

September 24, 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 *
Wanda Harrington *	John Hutchens*
Scott Shook X	Charles Ward *
Renee Safford-White *	Linda Rich *
Susan Bailey X	

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

VOTING MEMBERS: Wubneh, Bellis, Harrington, Hutchens, Ward, 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

MINUTES

Motion was made by Mr. Ward, seconded by Mr. Ewen (at this time, Ms. Safford-White nor Mr. Hutchens had arrived, so Mr. Ewen could vote) to accept July 23, 2009 minutes as presented. Motion carried unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY MELINDA WHITLEY

The applicant, Melinda Whitley, desires a special use permit to operate a home occupation (child day care) pursuant to Section 9-4-78(f)(3)a. of the Greenville City Code. The proposed use is located at 1233 SW Greenville Blvd. The property is further identified as being tax parcel number 14648.

Ms. Radcliff swore in all those wishing to speak for or against the case.

Mr. Dail delineated the area on the map. He said the property is zoned RA20 (Residential-Agricultural). The property is located along a major thoroughfare, being Southwest Greenville Boulevard.

Surrounding Zoning:

North: R6 (Residential) & RA20 (Residential-Agricultural)

South: RA20 (Residential-Agricultural)

East: RA20 (Residential-Agricultural)

West: RA20 (Residential-Agricultural)

Surrounding Development:

North: Brasswood Apartments, Single Family Residences

South: Single Family Residences
East: Single Family Residences
West: Single Family Residences

Description of Property:

The property contains a 1,100 square foot single family dwelling and has approximately 98 feet of frontage along SW Greenville Boulevard with a total lot area of 0.5 acres.

Comprehensive Plan:

The property is located within Vision Area “E” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends office/institutional/multi-family development for the subject property. The property contains a single family dwelling and a home occupation is considered an accessory use to a single-family dwelling.

Notice:

Notice was mailed to the adjoining property owners on September 10, 2009. Notice of the public hearing was published in the Daily Reflector on September 14, 2009 and September 21, 2009.

Staff Comments:

If approved, the applicant shall comply with the following pursuant to Section 9-4-86(v), Specific Criteria:

- (1) Except as otherwise provided, all home occupations shall comply with all of the following standards.
 - a. Shall only be permitted within single family dwelling units;
 - b. Shall not be permitted within any detached accessory structure or building;
 - c. Shall constitute an accessory use to the principal use;
 - d. Shall not occupy more than twenty (20) percent of the mechanically conditioned enclosed floor space of the dwelling unit;
 - e. Shall not employ more than one (1) person other than those persons legally residing within the principal use dwelling;
 - f. Shall not be visible from any public right-of-way or adjacent property line;
 - g. Shall not involve the on-site sales of products;
 - h. Shall not involve any outside storage of related materials, parts or supplies;
 - i. Shall have signage in accordance with Article N, Signs; and
 - j. Shall not create any hazard or nuisance to the occupants residing or working within the principal use dwelling or to area residents or properties.

Staff Recommended Conditions in Addition to 9-4-86(v):

Day care must comply with all state licensing requirements and regulations for home based child day care facilities.

Applicant may provide service for up to five (5) children.

An outdoor play area shall be provided at a ratio of not less than one hundred (100) square feet per child and shall be enclosed by a fence at least four (4) feet in height.

Three parking spaces must be provided and parking area must be improved to meet city standards before operation of home occupation.

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.

Ms. Bellis asked if the three recommended parking spaces would give adequate turn-around space so they don't have to back out into the highway.

Chris Kelly, Engineering Assistant with the Public Works Department, said he had visited the site and the owner would need to contact them to discuss parking and turn-around, but their appeared to be adequate space.

Melinda Whitley, applicant, spoke on behalf of her request.

No one spoke in opposition to the request.

Dr. Wubneh asked for staff's recommendation.

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

Dr. Wubneh read the finding of facts.

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

Motion was made by Ms. Harrington, seconded by Ms. Rich to approve the petition with the conditions. 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.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY PAIGE HEATH

The applicant, Paige Heath, desires a special use permit to operate a home occupation; not otherwise listed (dog grooming) pursuant to Section 9-4-78(f)(3)a. of the Greenville City Code. The proposed use is located at 990 Davenport Farm Road. The property is further identified as being tax parcel number 11260.

Ms. Radcliff swore in all those wishing to speak for or against the case.

Mr. Dail delineated the area on the map. He said the property is zoned RA20 (Residential-Agricultural). The property is located along a minor thoroughfare, being Davenport Farm Road and close to another minor thoroughfare, being Frog Level Road.

Surrounding Zoning:

North: R6A (Residential)

South: CN (Neighborhood Commercial, O (Office) & R9S (Residential-Single Family)

East: RA20 (Residential-Agricultural) & R6S (Residential-Single Family)

West: O (Office) & CN (Neighborhood Commercial)

Surrounding Development:

North: Duplexes (Augusta Trails)

South: Single Family Residences, Vacant

East: Single Family Residences

West: Vacant

Description of Property:

The property contains a 2,120 square foot single family dwelling with a detached garage and has approximately 165 feet of frontage along Davenport Farm Road with a total lot area of 1.86 acres.

Comprehensive Plan:

The property is located within Vision Area "E" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends medium density residential development for the subject property. The property contains a single family dwelling and a home occupation is considered an accessory use to a single-family dwelling.

Notice:

Notice was mailed to the adjoining property owners on September 10, 2009. Notice of the public hearing was published in the Daily Reflector on September 14 and September 21, 2009.

Staff Comments:

If approved, the applicant shall comply with the following pursuant to Section 9-4-86(v), Specific Criteria:

(1) Except as otherwise provided, all home occupations shall comply with all of the following standards.

- a. Shall only be permitted within single family dwelling units;
- b. Shall not be permitted within any detached accessory structure or building;
- c. Shall constitute an accessory use to the principal use;
- d. Shall not occupy more than twenty (20) percent of the mechanically conditioned enclosed floor space of the dwelling unit;
- e. Shall not employ more than one (1) person other than those persons legally residing within the principal use dwelling;
- f. Shall not be visible from any public right-of-way or adjacent property line;
- g. Shall not involve the on-site sales of products;

- h. Shall not involve any outside storage of related materials, parts or supplies;
- i. Shall have signage in accordance with Article N, Signs; and
- j. Shall not create any hazard or nuisance to the occupants residing or working within the principal use dwelling or to area residents or properties.

Staff Recommended Conditions in Addition to 9-4-86(v):

Applicant may provide service for up to one dog in addition to the standard residential allowance of three dogs

No overnight boarding of animals is permitted.

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.

Paige Heath spoke on behalf of her request.

Ms. Bellis stated under one of the criteria it said “selective boarding for established clientele” and one of the conditions was no overnight boarding.

Ms. Heath said some clients would drop their pet off in the morning and pick it up in the afternoon and that was the only boarding she would be doing at this time.

No one spoke in opposition to the request.

Dr. Wubneh asked for staff’s recommendation.

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

Dr. Wubneh read the finding of facts.

Motion was made by Ms. Safford-White, seconded by Mr. Hutchens to approve the Findings of Fact. Motion carried unanimously.

Motion was made by Mr. Ward, seconded by Ms. Harrington to approve the petition with the conditions. 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.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY KT PUB, LLC (CHRISTY 'S EURO PUB)

The applicant, KT Pub, LLC (Christy's Euro Pub), desires a special use permit to operate a dining and entertainment establishment with regulated outdoor activities pursuant to Sections 9-4-78(f)(6)m.(1) and 9-4-78(f)(10)j. of the Greenville City Code. The proposed use is located at 301 S. Jarvis Street. The property is further identified as being tax parcel number 18593.

Ms. Radcliff swore in all those wishing to speak for or against the case.

Mr. Mike Dail delineated the area on the map. He said the property is zoned CN, Neighborhood Commercial. The property is located near several minor thoroughfares, being East First Street and East Fifth Street, and near a major thoroughfare, being Reade Street.

Surrounding Zoning:

North: CN (Neighborhood Commercial)
South: R6S (Residential Single-Family)
East: R6S (Residential Single-Family)
West: R6S (Residential Single-Family)

Surrounding Development:

North: City Market, Unks and associated parking areas
South: Single Family Residences
East: Single Family Residences
West: Single Family Residences

Description of Property:

The subject property contains a 1,466 square foot commercial building with an additional 360 square foot patio area. The property has approximately 84 feet of frontage along S. Jarvis Street and 83 feet of frontage along Third Street with a total lot area of 0.17 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 September 10, 2009. Notice of the public hearing was published in the Daily Reflector on September 14 and 21, 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-

Definition (Sec. 9-4-22)

Restaurant and/or dining and entertainment establishment; outdoor activities. A principal and/or accessory use associated with or utilized in conjunction with a conventional or fast food restaurant or a dining and entertainment establishment which is intended for the temporary or permanent conduct of activities relative to the sale, transfer or enjoyment of products and/or services to persons located on the business premises and which is open and unenclosed on one (1) or more sides or which is without a complete roof structure. For purposes of this section, all areas not constituting “mechanically conditioned area” as determined by the building inspector shall be considered open and unenclosed. Additionally, fences and/or wire or plastic mesh screens shall be considered open and unenclosed for purposes of this section. Use of any amplified outdoor audio sound system including loud speakers, audio speakers or other electronic or mechanical sound transmission devices shall be considered as an “outdoor activity” for purposes of this definition.

Restaurant; and/or dining and entertainment establishment; regulated outdoor activities. Any “restaurant and/or dining and entertainment establishment; outdoor activity”, as defined herein, which is located within three hundred (300) feet, as measured to the closest point, of any residential district, excepting CDF, which allows single-family dwellings as a permitted use.

Current Special Use Permit Information:

Christy’s Euro Pub has a 360 square foot patio area that is utilized for outdoor dining. Christy’s received a special use permit for regulated outdoor activities in April of 2002. The following conditions were placed on the special use permit by the Board at that time:

- (1) The Permittee shall ensure that the outdoor dining area contains no greater than nine (9) seats and no greater than nine (9) persons, other than employees of the Permittee, at any time.
- (2) The Permittee shall ensure that no persons, other than employees of the Permittee, are within the outside dining area between sunset and sunrise.
- (3) The Permittee shall remove all tables and chairs from the outside dining area no later than sunset so that no tables and chairs are within the outside dining area between sunset and sunrise.
- (4) The Permittee shall not allow any amplified sound or music outside the establishment at any time and shall comply with all provisions of the Noise Ordinance of the Greenville City Code.
- (5) The Permittee shall install curb stops at each parking space within the parking lot.
- (6) The Permittee shall install a continuous, opaque fence constructed of brick or wood of at least six and one-half foot in height along the shared property line with the adjacent property to the south currently owned by Jarvis J. Mills and wife Darlis B. Mills and as described in Deed Book R-46, at

Page 284, Pitt County Registry, said fence to extend from the right-of-way of Jarvis Street to the existing walled area south of the existing one story brick building.

- (7) The Permittee shall install continuous concrete curb stops between the outside dining area and any parking area so that a barrier with no gaps is established between the outside dining area and the parking.
- (8) The Permittee shall notify each residential property owner of property located within 500 feet of the property of the establishment, of the name and phone number of a contact person for the establishment which shall be working at all times the establishment is in operation. The contact person shall immediately respond to the complaints/concerns of the residents.
- (9) That operation of the outside dining area shall cease and the special use permit shall be deemed suspended until the Board of Adjustment determines whether to rescind and revoke the special use permit in accordance with the provisions of Section 9-4-83 of the Greenville City Code, in the event the zoning enforcement officer determines that any provision or condition of the special use permit is not complied with. The suspension shall not be effective until 48 hours after notice of the determination is given to the Permittee and the Permittee shall have an opportunity to be heard by the zoning enforcement officer prior to the expiration of said 48 hours, if requested by the Permittee. Notice is deemed given to the Permittee upon delivery of a copy of the notice to the Permittee or 3 days after the notice is deposited in the United States mail in an envelope addressed to the Permittee with adequate postage thereon. The determination of the zoning enforcement officer shall be final until the Board of Adjustment determines whether to rescind and revoke the special use permit.

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.

Christy's Euro Pub contains 1,466 square feet 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.

The closest dining and entertainment establishment is Unk's, which is located 243 feet from Christy's Euro Pub.

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 as noted on their site plan is 860 square feet. Christy's Euro Pub's parking requirement is 17 spaces.

The applicants have fifteen parking spaces on their principal site and have a parking agreement with the owner's of the parking lot across the street giving them permission to utilize their parking lot for two additional spots.

Lighting

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

Security

Security is required when a dining and entertainment establishment is located within 500 feet of a residential zoning district and has an approved occupancy of over 50. Christy's Euro Pub is adjacent to a residential zoning district however their approved occupancy is 50, therefore Christy's Euro Pub is not required to provide security.

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.

Ms. Bellis asked if Christy's occupancy was currently 50.

Mr. Dail said it was.

Ms. Bellis asked if that included employees.

Mr. Dail said it did.

Mr. Ward asked if they could have amplified music.

Mr. Dail said as part of a dining and entertainment establishment you could have audio amplified entertainment on Friday and Saturday night after 11pm until 2am, but you also have to serve food to within one hour of closing.

Dr. Wubneh asked what the permit was for that was issued in 2002.

Mr. Dail said they were operating as a restaurant at that time and came in to get a special use permit to have outdoor dining. He said the special use permit was required because it was located within 300 feet of a residential zoning district.

Ms. Bellis asked if the same conditions would still be in effect.

Mr. Little said those conditions would continue; however, the board could modify, remove or add to those conditions.

Attorney Jeremy King spoke on behalf of the applicant. Mr. King said this was an existing restaurant that has been in existence since 2001. He said they were not asking to change the use or any aspect of their operations. He said his clients were longtime employees of Christy's Euro Pub that purchased the business earlier in the year. He said the availability of the special use permit for a dining and entertainment establishment is what allowed his clients to move forward and purchase the business. He said his clients did want to continue the porch dining and would like to revisit some of the conditions that were placed on that permit. He said they would prefer a less restrictive permit regarding outdoor dining.

Ms. Bellis wanted to clarify whether or not they had amplified music.

Mr. King said they do not currently have or plan to have amplified music, except on Saint Patrick's Day.

Ms. Bellis asked if they would be willing to have that as a stated condition.

Mr. King said he would have to discuss that with his client but didn't think they would have a problem with that.

Mr. Hutchens asked which of the original conditions they wanted to revisit.

Mr. King said they would like to have more than 9 seats on the patio, which is condition 1. Also, condition 2 that states no one is to be on the patio from sunset to sunrise caused some concern. He said number 3 was okay except for the sunset clause. All others were okay.

Tandi Mahn spoke on behalf of her application. She stated she had been working at Christy's for about two and a half years before she bought it. She said her partner, Kristina Williams, had been there for about 5 years and a few months. She said they purchased the pub on May 20th and was thankful for the opportunity to apply for the dining and entertainment establishment special use permit. She said they would do whatever they could to be in compliance.

Ms. Bellis asked Ms. Mahn if she had any idea of the number of people she would like to have for outside dining.

Ms. Mahn said she would like to have at least 15 seats available and up to 25 if possible.

Mr. Little said Inspections would have to set the occupancy for the patio. He said the board could set the condition to say the maximum number allowed by the building code as set by the Inspections Department.

Ms. Bellis asked what Ms. Mahn would suggest as a reasonable time to end outside dining.

Ms. Mahn said 10pm was when they did a menu change so that might be a good time.

Mr. King said they would like to have people on the patio until the establishment closes.

Mr. Ewen said he had concern with the noise on the patio carrying on later in the evening.

Mr. King said they didn't get a lot of noise complaints for their location.

Mr. Ewen suggested they stop serving the patio at 10pm and look at the application again in a year to see how that works.

Ms. Bellis asked how this would affect the occupancy limit.

Ms. Mahn said when they got their business license from the city the building inspector came through and there was no occupancy at that time. The building inspector said the occupancy for the inside of the building was 50 and the occupancy for the patio was separate. They had to install an emergency exit on the patio to comply with the occupancy level.

Ms. Bellis said that a higher occupancy could require them to hire security officers.

Mr. Dail said the security requirement was only in effect when they provide audio amplified entertainment if they had a higher occupancy.

Ms. Safford-White asked about the parking spaces provided. She asked if Unk's was using the same parking lot and they were operating at the same time, would there still be enough spaces for both.

Mr. Little said there was additional space in the lot that could be used when needed.

Dr. Wubneh asked about revising the conditions that were on the original permit.

Mr. Little said applicants have amended their application to include the terms and conditions from the 2002 special use permit as modified.

Mr. John Darrow spoke in favor of the application.

Mr. Carol Vann spoke in favor of the application.

Mr. Clifton Bryant spoke in favor of the application.

No one spoke in opposition.

Dr. Wubneh asked for staff's recommendation.

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

Dr. Wubneh read the finding of facts.

Motion was made by Ms. Bellis, seconded by Ms. Safford-White to approve the Findings of Fact with the amended application stating the maximum allowed on the patio will be no greater than the maximum occupancy set by the Inspections Department, and nothing will be served on the patio after 10pm. Motion carried unanimously.

Motion was made by Ms. Harrington, seconded by Mr. Ward to approve the petition with the following additional conditions: In addition to the general requirements, the applicant would be permitted to increase the number of persons on the outdoor dining facility to the maximum number permitted under the building code and as approved by the Inspections Department of the City of Greenville; the applicant would be permitted to use the outdoor dining facility patio and serve food and beverages up until 10pm, at which time all serving would cease; and the applicant will not permit amplified sound on the outdoor dining area. 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.

ELECTION OF CHAIR AND VICE CHAIR

Mr. Hutchens made a motion to keep the officers the same. Ms. Rich seconded. Motion carried unanimously.

With no further discussion, motion was made and properly seconded to adjourn at 8:10p.m.

Respectfully Submitted

Michael R. Dail, II
Planner