

July 24, 2008

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 X
Scott Shook*	Charles Ward*
Renee Safford-White*	Allen Thomas *
Linda Rich*	Louis Treole*

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

VOTING MEMBERS: Wubneh, Bellis, Shook, Ward, Safford-White, Thomas, Rich

OTHERS PRESENT:

- Mr. Mike Dail, Planner
- Mr. Wayne Harrison, Planner
- Mrs. Sarah Radcliff, Secretary
- Mr. Les Everett, Chief Building Inspector
- Mr. Chris Kelly, Engineering Assistant
- Mr. Bill Little City Attorney
- Lieutenant T.D. Sauls

MINUTES

Motion was made by Ms. Bellis, seconded by Mr. Thomas to accept the June 19, 2008 and June 26, 2008 minutes as presented. Motion carried unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY CHRISTINA HARRIS

The applicant, Christina Harris, desires a special use permit to operate a home occupation; not otherwise listed (child day care) pursuant to Sections 9-4-78(f)(3)a. and 9-4-86(v) of the Greenville City Code. The proposed use is located at 3324 Langston Boulevard. The property is further identified as being Tax Parcel Number 69978.

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

Mike Dail, planner, delineated the area on the map. He stated the subject property, as well as the surrounding properties, are zoned R9S, Residential-Single Family. Mr. Dail stated the property was located close to a minor thoroughfare, being Thomas Langston Road.

Surrounding Development:

North: Single Family Residence
South: Single Family Residence
East: Single Family Residence
West: Vacant

Description of Property:

The property contains a 1,854 square foot single family dwelling and has approximately 85feet of frontage along Langston Boulevard and 130 feet of frontage along Birch Hollow Drive with a total lot area of 0.24 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 July 10, 2008. Notice of the public hearing was published in the Daily Reflector on July 14, 2008 and July 21, 2008.

Staff Comments:

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

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):

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 and all play equipment shall be located in the rear yard.

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

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. Ward asked if there was a fence there.

Mr. Dail stated there was a 6 foot white solid vinyl fence around the side and rear of the property.

Mr. Thomas asked if there were any hazards such as canals or ponds in the area.

Mr. Dail stated he did not see any; however he did not look to the extreme rear of the property.

Christina Harris spoke in favor of the request. Ms. Harris stated she regularly took care of children in her home. She said that a representative from the North Carolina Department of Child Development told her if she takes care of more than two children in her home for more than four hours a day she needed a home daycare license. She said with a license she would be able to take care of up to five children at a time. Ms. Harris stated she only keeps a few children at a time, mostly friends of her children or neighbors. She stated she would not be operating a huge daycare, but she wanted to be there for her neighbors and friends when they needed her. Ms. Harris also stated she depended on the babysitting for her income. She read a letter that she had submitted to the subdivision's

Homeowner's Association in early 2007. She stated they held a closed meeting and her home daycare was approved. In her letter she stated she had submitted a request for a \$9,000 fence project to ensure the safety of the children and asked for assurance that she would not have any problems with the homeowner's association regarding babysitting before she put it up. Ms. Harris stated her reason for applying for the Special Use Permit was so she could obtain her daycare license and keep up to five children in her home.

Mr. Treole asked if she had liability insurance.

Ms. Harris stated she had a one million dollar policy. She stated her fence was a six foot vinyl privacy fence that locked from the inside or the outside.

Mr. Treole asked why she wasn't getting paid for her services.

Ms. Harris stated some of the parents paid her three dollars per hour.

Mr. Ward asked the ages of the children that she would be keeping.

Ms. Harris said the license allowed her to keep from newborn up to 12 years old.

Chairman Wubneh asked if there was a ditch in the back.

Ms. Harris said there was not a ditch, just some trees and play equipment in the fenced area.

Chairman Wubneh asked if there was any way for the kids to get out of the fenced area.

Ms. Harris stated the locks were high enough that they could not get out.

Mr. Shook asked if the fenced area was at least 500 square feet.

Ms. Harris stated it was.

Ms. Rich asked if the locks on the gate were child proof.

Ms. Harris said they were and that she used the Safety First safety locks on the gates.

Mr. Christopher Edwards, attorney, spoke in opposition to the request on behalf of the Langston Farms Homeowners Association. Mr. Edwards stated the HOA had a strong opposition to the issuance of the special use permit. He said they viewed the operation of her business as a violation of the neighborhood's restrictive covenants. He handed out copies of the restrictive covenants to the board members. Restriction number 7 states, "No barber shop, beauty parlor shop, or any commercial or business activity shall be permitted or shall suffer to remain on the property, property being Langston Farms Subdivision". Restriction number 1 states "this property shall be known, described and restricted to residential purposes only". Mr. Edwards stated the HOA had concerns

about the noise, traffic, and use of the Langston Farms' pool. He said the matter came before the Langston Farms' board approximately one year ago and it was decided Ms. Harris could watch children in her home, provided she stayed under the minimum requirements for being required to have a state license. Mr. Edwards stated that under the childcare license she would be able to keep up to 5 preschool age children and 3 school age children. He stated he found two separate web sites that Ms. Harris maintained promoting her in-home business and passed out copies of the webpages to the board members. Mr. Edwards pointed out that though Ms. Harris does not call her babysitting services a business, the websites shows something different.

Ms. Bellis asked where the figure for up to 8 children came from. She said the staff comments and the state regulation said up to five children.

Mr. Edwards said it came from the North Carolina Division of Child Development home page.

Mr. Shook said the city code says up to 5 and that is what the board is governed by.

Chairman Wubneh asked Mr. Little if the board was governed by the Restrictive Covenants and if the definition of a business that Mr. Edwards alluded to relates to this case.

Mr. Thomas asked if the website constitutes a business.

Mr. Little stated that the city ordinance permits a home occupation and a home occupation is a business. He said the website advertising the home occupation would be consistent with the provisions of the city ordinance. He said the website was a different form of signage that is not regulated. He stated the city ordinances are not governed or bound by any restrictions or limitations imposed through a restrictive covenant. Mr. Little said that was between the purchaser or resident and the other residents or the HOA. Regarding the traffic concerns, he said that specific information would be needed to warrant the significance of those concerns.

Ms. Bellis asked if someone were to place an advertisement in the paper that they are keeping preschool children if it would be considered signage.

Mr. Little said it would not be according to the ordinance. He said it would be the same as an advertisement in the yellow pages.

Mr. Thomas asked about the restrictions for the Langston Farms pool.

Mr. Edwards said he was not familiar with those regulations and would defer that to some of the homeowners that were there.

Mr. Shook stated if they grant the permit it would be for this specific property and could not dictate what happened at the pool or outside that parcel.

Mr. Little stated the special use permit would only govern what happened on that property. He said what happened outside of the property boundaries would not be a jurisdictional issue. He said any condition on use of the pool would be difficult to enforce.

Ms. Safford-White asked if Ms. Harris had been issued any written warnings or notices indicating they had a problem with what she was doing.

Mr. Edwards said to his knowledge they had not.

Richard Walsh, Vice President of the Langston Farms HOA, spoke in opposition to the request. Mr. Walsh stated his concern was that if Ms. Harris was granted the permit, more and more businesses would try to open in the neighborhood.

Ms. Safford-White asked if the HOA had notified Ms. Harris regarding the recent complaints.

Mr. Walsh said he would have to check with the secretary, who was not there. He stated he was not against Ms. Harris having children in her home, but did not think their neighborhood was the place for a business.

Mr. Thomas asked if there was a fence at the pool.

Mr. Walsh said the pool had a gate that was operated by key cards. He said children under 14 years old must be accompanied by an adult.

Mr. Gary Storie, member of the board of directors for Langston Farms HOA, spoke in opposition to the request.

Glenda Walsh, neighbor, spoke in opposition to the request.

Ms. Harris spoke in favor in rebuttal. She said only one of her websites was being actively used. She stated her license would be limited to five children because of the Greenville ordinance. She said she had used the pool twice in the year, once with one daycare child, and again with her children and two others. She said the pool wasn't crowded and she was watching the children. Ms. Harris stated if it was a concern, she would not take the daycare children to the pool any more.

Ms. Bellis asked if she would agree to have no signage advertising her business.

She said she would.

Ms. Bellis asked if she would agree to have a condition that she not take the daycare children to the pool.

Ms. Harris said she would but that she was allowed to have a guest and didn't see how that was any different.

Chairman Wubneh asked if a condition on the use of the pool could be enforced.

Mr. Little said it would be hard to enforce and distinguish between a daycare child and a guest. Mr. Little said if she was willing to volunteer it as a condition it could be used, however it was outside of the jurisdiction and they could not enforce it.

Mr. Treole stated the City had jurisdiction over the matter that superseded the rules and regulations of the association.

Mr. Little stated that was correct.

Chairman Wubneh stated they were trying to come up with some understanding between Ms. Harris and her neighbors. He said there were certain things that were outside of the power of the board, but if Ms. Harris was willing to agree to them, it would be helpful.

Ms. Safford-White asked if she received a copy of the restrictions and by-laws when she moved in.

Ms. Harris said she did; however her realtor spoke to the HOA and her babysitting was agreed on before she bought the house. She said if her neighbors had concerns or complaints, she was always home and willing to talk with them. She said she had never received any complaints.

Chairman Wubneh asked if there were any spacing requirements regarding home daycares.

Mr. Dail said there were no spacing requirements.

Mr. Thomas asked if there were any other daycares in the neighborhood.

Ms. Harris stated there were; however they were not obtaining a license or special use permit.

Ms. Harrington asked why she wanted to be certified.

Ms. Harris said she was told if she kept more than 2 children for more than 4 hours without a license, she would be committing a felony.

Mr. Ewen asked how that came to her attention.

Ms. Harris said she had previously been licensed in another state, so when she came here, she inquired about a license and was told at that time.

Ms. Rich asked if she received written confirmation from the HOA when she purchased the house that she could baby-sit.

Ms. Harris said she wasn't sure if she had it in writing, she would have to check her records.

Chairman Wubneh asked for the staff recommendation.

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

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

Mr. Ward said he had not heard any legal objections to the request.

Mr. Treole said if the City of Greenville's ordinance says home occupation is permissible in a residential zone....

Chairman Wubneh said that was not by right, it had to be approved by the board.

Mr. Treole said if Greenville has a home occupation ordinance that was the end of the story, because the Greenville ordinance supersedes any kind of association agreements or contracts.

Mr. Ward said that was true only if the board gives it permission.

Mr. Little stated the ordinance authorized the home occupation, not by right, but solely by special use permit. He said if the applicant meets the criteria for issuance of the special use permit, then it can be awarded.

Chairman Wubneh read the criteria for granting/denying a special use permit. Chairman Wubneh asked for a motion to approve the findings of fact including the condition of occupancy. Motion was made by Ms. Safford-White, seconded by Mr. Ward. Motion carried unanimously.

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

REVIEW OF THE SPECIAL USE PERMIT ISSUED TO KEVIN FAISON FOR A PUBLIC OR PRIVATE CLUB

The applicant, Kevin Faison, was issued 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. As a condition of approval the Board requested a six month review of the application. The use is located at 2713 E. Tenth Street. The property is further identified as being Tax Parcel Numbers 16501 & 16472.

Mike Dail, planner, delineated the area on the map. The property is located between Green Springs Road and Tenth Street and adjoins Monroe Street to the west. He stated the property was currently zoned CG, General Commercial. The property to the north is zoned Office Residential, to the south

and east is General Commercial, and to the west is General Commercial and Office Residential. Mr. Dail stated the property was located along a minor thoroughfare, being Frog Level Road, and within close proximity to a major thoroughfare being Dickinson Avenue Extension.

Surrounding Development:

North: Green Springs Park
South: Glass Masters Services
East: Forrest Lock & Key
West: Shaw University Extension Campus

Description of Property:

The property fronts along 10th Street and is bounded on the west by Monroe Street and on the north by Green Springs Road. The total lot area is 0.72 acres and the total heated square feet of the building is 4,906.

Notice:

Notice of the special use permit review was mailed to the adjoining property owners on July 10, 2008. Notice of the special use permit review was published in the Daily Reflector on July 14, 2008 and July 21, 2008.

Specific Criteria for Public or Private Clubs (9-4-86(f)):

- (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).

Conditions placed on the Special Use Permit by the Board:

- (1) During hours of operation outside security is mandatory.
- (2) Relocate the southeast door and make it a handicap entrance/emergency exit.
- (3) The hours of operation are limited to 7:00 pm to 2:00 am nightly.
- (4) Review of compliance will be made at 6 month intervals for 1 year.
- (5) No outdoor activities permitted.
- (6) No vehicular entrance from Monroe Street.
- (7) Dilapidated accessory structure must be removed.
- (8) No live music outside.

Mr. Dail stated he had been to the property and from what he observed, most of the conditions were being met. He stated the southeast door referred to in number (2) was covered with OSB on his visit. He said a planting box with shrubbery replaced the old driveway entrance referred to in number (6) along Monroe Street. He stated the dilapidated structure referred to in number (7) had been removed. No speakers were seen outside and the property appeared to be clean.

Police Comments and Report:

There were not a high volume of calls associated with this location. Fourteen (14) calls were

made in the last year and a half with one being an ABC violation. The ABC violation was a person drinking in their car in the parking lot which is not directly related to the business.

Mr. Thomas said of the two pages of activity, only activity reported since May, 2008 was relevant to this case.

Mr. Dail stated that was correct.

Chairman Wubneh asked when they started operating the business.

Mr. Dail said they opened May 25th.

Chairman Wubneh stated there was an officer there to explain the report if anyone wished to ask him any questions.

Mr. Ewen asked how this compared with similar clubs.

Lieutenant T.D. Sauls stated the report showed anything that happened on or near the property. Mr. Sauls stated that activity after May 9th would be related to Face's Lounge. He said he had seen no notable activity, and what had occurred was typical for clubs of their nature.

Chairman Wubneh asked Mr. Little what action the board needed to take.

Mr. Little said the board could either note that the review had been conducted and move on, or could hear from the owner and any others if they choose. Mr. Little stated if the board chose to hear any testimony from the public, they would need to be sworn in.

Chairman Wubneh asked the board what they wanted to do.

Ms. Safford-White stated she would like to give them the opportunity to speak.

Chairman Wubneh asked all who wished to speak to come forward and be sworn.

Mr. Faison told the board the ABC violation on the police report had occurred prior to his opening. He stated he wanted to expand his hours of operation. He also stated concerns with the staffing requirement of the security guard outside. He said he was the only club with a parking lot of his size that was mandated to have outdoor security. He stated he had developed a good relationship with the neighboring business, Forrest Lock & Key, and they had agreed that Face's staff could use their parking spaces and they would be clearly marked, Face's Staff to keep others out of his lot.

Chairman Wubneh stated they were only there to hear the six-month report and that any changes that Mr. Faison was requesting would need to be brought before the board as a new agenda item, just like a new permit.

Mr. Kevin Ousley and Mrs. Kara Ousley spoke on their concerns with the club.

Chairman Wubneh asked if a vote was required.

Mr. Little said no vote was required; they simply needed to note that the next review would be in six months.

Ms. Bellis asked if they could send a letter of appreciation to Tom Harwell for his service to the boards.

Mr. Little stated that staff would take care of it.

With no further discussion, the meeting adjourned at 8:34p.m.

Respectfully Submitted

Michael R. Dail, II
Planner