I say that from the standpoint that you go back and you look at the history, what's been taken place and that would not take care of what needs to be done. If this is approved then we need to stick to the guidelines. My first concern is the fact that in big bold letters it states right there "based on this information Greenville Police Department recommends that his application be denied". I mean, you know, boom, it's right there staring us in front of the face. It's right there black and white you know. So if we do approve this I don't think we should use any of his suggestions. I think that we should go strictly with what the police says. They know the best. We're not police officers. We can only go by what they say so I think it behooves us if this is approved that we go by exactly what is on there and don't minimize anything.

Mr. Shook: I agree.

Chairman Wubneh: So are we saying six, which is the original recommendation, verses the Major suggested at least a minimum of four? So you're saying we have to maintain the six.

Ms. Safford-White: well, yea. He also had on here as part of his condition about the two that was on here, but then he said you know bare minimum because Ann had asked about the, you know, four. I think we should really stick with the six.

Chairman Wubneh: Okay.

Mr. Shook: I agree.

Ms. Rich: I agree.

Mr. Shook: We do have some history on this board with this location. I remember being here when Sean came here and you know what strikes me is that when he was here – and you know this gentleman, Mr. Frizzell has only been managing the club it appears for three months, but with Sean coming here the word “gun” never came up. You know, that concerns me a lot. When you have eight hundred people and firearms around a place where people are drinking. I know the North Carolina law, that’s against the law for a very, very good reason and something very bad could have the potential to happen you know in those. But on the other hand, Mr. Frizzell’s been there for a short period of time and, you know, before that it didn’t seem to be an issue. Like I said with a short period of time I certainly wouldn’t entertain going down below what’s listed here, just simply because of the testimony that’s given about people finding firearms on the premises.

Ms. Safford-White: Right, and too, even though he’s only been managing privately himself for the past six months, he’s been there a year so I can’t let that go. He’s been there long enough to know, even in that capacity, that there were things going on. So he was a part of, for the lack of better words, nonsense that was taken place.

Mr. Hutchens: Part of the problem.

Ms. Safford-White: He was part of the problem. Right. As well. So now that he is on here by himself, are things going to change? I don’t know.

Chairman Wubneh: Alright. Any other discussions?

Ms. Harrington: I know I was, having read through all of this prior to the meeting, when I walked in tonight, you know unless I heard something pretty good I was going to vote not to do the permit. But, they have brought up some good points as far as him just having started in this capacity and I didn’t realize that the club had been there without issues at one point in time either. They’ve raised some issues with all of these recommendations from the police department maybe it’s doable for six months to see if they can do it.

Chairman Wubneh: Alright, any other views?

Mr. Hutchens: Just one last comment. Going back to that bold face statement that Ms. Safford-White pointed out, the staff does not recommend this permit being issued; but if we do, if we so deem to do, then list the eighteen criteria. That implies to me that staff is in itself skeptical about the ability of this club to turn itself around.

Ms. Safford-White: Exactly, I agree with you.

Mr. Shook: That's certainly putting a short leash on it.

Chairman Wubneh: Alright, okay. Members of the board, I now close this public hearing and we've had a discussion. This is a special use permit and I'll read the criteria by reference.

Ms. Bellis: Excuse me.

Chairman Wubneh: Yes?

Ms. Bellis: If we've already said the conditions should we not set that before we read the criteria?

Chairman Wubneh: My understanding was that if we are going to accept conditions, we are going to be taking the initial conditions that were recommended. Is that correct or are we modifying them? Are you talking about additional conditions?

Ms. Bellis: The conditions that were recommended by the, did Mike go over those for us?

Chairman Wubneh: Yea, he wanted to go but I was the one who stopped him. Do we need to go over it?

Ms. Bellis: Well, there was the one there about the time.

Ms. Safford-White: I think he should.

Chairman Wubneh: Okay. Mike, if you don't mind, I was the one who stopped you not to go through the conditions, but the board would like to hear in sort of a general fashion if you could summarize...

Mr. Dail: Okay.

Chairman Wubneh: and tell us those conditions.

Mr. Dail: I'll just read through them. They begin on page five. The special use permit will be reviewed by the Board of Adjustment every six (6) months from the date of approval for the first eighteen (18) months after the permit is issued or renewed to ascertain whether all of the criteria necessary for issuance of special use permit and any approved additional conditions are being met. Number 2: The Permittee obtain within six (6) months of the date of the action of the Board of Adjustment, which would be tonight, a permanent ABC license. Number 3: The Permittee shall not allow any amplified sound to be audible from the establishment beyond the property line. Number 4: The Permittee shall cease all amplified sound within the establishment after 2:00 A.M. Number 5: The Permittee shall employ at a minimum six (6) private security guards to patrol the parking lot of the establishment during the hours of operation. The private security guards shall be either off-duty law enforcement or uniformed security guards provided by a security and control profession licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes. The Permittee shall not be permitted to open the establishment or remain open without

the required number of private security guards on the premises. The Permittee shall not be in arrears more than 30 days for the payment of such private security. Number 6: The Permittee shall conduct a search of every vehicle parking in the establishment's parking lot, excluding those of its employees to determine no contraband or illegal substances or weapons are permitted within Permittee's parking lot or establishment. Number 7: The Permittee shall make reasonable attempts to prevent alcohol or drug consumption in the parking lot by its private security personnel. Number 8: The Permittee shall prevent traffic congestion on Greene Street during the stop and search of vehicles before entering the parking lot of Permittee's property or establishment. Number 9: The Permittee shall ensure that all patrons vacate their vehicles and enter the establishment upon parking in the establishment's parking lot during hours of operation. Number 10: The Permittee shall ensure that all patrons immediately occupy their vehicles and vacate the premises upon leaving the establishment. Number 11: The Permittee shall ensure the parking lot is free of all vehicles and patrons not later than 3:00 A.M. Number 12: The Permittee shall ensure there is no congregating in the parking lot of the establishment. Number 13: The Permittee shall check the identification of all patrons entering the establishment. The Permittee shall not permit under age persons in the establishment and shall not serve alcohol to minors or permit others to purchase alcohol for minors. Number 14: The Permittee shall conduct a search of all patrons entering the establishment. No weapons, contraband, alcohol or controlled substances will be permitted to be brought into the establishment. Number 15: The Permittee shall allow reasonable access during the hours of operation of the establishment to any law enforcement officer.

Chairman Wubneh: Now there are three more on page eight. Sixteen, seventeen and eighteen.

Mr. Dail: You're correct. All fire code violations noted on citations 81958 and 80397 must be mitigated and pass inspection before club can open back up and the rest of the roof in questions must be repaired within 14 days of citation issuance. The Permittee remain in compliance with all North Carolina State Building and Fire Codes. And, the Permittee abate the nuisance liens on all other properties and businesses owned by the applicant, the individual shareholders or members of applicant's business owed to the City of Greenville in the amount of, and this is a corrected amount, \$7,194.00, within 180 calendar days of the date of this renewal or issuance.

Mr. Shook: Question, Mr. Dail.

Mr. Dail: Yes.

Mr. Shook: It says we can, it is to be reviewed as mandatory in six months. If two months from now they're found in violation of two or three or one or any or some or any of these conditions or any of the conditions of the permit, what happens at that point in time?

Mr. Dail: The specific criteria that a public/private club operates under give the city staff the right to bring back before the commission any public/private club that's not operating pursuant to the specific criteria or the conditions

that are placed on the special use permit at any time. So if there's a reason to bring them back in a less amount of time then that can be done.

Mr. Shook: At any time?

Chairman Wubneh: Any time that the city feels that some of these conditions are violated they'll bring it to the board.

Mr. Dail: Sure.

Mr. Shook: Does the city have the right to shut the club down until...I mean do you have a cease and desist order or, it has to come back to this? So it operates until it comes back in front of this board and we accept or reject...

Mr. Little: The only time there could be a cease and desist order would be if it was issued by the courts and that would fall under Chapter 19 of the General Statutes, under the Nuisance Statute provisions. If one of the violations that are numerated in that statute are found and they are of significant nature then the city can obtain a temporary restraining order which would then seek a hearing within ten days after that for preliminary but eventually permanent injunction for operation.

Mr. Shook: A hearing at a court, not in this place?

Mr. Little: It's a court hearing that would be separate and distinct from any action by this board.

Mr. Shook: Gotcha.

Chairman Wubneh: Does that satisfy the board in terms of the conditions or are there any other conditions that we want to add or any conditions that we want to eliminate of the ones that were recommended?

Ms. Bellis: There was that number 4 and Major Smeltzer said that he was in agreement with changing that to 2:30.

Chairman Wubneh: Yes, for the purpose of operation it would be more practical.

Mr. Shook: And I believe we had an issue like this with a bar and nightclub at some point in time. It just seems like, you know alcohol sales have to stop at two, you know what time do you stop, you know what time do you have to because one of the other clubs that we had that come up we talked about when they have to vacate the property and that type of thing. Obviously alcohol's got to stop there but...

Chairman Wubneh: Alright, a correction instead of 2:30. Is that correct? Number four shall read that after 2:30a.m. Now there was, okay it was 2:30 not 3. Any other conditions that we need to clarify or add or delete before the board decides to go one way or the other or any questions that the board has on the conditions? (pause) Okay, members of the board, this is a special use permit and I will now read the criteria by reference. You have heard the conditions. The first criteria is conditions and specifications (pause). Comprehensive Plan. (pause). Health and safety.

Mr. Hutchens: Vote.

Ms. Safford White: Vote.

Chairman Wubneh: Okay, request for a vote. Ms. Harrington? She asked for a vote, so how do you vote? For or against on this particular criteria?

Ms. Harrington: On the health and safety?

Chairman Wubneh: Yes or no? For or against? If you vote yes or for you are voting in favor of the applicant. If you vote no you are voting against the applicant.

Ms. Harrington: There are still safety issues to be addressed I do believe so I would have to say no on that issue.

Chairman Wubneh: Okay we'll go over it first and then they would have to give us an explanation why you voted no. Is that correct Mr. Little?

Mr. Little: I'm sorry, I couldn't hear you.

Chairman Wubneh: If they vote no they would have to give an explanation to why they are voting no. So Ms. Harrington is voting no. Ms. Safford-White?

Ms. Safford-White: No.

Chairman Wubneh: Ms. Bellis?

Ms. Bellis: Yes.

Chairman Wubneh: Yes.

Mr. Hutchens: No.

Chairman Wubneh: Mr. Shook?

Mr. Shook: Yes.

Chairman Wubneh: Ms. Rich?

Ms. Rich: No.

Chairman Wubneh: May we have an explanation of why?

Ms. Harrington: Well there are still existing safety conditions that haven't been met and their having numerous health, well, safety in general of people that they had to deal with out there and that's a major concern I do believe.

Mr. Little: What we're doing is...I don't think, Ms. Harrington, you've been involved in one of these before...is if there is a vote and there's a no vote then what you're doing is you're stating the facts that you received that you consider as material, competent and substantial evidence that you determine does not meet this particular criteria of health/safety and those are the reasons. You can also state that you believe there is a potential to satisfy that if there are conditions that are imposed. So you could, there is a no, but you could substantiate it you think that it could be met if there is a condition that's imposed that might satisfy that particular criteria. So from that standpoint, if you have a no vote and you just want to say no that's okay but you just tell us why. If you don't believe there is anything they can do to satisfy it then that's fine also. You're not required to do so but there may be something that's in your mind that you believe might make it compliant with that particular criteria and that is also something that you can, as well as anybody. You can have a no vote and state your facts and evidence that you rely on but if you think there's something that might make it so then the board can come back and consider that if they want to, based upon a vote. Because if there is a no finding and substantiated by two votes for any one finding, then the special use permit is, in this case is withdrawn.

Chairman Wubneh: Is that clear?

Ms. Harrington: I think so. So for the health and safety if, let me just make sure I'm understanding correctly. On the health and safety issue, for the safety part if the roof is repaired within a certain period of time and they're doing searches to prevent the guns from going out there because of our criteria here, or our special recommendations...

Chairman Wubneh: That's correct.

Ms. Harrington: then that's okay.

Chairman Wubneh: That would not be a problem. The health and safety aspect would not be a problem.

Ms. Harrington: So does that automatically change her vote into a yes because the explanation seems to be...?

Mr. Little: Well it doesn't really change the vote. She still has a no vote in there however the board can, even though it may have two votes, I think there were three no votes.

Chairman Wubneh: No, I think more than three.

Ms. Safford-White: There was four.

Mr. Little: Okay, I heard three.

Ms. Safford-White: No, there was four.

Mr. Little: There may be four no votes which would normally then deny a permit or in this case withdraw the special use permit. After that's done if the board is of an opinion that based upon the evidence that is received that the criteria could potentially be met by the imposition of the condition, then the board can then vote to impose a condition that would then satisfy that particular requirement.

Chairman Wubneh: Second vote is going to require...

Mr. Little: That is a second vote if there is a condition then that's imposed. It gives another opportunity. Yes, an outright, if no one believes, if someone does not believe that there is a condition that would satisfy it based upon the evidence then the no vote would stand.

Chairman Wubneh: Alright.

Mr. Little: And this would only occur after two or more no votes. But if somebody believes a condition might, then they can make that statement after there is a finding that does not satisfy the agreement.

Chairman Wubneh: Let's go through these four votes first and let's hear their explanation and then we'll come back to their explanation of extenuating circumstances or conditions that they would like to see to alleviate the problem of health and safety. Ms. Safford-White, I think you voted no, is that correct?

Ms. Safford-White: I did and it has to do with the searching of the cars. We did hear that there is a way to go into the parking lot, but when there are large venues taking place and if they have to pull over and they're stopped on

Greene Street, that is a hazard whether it's at night or during the day. Greene Street, which is over that bridge area coming that way, that is a hazardous no.

Chairman Wubneh: I'm sorry, Ms. Bellis?

Ms. Bellis: I voted yes.

Chairman Wubneh: Yes, you voted yes and I voted yes.

Mr. Hutchens: I voted no.

Chairman Wubneh: Mr. Hutchens, yes?

Mr. Hutchens: Based on the written and oral testimony of the police department this constitutes a significant law enforcement hazard. I have to vote no.

Chairman Wubneh: Okay, the last and fourth one, was it Mr. Shook or...

Ms. Rich: It was me. I agree. Based on the documentation that we were provided and what the testimony of Major Smeltzer I agree and still stand no.

Chairman Wubneh: Okay, we need to finish the criteria first. We have already four. I believe this was health and safety. Detriment to public welfare...

Ms. Safford-White: Vote.

Chairman Wubneh: Vote. Alright.

Ms. Safford-White: That's me.

Chairman Wubneh: Ms. Harrington, yes or no.

Ms. Harrington: No.

Chairman Wubneh: Okay, no. Ms. Safford-White?

Ms. Safford-White: No.

Chairman Wubneh: Okay, Ms. Bellis?

Ms. Bellis: I think with the conditions that we have that I would vote yes and see where we go in six months.

Chairman Wubneh: I'll vote yes, too and in six months see.

Mr. Hutchens: No.

Chairman Wubneh: No for Mr. Hutchens.

Mr. Shook: I vote yes.

Chairman Wubneh: Ms. Rich?

Ms. Rich: No.

Chairman Wubneh: We are consistent. Four. Again, the explanations, I believe, did you give me an explanation?

Ms. Harrington: Not for this one.

Chairman Wubneh: I'm sorry. It's required. The law requires that you have to tell us why.

Ms. Harrington: Okay. I, would it be...

Chairman Wubneh: This is detriment to public welfare.

Ms. Harrington: Well, would it be out of order for us on the first recommendation to put that we review them after three months?

Chairman Wubneh: We will to come back. Let's finish the criteria and then we're going to come back to those conditions as Mr. Little...what we will do is we will draw and then get it back to vote. Ms. Safford-White?

Ms. Safford-White: Based on written testimony here where the police department has recommended everything that they have (inaudible)

Chairman Wubneh: Hutchens, you need to explain.

Mr. Hutchens: Same as before. The testimony of the police, the written and oral testimony of the police department that this constitutes a law enforcement hazard.

Chairman Wubneh: Ms. Rich?

Ms. Rich: Same as before, documentation (inaudible).

Chairman Wubneh: Alright, I'll move on to the next criteria. Existing use detrimental. Injury to properties or improvements. Nuisance or hazard. There are two conditions where we have four negative votes. Those are conditions, I'm sorry criteria. Criteria number C, Health and Safety, I believe, and criteria D, Detriment to Public Welfare. In both criteria there are four negative votes against the application. Mr. Little, what you are saying at this point, we don't even have to go into a motion to approve the Findings of Facts but we draw? I'm not clear.

Mr. Little: Well, at this point because it's a consideration of a withdrawal of a special use permit, you have two criteria that would satisfy the withdrawal. Now, you can, if the board by vote, decides or believes based upon the evidence and the matters that have been presented, there are conditions that may be imposed that could satisfy these two negative conditions so that the permit could continue then...you're findings of fact are now that two criteria are not met and based upon those two criteria that are not met there is the substantial finding that the permit can be withdrawn. Now, what would happen, now you ask for the, you have a finding of fact, for the motion to approve the finding of fact, which would occur. Then you may have a, do I have a motion to either withdraw the special use permit or a motion to provide a conditional approval based upon a conditional reinstatement of the withdrawn permit based upon whatever conditions that the board determines might be applicable. There was something that was already discussed during the open discussion so if you want to have further discussion that is certainly available to you.

Chairman Wubneh: Okay. I think if I understand it correctly the next procedure that we will be doing is the motion to approve the Finding of Facts and then the next point I will ask for a motion whether to withdraw the special use permit or to provide condition reinstating providing that the board gets satisfied with certain or whatever conditions that it was. Do I have a motion to approve the Finding of Facts?

Ms. Bellis: Motion.

Chairman Wubneh: Motion by Ms. Bellis.

Mr. Shook: Second.

Chairman Wubneh: Second by Mr. Shook. All those in favor of approving the Finding of Facts please indicate by saying I.

Ms. Harrington, Ms. Safford-White, Ms. Bellis, Chairman Wubneh, Mr. Hutchens, Mr. Shook, Ms. Rich: I.

Chairman Wubneh: Members of the Board, as you know that we already have two nay votes on health criteria, Health and Safety criteria and Detriment to Public Welfare criteria. So I would entertain a motion to, one revoke the special use permit or if there is another motion to provide or a motion to provide conditional reinstatement of the withdrawn application. Is it first, do we have first to vote to withdraw it and then reinstate; I believe I would have to do that.

Mr. Little: Yes that is correct.

Chairman Wubneh: Do I have a motion to withdraw the special use permit given the fact that we have a negative, four negative votes, on two of the criteria?

Ms. Safford-White: Motion.

Chairman Wubneh: Motion by Ms. Safford-White.

Mr. Hutchens: Second.

Chairman Wubneh: Second by Mr. Hutchens. All those in favor of approving the motion to withdraw the special use permit, please indicate by saying I.

All: I.

Chairman Wubneh: Opposed (pause)? I entertain another motion to provide conditional reinstatement of a withdrawn application. In other words, if this statement doesn't have a motion and a second then the first motion stands or the first vote stands. In other words will be withdrawn.

Mr. Little: Before you get into that you may want to discuss are there any conditions that might satisfy the board of the two criteria that resulted in the withdrawal and if there are conditions then you would go into a request for a motion to conditionally reinstate based upon the conditions that were provided that are listed that you list would be applicable.

Chairman Wubneh: Instead of six months can we hear it in three months?

Ms. Harrington: Correct.

Chairman Wubneh: So we'd like to see that and you believe that condition was changed to three months that would satisfy your concern as far as the two negative votes are concerned. Or do you have other conditions that you'd like to see?

Ms. Harrington: Well, I think three months would give us an indication of what kind of situation would be out there as far as police reports, whether the roof does indeed get fixed like they're saying it will.

Chairman Wubneh: We hope no more violations.

Ms. Harrington: Right. Right.

Mr. Shook: I think the roof has to be fixed before they reopen. I think it's one of the criteria as a...

Chairman Wubneh: Well the roof is also one of the conditions anyway so...

Mr. Shook: That's right.

Chairman Wubneh: Any violation, in three months, if I understand this correctly, in three months if any of these violations are, I mean conditions, are violated then...

Ms. Rich: That's it.

Ms. Harrington: And that would also give Mr. Frizzell time to set up his little payment plan regarding the monies due to the city.

Chairman Wubneh: Do you want to be very specific? I think Mr. Frizzell said that he is already discussing with Mr. Little and trying to work out if I remember correctly he wanted to get...

Mr. Little: There are no specifics that were addressed. It's just that we talked about a repayment plan. As to specific amounts for monthly payments, specific amount for an upfront and obviously the board, the condition that was recommended was 180 days so whatever within that 180 days could be done or the board can modify that and say that x number of dollars has to be paid upfront within so many days and so much per month to be paid off by a certain date. That can be the condition that the board imposes.

Chairman Wubneh: I think Ms. Harrington does not have any problem. It might be a good idea just to say that in three months we still would like to know if some kind of mutually agreeable payment plan is worked out between the city and the applicant.

Mr. Little: If the board provides a reinstatement, a conditional reinstatement and this is one of their conditions, Mr. Frizzell would be in my office, I'm sure tomorrow and we would have a plan hammered out by tomorrow.

Chairman Wubneh: Okay.

Mr. Little: And it can be attached to the...

Chairman Wubneh: Application.

Mr. Little: To the findings as part of the condition.

Mr. Shook: And you'd have to stay in the parameters of 180 days because that's set out in the... I gotcha.

Mr. Little: If that's the condition that the board approves.

Mr. Shook: I got it.

Chairman Wubneh: That's eighteen, condition number eighteen. Any other condition that the board members feel that we need to include or impose in order to make it satisfy or at least alleviate, address the concerns that the two negative votes that we have on health and safety and detriment to public welfare?

Mr. Hutchens: Could I ask a question of the officer please? Major, would special conditions imposed, would that alleviate the Police Department's state of concern about the law enforcement issues?

Major Smeltzer: If all those conditions are met, seriously met, yes they would.

Mr. Hutchens: Yes they would.

Chairman Wubneh: Alright, anybody else who has any concerns or any more conditions that you want to add or any questions or any clarifications before I call for a vote on this?

Ms. Safford-White: I don't have any conditions but I have to put in on record again, I don't think reinstating this is going to change anything. I'm sorry. Again, it's here in black and white, okay. You go back and you look at it, and I've read this several times since I've gotten my packet, I read what staff recommendation has to say down here. That they're not in compliance and we know that there's been letters that has been sent out. We know that they have contacted these people several times for several issues and to this date very little has been taken care of. I got concerns. Major Smeltzer just said that if, "if", all of these are met, I've got a problem with that.

Ms. Rich: That's a big "if".

Ms. Safford-White: Yeah. If you go back and you look at what has transpired, and here again I'm gonna say it again, I know I'm repeating myself, even though he's been in this position for a short period of time he has been there for almost a year, a little over a year. I got concerns. I don't believe that reinstating this anything is gonna change. I have issues with this. I have big time issues with this.

Ms. Rich: Well, according to testimony, he had invested interest in the business even before he became a manager.

Ms. Safford-White: Exactly.

Ms. Rich: So why not step in? If I had an invested interest and was there I would be watching the store.

Ms. Safford-White: Exactly. Exactly.

Ms. Rich: That's your livelihood, you look after it.

Ms. Safford-White: Right, and as far as you know certain money issues I can understand not really knowing but again if you do have an investment in something, you're going to know what's dotted and what's crossed. Okay and then to show up at the eleventh hour and try to do certain things, I got. The mook ain't clean.

Chairman Wubneh: Alright, any other discussions? I just want to make sure that I do not violate the procedure but I am seeing the applicant's hand. I don't know whether he wants to provide with additional information or not. This is board discussion.

Mr. Little: It's board discussion. The public testimony portion has been closed.

Ms. Rich: Closed.

Chairman Wubneh: Closed.

Mr. Little: If the board has a specific question it wants to ask the applicant just as say a specific question was asked of Major Smeltzer, the board may ask that specific question of the applicant, but as far as a general testimony, no sir. Unless there's a vote to reopen the public hearing.

Chairman Wubneh: Thank you. I just want to make sure to. He raised his hand so I was not sure whether he wants to respond to the comments or he has additional information that he wants to give. Granted, I understand. Any other discussions?

Ms. Harrington: Well then it would be appropriate for us to ask him why he hasn't stepped forward with the situation...

Chairman Wubneh: I think that's true.

Ms. Harrington: ...and done something about it to this point.

Ms. Safford-White: No, I don't think so because that is what has been asked of him four different times in four different ways and we still did not get an answer. That has already been asked four different times already. Asking a fifth time, I mean we can't keep killing this dead horse.

Chairman Wubneh: Alright.

Ms. Safford-White: You know, here we are again. It's the same thing. This is part of the same packet. It's the same thing. I don't think it's necessary to ask any more questions. You gotta stop at some point.

Chairman Wubneh: Any other comments before the vote? Okay, members of the board, do I have a motion to provide additional reinstatement of a withdrawn application? If we do we have at least two criteria, conditions. But, from what I am hearing overall I think the general consensus seems to be that the board is very skeptical. However, I would like to do it in a formal way. If it is necessary to have a motion and hear whether or not the board is in favor or against reinstating.

Mr. Little: The, if there is a motion, you know, and the board has already voted to withdraw the special use permit. You can ask is there a motion to do a conditional reinstatement by the addition of the eighteen conditions plus the two that have been added, so there would be a total of twenty conditions that would be imposed. I think one of them is a modification of one of the eighteen.

Chairman Wubneh: Three months, that's a modification.

Mr. Little: If there is a motion, then it's made and if there's a second, then it's voted on. If there is no second then the motion dies. If there is no motion made then the decision stands.

Chairman Wubneh: Thank you. Okay I think that's straightforward and obviously at this point what we have is really one modification. Instead of six months, we hear it in three months and the second one that the applicant work out a repayment plan within a certain period of time. Is there a motion to provide conditional reinstatement of the withdrawn application with the nineteen conditions? Cause there were originally eighteen conditions and we added

now one. Nineteen and one modification. Do I have a motion (pause)? I can't ask a second if there is no motion. At this point your application is withdrawn and I'm sorry. And he has the right...

Mr. Little: At this point with no motion to provide conditional reinstatement then the determination of the board based upon your vote is that the special use permit to operate a public/private club at this location has been withdrawn. He then has the right to appeal that decision to the superior court within the time period. Its thirty days from the date that the order is signed.

Chairman Wubneh: Okay. Alright, you already heard it. At this point, based on the vote of the board your special permit is withdrawn and you have a period of thirty days to appeal to, I guess, to what, to superior court? Is that what it is within thirty days?

Mr. Little: Its administrative appeal on the record that was presented tonight to the superior court. With the fact that it has been withdrawn, at this point there would be no operation unless it goes into the superior court.

Chairman Wubneh: At this point, the only way that you would be able to operate is by appealing it to superior court within a period of thirty days from the time that the order is signed. I'm sorry about that, but that's it. I'll move on to the next item on the agenda, the first item or number 2, a public hearing on a request for a special use permit by Jeremy Spengeman (Unk's). The applicant, Jeremy Spengeman (Unk's), desires a special use permit to operate a dining and entertainment establishment pursuant to Section 9-4-78(f)(6)m.(1) of the Greenville City Code. The proposed use is located on 201 S. Jarvis Street. The property is further identified as being tax parcel numbers 07713 and 21895. All those wishing to speak for or against this application, please come forward and get sworn.

Ms. Radcliff swears in Mr. Spengeman, Mr. Dixon and Ms. Fridley.

Mr. Dail: Sure. Before I go over the findings of fact and tell you about the application I would like to take a few moments to explain to the board what a dining and entertainment establishment is. The city, along with the representatives from Unk's, have gone through a long, probably a little over a year, process along with City Council and city staff to develop this ordinance and I would just like to explain it to you since this is the first time some of you are hearing it tonight. Some of you may be aware or have read your packet, so just bear with me. In April of this year City Council adopted an ordinance creating a new use entitled "Dining and Entertainment Establishment". The use was created because of establishments such as Unk's who wanted to operate as a restaurant with less than 51% food sales and provide entertainment for a fee. It's a permitted use in the CG, CH and all of the industrial districts and it's a special use, which requires a special use permit from the Board of Adjustment, in the MS, MO, MCG, MCH, OR, CD, CDF and the CN district which is the subject of tonight's hearing, the Neighborhood Commercial zoning district. What a Dining and Entertainment establishment allows: it allows for a cover charge; it allows for a reduction of food sales to 30%, a restaurant requires 51% food sales; it is allowed as a permitted and special use, as I just stated; it's subject to specific criteria or special standards, specific criteria if is a special use or special standards

if it's a permitted use, which are roughly the same thing. Part of those specific criteria or special standards: it requires a parking plan, a lighting plan, outside security, maximum size and separation in the CN district, and it's also limited to specific hours of operation for Amplified Audio Entertainment only, not just when the business can operate but when they can provide the amplified audio entertainment. Other uses in our zoning ordinance that allow for food and beverage sales: fast food restaurants, conventional restaurants and some public/private clubs also provide food sales and they definitely provide beverage sales. Restaurants cannot charge a cover so that's one major difference and as I stated before, restaurants must have greater than 50% food sales and they are also allowed as permitted and special uses in different zoning districts. Public/private clubs can charge a cover. They are allowed as special uses only so every public/private club that opens in this city now is subject to a special use permit from the Board of Adjustment and they are also subject to specific criteria. So a dining and entertainment establishment is kind of a hybrid between a restaurant and a public/private club. I'm going to go over the special use permit specific criteria. The first five basically mimic the criteria for a public/private club. There's a revocation clause for noncompliance with standards and conditions. There's an annual staff review report requirement just as we do for public/private clubs it'd be required for dining and entertainment establishments also on a yearly basis. There's rehearing procedures as you've just gone through here tonight for the public/private club. There's trash and litter disposal requirements and then there's a business transfer notice requirement. Some of the different things that are additional is a cover charge without date/time limitations. There are date/time limitations for amplified audio entertainment which a public/private club can provide amplified audio entertainment at any time. There's a minimum food sales requirement of thirty percent. A public/private club would not require thirty percent food sales and a restaurant would require fifty-one percent. There's a one year food sales records retention requirement so that staff could inspect the facility and determine or not whether they are in compliance with the thirty percent food sales requirement. As I stated before it requires an exterior lighting plan, a parking plan requirement, and it's basically one space for every fifty square feet of activity area within the club that's accessible by the patrons not the storage area but just the area accessible by the patrons minus the bathrooms. In the CN district specifically there's a maximum size limitation for the establishment and that's 7,000 square feet of mechanical conditioned floor area. There's a spacing requirement in the CN district which would be 200 feet between dining and entertainment establishments as measured from the nearest lot line. There's also an outside security requirement when located within 500 feet of a residential zoning district and providing amplified audio entertainment after eleven pm so that would be the only time the outside security would be required – within 500 feet of a residential zoning district and they're also providing audio entertainment after eleven pm at night. I'll explain to you what staff considers amplified audio entertainment and what's contained in the ordinance. This is taken from the ordinance. It says 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 a low amplification and not intended as a principal form of entertainment or background music typically associated with a restaurant shall not be deemed amplified audio entertainment. Amplified audio entertainment may take place; there are specific times when it may take place. From eleven am to eleven pm Sunday thru Thursday and from eleven am to two am Friday and Saturday and one exception would be New Year's Eve is also a time when amplified audio entertainment could take place from eleven am to two am. It's important to note that food sales may only be

suspended one hour prior to ending of the amplified audio entertainment. If you're going to provide audio entertainment to eleven o'clock at night, you can't suspend your food sales until ten. If you're going to provide it until 2, you can't suspend your food sales until one o'clock so that prevents it from operating just as a public/private club. It has to continue to operate as a restaurant as well to within one hour of the ending of the amplified audio entertainment. Outside Security Requirement: applies to all dining and entertainment establishments that are located within 500 feet of a residential zoning district when the establishment provides or utilizes amplified audio entertainment after 11:00 PM on any day (Friday, Saturday and New Years Eve). This is designed to minimize secondary impacts, such as noisy patrons in the parking lot, when the establishment is open late hours. Outside security is based on the maximum occupancy of the establishment. If the occupancy is less than 50 persons then no outside security officer is required. If the occupancy is 50 to 199 persons, one (1) outside security officer is required. For 200 or more persons, two (2) outside security officers are required. Qualified security personnel shall be either uniformed off-duty law enforcement officers, or uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes. The security personnel are to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period from 11:00 PM 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 be visible outside the establishment, and shall be accessible to law enforcement officers at all times. Regulated Outdoor Activities: The definition of "outdoor activities" has been amended to include amplified outdoor audio sound. If a restaurant or dining and entertainment establishment wishes to utilize outdoor audio sound, and the establishment is located within 300 feet of a residential zoning district, special use permit approval of the board of adjustment will be required in advance for such accessory outdoor audio sound or other regulated outdoor activity. Special Standards: Ordinance imposed criteria for those cases where a dining and entertainment establishment is a permitted use and is not subject to approval of the board of adjustment – includes all criteria except those concerning special use permit review and approval.

Mr. Hutchens asked how many areas in Greenville the ordinance would apply to.

Mr. Dail said he knew of one other facility that would need to apply, but probably several would potentially apply.

Mr. Dail delineated the area on the map. He stated the property is zoned CN. The use is located between two minor thoroughfares, being East First Street and East Fifth Street and close to a major thoroughfare, being Reade Street.

Surrounding Zoning:

North: CN (Neighborhood Commercial) & R6S (Residential Single-Family)

South: CN (Neighborhood Commercial)

East: R6S (Residential Single-Family)

West: R6S (Residential Single-Family)

Surrounding Development:

North: Single Family Residential, Multi-Family (Market Place Villas)

South: Jarvis St. Laundromat, City Market, Parking

East: Single Family Residential, Multi-Family (Triplex)

West: Single Family Residential

Description of Property:

The subject property contains a 6,887 square foot commercial building and has a parking area directly across S. Jarvis Street. The property has approximately 84 feet of frontage along S. Jarvis Street and 255 feet of frontage along Second Street with a total lot area of 0.40 acres.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on May 14, 2009. Notice of the public hearing was published in the Daily Reflector on May 18th and May 25th of 2009.

Staff Comments

Definition (Sec. 9-4-22)

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 thirty (30) percent of the total gross receipts for such establishment during any month. 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: (i) food prepared in the establishment's kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. 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: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) 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. A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for such 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 of North Carolina;

- (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 (1) but not both of the following operational functions or characteristics:
 - (a) Drive thru service.
 - (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, etc., 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 premise 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-premise food consumption services may be suspended at the option of the owner/operator not less than one (1) 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 AM (midnight) complete restaurant services including regular menu food ordering, food preparation and on-premise food consumption shall be provided until not less than 11 :00 PM 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 (Sec. 9-4-86)

(f)1. 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 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 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 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 non-compliance with applicable laws, codes, and ordinances including, but not limited to, noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (4) below shall be provided notice of the meeting and a copy of the staff report.

(d) Based on the staff report, the board of adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit. An order for a rehearing shall be based upon a determination by the board of adjustment that either (i) the use of the property is inconsistent with the approved application, (ii) the use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code, (iii) the use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard, or (iv) the use is not compliant with any additional conditions of approval established by the board and set out in the order granting the permit. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the board of adjustment may grant a special use permit with conditions imposed pursuant to this subsection (f)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 AM each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public right-of-ways or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a 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 (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 acknowledgement of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgement shall be made on forms provided by the planning office.

- (5) 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 (8) below, dining and entertainment establishments shall not have amplified audio entertainment after 11:00 PM each Monday, Tuesday, Wednesday, and Thursday night and before 11:00 AM 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 (8) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 AM each Friday and Saturday night and before 11:00 AM of the next day, and shall not have amplified audio entertainment after 11:00 PM each Sunday night and before 11:00 AM 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) Special period of operation. The allowable period of amplified audio entertainment may be extended, at the option of the owner/operator, from the times specified under subsections (6) and (7) above to not later than 2:00 AM and before 11:00 AM of the next day on the following day: December 31st (New Years Eve).
- (9) Shall have sales of prepared and/or packaged foods, in a ready to consume state, in excess of thirty (30) percent of the total gross receipts for such establishment during any month. 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: (i) food prepared in the establishment’s kitchen and served as a meal to be consumed on the premises or as a take-out order, (ii) packaged food sold to accompany the meal, and (iii) non-alcoholic beverages sold to accompany the meal. 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: (i) mixed alcoholic beverages, including the mixer, (ii) any other alcoholic beverage, (iii) grocery items not ordered and purchased with meals, and (iv) 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. A membership, cover, or minimum charge for admittance or service shall not be included in either the total gross receipts for such 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, 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 (1) 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 such 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 (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 such 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, Parking, 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(2) 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 two-hundred (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 (i) is located within five-hundred (500) foot radius, including street right-of-ways, 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 (ii) such establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 PM on any day, such 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 (1) uniformed off-duty law enforcement officer, or not less than one (1) uniformed security guard provided by a security guard and control profession licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 PM 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 (2) uniformed off-duty law enforcement officers, or not less than two (2) uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 PM 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: RA20, R6MH, R6, R6A, R6A-RU, R6N, R6S, R9, R9S, R15S, PUD, MR, and MRS. (Ord. No. 09-27, § 7, 4-9-08)

Additional Information:

Maximum Size Limit

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.

Unk’s contains 6,887 square foot of mechanically conditioned floor area and is under the maximum size limit.

Separation

No dining and entertainment establishment located in a CN (neighborhood commercial) district shall be located within a two-hundred (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.

Currently there are no other dining and entertainment establishments within 200 feet of Unk’s. (Unk’s is located 243 feet from Christy’s Euro Pub which is a potential future dining and entertainment establishment).

Parking

A dining and entertainment establishment has a parking requirement of 1 space for every 50 square feet of activity area including any dining area, hallway, foyer, dance floor, bar and other area accessible by the patrons of the establishment.

The activity area for Unk's noted on their site plan is 4,049 square feet. This amount of square feet equates to a requirement of 81 parking spaces. The applicant has access to 114 parking spaces.

Lighting

The applicant has included the required lighting plan on their site plan.

Security

Security requirements are based on the distance to the nearest residential zoning district and approved occupancy of the establishment. Unk's is located within 500 feet of a residential zoning district and has an approved occupancy of over 200 therefore they must follow the requirement 15(b) of the specific criteria. The requirement reads as follows:

"shall employ not less than two (2) uniformed off-duty law enforcement officers, or not less than two (2) uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of Chapter 74C of the North Carolina General Statutes, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 PM 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."

Other Comments:

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

Staff Recommendation:

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

Attorney Phil Dixon spoke in favor of the request on behalf of the applicant. Mr. Dixon gave a summary of the incidents that led up to the application of the special use permit. He stated he and Mr. Spengeman had worked with city staff to create an ordinance that would work for an establishment like Unk's. Mr. Dixon stated Unk's had a one year contract with the Sheriff's department to provide security, direct traffic, and monitor conduct.

Mr. Jeremy Spengeman spoke on behalf of his request. He said the ordinance was drafted by city staff at the direction of City Council after receiving input from himself as well as those in opposition to his request. Mr.

Spengeman stated he complied with all of the conditions and the criteria in the ordinance as well as the Findings of Fact.

Ms. Inez Fridley spoke in opposition to the request on behalf of the Board of Directors of the TRUNA. Ms. Fridley said their neighborhood was not the place for this establishment. She stated there were only 114 parking spaces for the entire area with 81 required for Unk's. She said even though they have agreements with adjacent businesses for parking, they only actually have 18 spaces that are actually theirs. She said they have concerns with the lighting as well. Ms. Fridley stated they also had concerns with health and safety with the potential of 300 people leaving the establishment at either 11pm or 2am in the morning. She said the Greenville Police Department had had numerous calls for services to Unk's. Ms. Fridley requested the Board of Adjustment deny the request for the special use permit. She said should they choose to grant the request, she asked that they review the permit in 6 months, rather than 1 year and obtain a complete record of all calls to their address from the police department. She said she was concerned as well that the contract for security was with the Sheriff's office rather than the Greenville Police Department. She felt the police department was more aware of what goes on with the establishment and was better suited for the job. She also asked that specific information be provided for all lighting of the entire property before a special use permit is issued.

Mr. Hutchens asked Ms. Fridley if she had any evidence that parking had been an issue in the past.

Ms. Fridley stated she didn't have specific evidence but thought it could potentially be an issue.

Mr. Hutchens asked if she had any evidence of a nuisance or hazard in the past.

Ms. Fridley said the police report was evidence to that.

Mr. Shook asked why she cited the time frame of 2006-2008.

Ms. Fridley stated that was about the time that Mr. Spengeman had run the business.

Ms. Safford-White talked about the calls for service. She said the incidents may not have taken place at Unk's and just because the specific street address was for Unk's it didn't mean the incident occurred there.

No one else spoke in opposition to the request.

Mr. Dixon spoke in favor in rebuttal. He stated Unk's had the right to contact anyone they wanted to for security. He said he had met with TRUNA several times and had never seen any of the data on the police reports. Mr. Dixon said you cannot assert that Unk's is responsible for anything that happens in the vicinity of there. Mr. Dixon stated they had invited the board of TRUNA to come to Unk's and have dinner free of charge, and they didn't accept the offer.

Chairman Wubneh asked for staff's recommendation.

Mr. Dail stated staff had no objections to the request.

Chairman Wubneh asked if the city used the police reports when giving the annual report at the end of the year.

Mr. Dail said they did. He said any dining and entertainment establishment would be subject to the same review that public and private clubs are subject to that operate pursuant to a special use permit. He said the next review would start in December and would be reported to the board in February, allowing about a seven month review period before the next review would occur.

Chairman Wubneh closed the public hearing and called for board discussion.

Ms. Bellis stated it might be appropriate to ask for a six month review since there had been a lot of discussion about it.

Chairman Wubneh asked if she was requesting that be a condition.

Ms. Bellis said she was.

Ms. Harrington asked if that was necessary since there would be a seven month anyway.

Chairman Wubneh said Mr. Dail said they would be getting a report in seven months.

Ms. Bellis asked if that counted as the one year.

Mr. Dail said it would be on the same schedule of the report they already do to keep from having to do two separate reports.

Ms. Safford-White told the board that only one club was brought back from the last report and Unk's was on that list as well, so they had no problem with what they saw for Unk's on the last report.

Mr. Hutchens stated Ms. Fridley had made a good point and that such an establishment would never be appropriate in a neighborhood; however, he felt the neighborhood was not a typical single family neighborhood. He was concerned with it setting a precedent for other neighborhoods.

Chairman Wubneh stated that was covered when City Council adopted the ordinance.

Mr. Dail stated he was not aware of any other neighborhood commercial zoning that is located within a neighborhood as this one.

Mr. Little stated Council had established an ordinance and said if an applicant can meet the conditions set forth in the ordinance for a special use permit then the permit would be granted.

Chairman Wubneh asked why there was no reference to traffic in the criteria, given the nature of the road.

Mr. Dail stated traffic did not seem to be a significant problem in the development of the ordinance.

Motion was made by Mr. Shook, seconded by Ms. Harrington to approve the Findings of Fact. Motion carried unanimously.

Motion was made by Ms. Safford-White, seconded by Mr. Shook to approve the petition. Motion carried unanimously.

Based on the facts found by the Board and the evidence presented, the Board orders that this permit be granted and subject to full compliance with all of the specific requirements stated in the Zoning Ordinance of the City of Greenville for the proposed use.

With no further discussion, the meeting adjourned at 10p.m.

Respectfully Submitted

Michael R. Dail, II
Planner