

February 28, 2008

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

Dr. Mulatu Wubneh, Chairman	
Mrs. Ann Bellis	Mr. John Hutchens
Mr. Charles Ward	Mrs. Renee Safford-White
Mr. Scott Shook	Mr. Thomas Harwell
Mr. Charles Ewen	

VOTING MEMBERS: Wubneh, Bellis, Hutchens, Ward, Safford-White, Shook and Harwell

OTHERS PRESENT:

- Mr. Wayne Harrison, Planner
- Mr. Mike Dail, Planner
- Mrs. Sarah Radcliff, Secretary
- Mrs. Gwen Turnage, Administrative Secretary
- Mr. Chris Kelly, Engineer
- Mr. Wayne Nottingham, Engineer
- Mr. Bill Little, Assistant City Attorney
- Mr. Calvin Mercer, Councilmember

### MINUTES

Chairman Wubneh asked if there were any corrections to the minutes. Motion was made by Mr. Harwell, seconded by Mr. Shook to accept the December 20, 2007 minutes as presented. Motion carried unanimously.

### ISSUANCE OF SPECIAL USE PERMIT REQUESTED BY SHEETZ, INC.

A special use permit was requested by Sheetz, Inc. to operate a gasoline sales facility having outdoor dining pursuant to Sections 9-4-78(f)(10)b and 9-4-78(f)(10)j of the Greenville City Code. The proposed use is located at 4300 East 10<sup>th</sup> Street. The property is further identified as being Tax Parcel Number 09797.

Assistant City Attorney Bill Little gave background on the Sheetz case for the board regarding issues that were brought up through the court hearing. See attached memorandum prepared by Mr. Little for additional information regarding the court case. Attorney Little stated that the Board of Adjustment was directed by order of the court to issue the special use permit with the following conditions: no amplified music outside of the convenience restaurant, at the gasoline pumps or the outdoor dining area and all outdoor lighting would be directional to avoid spillover onto adjoining properties. Motion was made by Charles Ward and seconded by Ann Bellis. 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 OUTCASTS, INC. – GRANTED WITH CONDITIONS

Chairman Wubneh stated that the first item of new business is a request by the applicant, Outcasts, Inc., for a special use permit to operate a public or private club pursuant to Sections 9-4-78(f)(6)m and 9-4-86(f) of the Greenville City Code. The proposed use is located at 2601 E. 10<sup>th</sup> Street. The property is further identified as being Tax Parcel Number 23381.

Chairman Wubneh then directed all who wished to speak for or against the case to come forward and be sworn in.

Mr. Dail stated that the applicant Outcasts, Inc. was applying for a special use permit to operate a public/private club. Mr. Dail delineated the area on the map. He stated the property is zoned as CG, General Commercial and gave the zoning and land use of the surrounding development. The land map recommends commercial for this property and the proposed use type is in compliance with the land use plan. The property is located in Vision Area “I” of the Comprehensive Plan. The property is located on a major thoroughfare being East 10<sup>th</sup> Street.

Applicant: Outcasts, Inc.

Request: The applicant, Outcasts, Inc., desires a special use permit to operate a public or private club pursuant to Sections 9-4-78(f)(6)m and 9-4-86(f) of the Greenville City Code.

Location: The proposed use is located at 2601 E. 10<sup>th</sup> Street. The property is further identified as being Tax Parcel Number 23381.

Zoning of Property: CG (General Commercial)

Surrounding Development:

Zoning:

North: Village Green Apartments

OR (Office Residential)

South: China 10 & Carraway Office Solutions

CG (General Commercial)

East: Village Green Apartments

CG (General Commercial)

West: The Wash House

OR (Office Residential)

Description of Property:

The property has approximately 132 feet of frontage along 10<sup>th</sup> street and 200 feet of frontage along Heath Street. The total lot area is 0.59 acres and the total heated square feet of the building is 1,930.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on February 14, 2008. Notice of The public hearing was published in the Daily Reflector on February 18, 2008 and February 25, 2008.

Staff Comments:

Definition of a *Public or Private Club* [zoning regulations]:

An establishment of which the principal use is entertainment and which:

1. May be open to the general public;
2. May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation;
3. May provide live or recorded amplified music;
4. May provide a floor show;
5. May provide a dance area;
6. May offer a full service bar;
7. May offer food services;
8. May provide food attendant (waiter/waitress) table ordering and busboy services; and
9. Does not qualify under the definition of “restaurant, fast food” or “restaurant, conventional” as contained herein.

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

- (1) (a) A special use permit for a public or private club 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 public or private club in accordance with the provisions of section 9-4-83.
- (b) An annual review shall be conducted by the director of planning or his authorized representative of a public or private club 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 planning 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 planning or his authorized representative shall present to the board of adjustment the staff report of a public or private club 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) 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 public or private club.
  
- (e) The requirements and standards set forth in this subsection (f)(11) 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 public or private club 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 public or private club shall comply with the provisions of Title 11, Chapter 9 of the City Code whether or not the establishment is a nightclub, bar or tavern.

- (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 public or private club, 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 planning 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) Any public or private club that has been issued a special use permit by the board of adjustment, that is subject to mandatory annual renewal, shall continue under the terms and conditions of the issued special use permit, until the expiration of said permit. All subsequent special use permit approvals for said location shall be subject to the specific criteria set forth under this subsection (f).

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

No amplified and/or non-amplified outdoor music allowed and no music audible on the outside from the inside of the establishment.

No outdoor activities permitted.

Other Comments:

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

The proposed project shall meet all related ABC regulations.

Site plan approval required.

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.

Mr. Harwell asked if they had requisite parking.

Mr. Dail stated they did and the capacity by the fire marshal was 45 and the applicants were proposing 43 seats. Mr. Dail stated he visited the site and there were 22 parking spaces available with one being a handicapped space. Only 17 spaces are required if used as a restaurant or 21 spaces if used as a public/private club, putting them over the threshold.

Mrs. Bellis asked Mr. Dail about buildings located on the photograph that were not on the drawing. She stated she did not believe the buildings were there anymore.

Mr. Dail stated that when he visited the site there was an accessory building on the rear property line backing up to Village Green Apartments on the North and the other two structures shown in the photograph were no longer there.

Mr. Harwell asked if the building met the setbacks.

Mr. Dail stated he did not know the answer to that question at the time.

Mr. Harwell then asked if it would be grandfathered if it didn't.

Mr. Dail stated that it would.

Mrs. Bellis asked for the distance measurement from the back of property to the closest apartment.

Mr. Dail stated that information was not available.

Chairman Wubneh asked if a sign would be allowed.

Mr. Dail stated a sign would be allowed and that it would follow under the signing regulations for that type of establishment.

Chairman Wubneh asked about trash clean up and Mr. Dail stated that it would be part of the criteria established in the zoning ordinance and would be bound to the special use permit if granted.

Chairman Wubneh asked the applicant to come forward. John Day came forward and stated he was a Commercial Real Estate Broker speaking on behalf of the property owner, John Van Coutren. Mr. Day gave a brief history of the property to the board to show that there were a lot of businesses going in and out of the location and the location did not seem to be suited for fine dining. Mr. Day stated that he knew of no problems associated with the property during the last 38 years. He stated that the application called for a combination restaurant and sports bar, which allows for a higher utilization of the property. Mr. Day stated this would give them more opportunities to generate revenue and stay in business longer. Mr. Day then referred to the application and addressed each item to show that they met all of the requirements. Mr. Day stated he had faced challenges in keeping a tenant in the property. The applicant is of significant financial stature that he can handle the time and expense of

renovating the property and getting the business going.

Mrs. Bellis asked if the proposed hours of operation from 10:00 am to 2:00 am were the same as previous uses.

Mr. Day stated the restaurants that previously occupied the area were generally open until 11 pm, so this would be a little longer than what had previously been there. Mr. Day also stated that the extra hours of operation would be a benefit to them and help them generate more income.

Mr. Shook asked the capacity of the building.

Mr. Day stated he believed the fire marshal had rated it for occupancy of 45 people.

Mr. Jeffrey Shrock introduced himself as a resident of Pitt County for the last 18 years. He stated he was previously employed by the city for 8 years as a police officer. He stated he was aware of nuisances and familiar with the area. He stated he had spent approximately \$30,000 renovating the interior of the building to make it suitable for this use. He stated his sole intent was to have a nice establishment and not adversely affect anyone or anything. He presented photos of the renovations he had made for the board to view.

Chairman Wubneh asked if anyone else wished to speak on behalf of the application. He then asked if anyone was opposed to the application.

Mr. Dail indicated staff had no objection to the application.

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

Mr. Ewen began discussion with comparison from a previous meeting where a club was approved with several conditions. He asked the board if the same conditions would be put on this club. Mr. Ewen asked if outside security would be appropriate for this club as it was with the last.

Chairman Wubneh asked if further discussion was necessary on that matter.

Mr. Hutchens stated he was concerned with creating a “strip of bars”.

Mr. Ewen asked if the application should be reviewed in 6 months verses 1 year, like the previous application.

Mr. Ward stated that several of the conditions that were put on the previous application were due to huge opposition from the community, which they did not have with this application.

Mrs. Bellis stated the occupancy for the previous application was over 250 and this was only 45.

Mr. Shook stated the issue of the “strip of bars” was noted in the zoning and that the Commercial

Development Zoning would limit that from happening.

Mr. Harwell asked what conditions were applied to the last application.

Mr. Day stated the previous facility was located in a shopping strip and that had something to do with the parking conditions on the previous approval. Previous approval had 6 month review due to the concern in the community.

Mr. Harwell asked if the permit was for a variance.

Chairman Wubneh stated that is was for a special use permit.

Mr. Harwell stated that the permit did not go with the land and it expires if a certificate of occupancy is not issued within 6 months.

Mr. Day and Chairman Wubneh both stated that was the case.

Chairman Wubneh stated he had found the conditions for the previous club and read them to the board. He then stated that those same conditions were already addressed for this application or they did not apply.

Chairman Wubneh read the criteria for granting/denying a special use permit. Chairman asked for motion to approve the findings of fact. Motion made by Mrs. Safford White and seconded by Mr. Ward. Motion carried unanimously.

Chairman Wubneh then asked for a motion to approve the petition. Motion was made by Mr. Shook, seconded by Mr. Harwell, 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.

**REQUEST FOR A SPECIAL USE PERMIT BY SYCAMORE CHAPEL MISSIONARY BAPTIST CHURCH – GRANTED**

Chairman Wubneh stated that the next item on the agenda is a public hearing on a request by Sycamore Chapel Missionary Baptist Church. The applicant, Sycamore Chapel Missionary Baptist Church, desires a special use permit to operate a child day care facility pursuant to Section 9-4-78(f)(8)a. and 9-4-86(e) of the Greenville City Code. The proposed use is located at 1610 Farmville Boulevard. The property is further identified as being Tax Parcel Number 26971.

Chairman Wubneh asked for all those wishing to speak for or against the application to come forward and be sworn.



Mr. Dail delineated the area on the map. Mr. Dail stated that the zoning of the property is CH, Heavy Commercial. To the North the property is zoned R6S, Residential-Single Family, to the South is Heavy Commercial, to the East is Heavy Commercial with some R6S zoning also. To the West is CH, Heavy Commercial. Surrounding land uses are Single Family Residential to the North, Hardee & Cox Welding Service to the South as well as some vacant property, to the East Greenville Stop Shop #2, a convenient store and also some Single Family Residential homes along Bancroft Avenue. To the West is Bojangles and Walgreen's Pharmacy. The property has approximately 370 foot of frontage along Farmville Boulevard and a total lot area of 2.59 acres. The property is located within Vision Area "G" as designated by the Comprehensive Plan. The proposed use type is in general compliance with the land use plan which recommends commercial development for this tract. The property is located on a major thoroughfare which is Farmville Boulevard and close to two other major thoroughfares being South Memorial Drive and Stantonsburg Road.

Applicant: Sycamore Chapel Missionary Baptist Church

Request: The applicant, Sycamore Chapel Missionary Baptist Church, desires a special use permit to operate a child day care facility pursuant to Section 9-4-78(f)(8)a. and 9-4-86(e) of the Greenville City Code.

Location: The proposed use is located at 1610 Farmville Boulevard. The property is further identified as being Tax Parcel Number 26971.

Zoning of Property: CH (Heavy Commercial)

Surrounding Development:

Zoning:

North: Single Family Residential

R6S (Residential-Single Family)

South: Hardee & Cox Welding Service

CH (Heavy Commercial)

East: Greenville Stop Shop #2 &  
Single Family Residential

CH (Heavy Commercial) &  
R6S (Residential-Single Family)

West: Bojangles

CH (Heavy Commercial)

Description of Property:

The property has approximately 370 foot of frontage along Farmville Boulevard and a total lot area of 2.59 acres.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on February 14, 2008. Notice of The public hearing was published in the Daily Reflector on February 18, 2008 and February 25, 2008.

Staff Comments:

Definitions[zoning regulations]:

*Day care; child.* An establishment which provides for the care and supervision of six (6) or more children away from their homes by persons other than their family members, custodians or guardians for periods not to exceed eighteen (18) hours within any twenty-four-hour period.

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

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

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.

Mr. Harwell asked if the residential lot in the back with parking should have been included in the yellow line. Mr. Dail stated it should have been included in the yellow line.

Mrs. Bellis asked where the 10th Street connector would be located. Wayne Nottingham from engineering stated it was on Farmville Boulevard.

Mr. Harwell stated there appeared to be a thoroughfare right-of-way on both sides of Farmville Boulevard on the map.

Mr. Nottingham stated that the right of way was very limited. Mr. Harwell asked if it was a 10 or 15 foot thoroughfare reservation. Mr. Nottingham stated no distance was on the map and it had not yet been determined.

Chairman Wubneh asked if the highway would affect this property, whether it was on the south side or the north side. Mr. Nottingham stated the traffic would be better for that area.

Ken Malpass came forward to represent the applicant. He stated the Philippi Church operated the location as a daycare for several years. He stated the MBL line was based off of the future thoroughfare, not the old.

Mr. Ward asked about the rush hour traffic to and from the hospital at 8 am and 5 pm. Mrs. Walston stated that they would open at 6:30 am and close at 6 pm, so most of the traffic would be over by that time.

Mrs. Safford-White asked how many would be at the daycare and the ages.

Mrs. Walston stated the projected capacity was 65 and they would be accepting children from six weeks to twelve years of age.

Chairman Wubneh asked if the current dimensions would be able to handle the capacity of 65 persons as far as parking and play area.

Mr. Dail stated the parking for the daycare was adequate. He also stated the area was adequate for 60 children. Chairman Wubneh stated that 60 children would be the limit for the daycare due to the size of the facility.

Chairman Wubneh asked if there was anyone else to speak in favor or opposition to the application.

Chairman Wubneh asked the position of the city.

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

Chairman Wubneh closed the public hearing and called for discussions from the board.

Chairman Wubneh then read the criteria in granting/denying a special use permit.

Motion was made by Mrs. Bellis, seconded by Mr. Ward, to approve the proposed findings of fact and evidence presented. Motion carried unanimously.

Motion was made by Mr. Hutchens, seconded by Mr. Harwell, to approve the request.  
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.

#### DISCUSSION OF ANNUAL TRAINING SESSION

Chairman Wubneh stated that he had presented the annual report of the board to the city council. He stated that the mayor and members of the city council were very appreciative of the work the board was doing.

Mr. Dail stated he had been asked to contact the Institute of Government to facilitate the annual training session for the board of adjustment. He stated that he would bring back available dates, depending on when the Institute of Government would be able to provide the training.

Suggestions were made to Mr. Dail to give to the Institute of Government for topics of discussion.

Mr. Dail stated he could be contacted by phone or email for further suggestions.

With no further discussion, the meeting adjourned at 8:20 pm.

Respectfully Submitted

Michael R. Dail, II  
Planner

TO: City of Greenville Board of Adjustment

FROM: Bill Little, Assistant City Attorney

DATE: January 28, 2008

SUBJECT: Application for Special Use Permit – Sheetz, Inc.

## MEMORANDUM

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1. On September 27, 2007, a public hearing was held on the application for a special use permit to be issued to Sheetz, Inc. to construct and operate a convenience restaurant with gasoline sales and limited outdoor dining. The facility was to be located at 4300 East 10<sup>th</sup> Street/NC Highway 33 East at the intersection with Portertown Road.
2. During the public hearing, Sheetz's representatives provided drawings and diagrams to show the setbacks, buffers and testimony of its engineers noting the compliance with the requirement so of the ordinance. No other persons spoke in favor of the application.
3. Dr. George Klein, as a representative of the Congregation Bayt Shalom Synagogue spoke in opposition to the application. Dr. Klein testified that the business would have a negative impact on their ability to conduct their religious activities, particularly as to the lights on all night. As noted, the synagogue was across the four lane highway and up from the location proposed by the applicant.
4. At the close of the hearing, the application was denied based on a 4-2 vote that the use would constitute a nuisance or hazard. A timely appeal was taken to the Superior Court, which sits as an appellate court to hear appeals from quasi-judicial boards and commissions such as the Board of Adjustment.
5. On January 22, 2008, a hearing was held on the appeal by Sheetz, Inc. After reviewing the written arguments of the parties and hearing the arguments of counsel, the court vacated and reversed the decision of the board of adjustment.
6. In its decision, the court restated this State's continued reliance on the decision in Woodhouse v. Board of Commissioners, in which the Court noted if the applicant satisfies the objective specific requirements of the ordinance, then, it has established a prima facie case that the applicant can receive the award and may be denied only if competent, material, substantial and admissible contra evidence is presented concerning the subjective general requirements – conditions and specifications, comprehensive plan, health and safety, detriment to public welfare,

existing uses detrimental, injury to property or improvements and nuisance or hazard.

7. The Superior Court found that Sheetz had satisfied the specific requirements of the ordinance and that the opposition failed to provide material, substantial, competent and admissible contra evidence.

8. The Court further found that the permitting process, the ordinances and the conditions offered by the applicant were sufficient safeguards to protect public safety, not adversely affect property uses or values or constitute a nuisance or hazard. Specifically the Court found these safeguards were present when the Board proposed and the applicant agreed as conditions that no outdoor amplified music would be used and there would be directional lighting.

9. In vacating the Board's decision, the Court ruled Sheetz was entitled as a matter of law to the issuance of the special use permit with the following conditions: no amplified music outside of the convenience restaurant, at the gasoline pumps or the outdoor dining area and all outdoor lighting would be directional to avoid spillover onto adjoining properties.

10. The order of the court, directed the Board of Adjustment to issue the special use permit with the following conditions: no amplified music outside of the convenience restaurant, at the gasoline pumps or the outdoor dining area and all outdoor lighting would be directional to avoid spillover onto adjoining properties. There is no public hearing. The only vote to be taken will be to vote on the special use permit, consistent with the order of the court.