

November 16, 2006

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. Multau Wubneh, Chairman
Ms. Ann Bellis Mr. John Hutchens
Mr. Charles Ward Ms. Renee Safford-White
Mr. Scott Shook Mr. Steve Estes
Mr. Thomas Harwell

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

OTHERS PRESENT: Mr. Seth Laughlin, Planner
 Mr. Wayne Harrison, Planner
 Ms. Kathy Stanley, Secretary
 Mr. Les Everett, Chief Building Inspector
 Mr. Tim Corley, Engineer
 Mr. Bill Little, Assistant City Attorney
 Mr. Larry Spell, Council member

MINUTES

Chairman Wubneh asked if there were any corrections to the minutes. Motion was made by Mr. Harwell, seconded by Mr. Estes to accept the October 26, 2006 minutes as presented. Motion carried unanimously.

REQUEST FOR A SPECIAL USE PERMIT ARGUS HOLDINGS – WITHDRAWN

Mr. Seth Laughlin stated that the Board received a request to withdraw their request.

REQUEST FOR A SPECIAL USE PERMIT BY MARK T. HAYES, ALEXANDRA MACKENZIE AND JOHNNIE E. MAY - GRANTED

Chairman Wubneh stated that the first item of business is a request by Mark T. Hayes, Alexandra MacKenzie and Johnnie E. May. The applicants, Mark T. Hayes, Alexandra MacKenzie, and Johnnie E. May desire a special use permit to operate a veterinary clinic pursuant to Sections 9-4-78(f)(7)f of the Greenville City Code. The proposed use is located at 2207 Evans Street. The property is further identified as being Tax Parcel Number 27389.

Chairman Wubneh declared the meeting a public hearing as advertised in The Daily Reflector on November 6, 2006 and November 13, 2006. Those wishing to speak for or against the request were sworn in.

Mr. Laughlin delineated the area on the map. Mr. Laughlin stated that the property is located at 2207 Evans Street and the proposed use is a veterinary clinic. The property is zoned Office-Residential. The surrounding development is Commercial General, Residential and Office-Residential. The property has approximately 160 feet of frontage along Evans Street and approximately 85 feet of frontage along Commerce Street. The property is located within Vision Area "D". The applicant shall meet occupancy requirements per NC State building codes and shall meet electrical code requirements for health care facilities. Mr. Laughlin asked that the proposed Findings of Fact be entered into the record.

Applicant: Mark T. Hayes, Alexandra MacKenzie, and Johnnie E. May

Request: The applicants, Mark T. Hayes, Alexandra MacKenzie, and Johnnie E. May desire a special use permit to operate a veterinary clinic pursuant to Sections 9-4-78(f)(7)f of the Greenville City Code.

Location: The proposed use is located at 2207 Evans Street. The property is further identified as being Tax Parcel Number 27389.

Zoning of Property: OR (Office-Residential)

Surrounding Development: Zoning

North: Commercial Business	CG (Commercial General)
South: Residential Structure	R9 (Residential)
East: Commercial Business	OR (Office-Residential)
West: Undeveloped Land	OR (Office-Residential)

Description of Property:

The property has approximately 160 feet of frontage along Evans Street and approximately 85 feet of frontage along Commerce Street with a total lot area of approximately 0.46 Acres.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on November 8. Notice of The public hearing was published in the Daily Reflector on November 6, 2006 and November 13, 2006.

Staff Comments:

Shall meet occupancy requirements per NC State building codes and shall meet electrical code requirements for health care facilities.

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.

Dr. Mark Hayes stated this location will not be a traditional animal clinic but an after hours emergency clinic. Mr. Hayes stated that he and his associates were looking for a property that was safe, accessible to outlying areas and other towns and

communities. Dr. Hayes stated that the clinic will be staff during the night, holidays and week-ends. Dr. Hayes stated that Dr. MacKenzie is female and will be staffing the clinic during these operational hours. Dr. Hayes stated there will be no animals boarded or during the day. The hours of operation would be from 6 PM and closed at 8 AM. Dr. Hayes presented the Board with an agreement between himself and Mr. Williamson in reference to installing a privacy fence. Dr. Hayes stated that there is adequate lighting and parking spaces. Dr. Hayes explained that the emergency clinic will be have diagnostic equipment for x-rays, blood work and surgical equipment as required by the State.

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

Motion was made by Ms. Bellis, seconded by Mr. Hutchens, to adopt the proposed findings of fact and evidence presented. Motion carried unanimously.

Motion was made by Mr. Hutchens, seconded by Ms. Safford-White, 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.

REQUEST FOR A VARIANCE BY ROBERT E. O' CONNER - DENIED

(This is a verbatim transcript)

Chairman Wubneh: The next item on the agenda is a request for a public hearing on a variance by Robert E. O' Conner. The applicant, Robert E. O' Conner, desires a variance from rear yard setback requirements to allow the subdivision of an existing developed lot pursuant to Section 9-4-94(f)5 of the Greenville City Code. The property is located at 804 A&B Johnston Street and 805 E. 4th Street. The property is further identified as being Tax Parcel Number 05518. I now open the public hearing on this case those wishing to speak for or against please come forward and get sworn. Mr. Laughlin would you give us preliminary report.

Mr. Laughlin: Thank you Dr. Wubneh. I' ve got the location map here in front of you. We have an aerial map here, a little more background to clarify. We have a single lot with a duplex to the north and a single family residence on the south edge,

south end of the property. The property is zoned R6S. To the north you have a little multi-family and south, east and west are all residential structures. Description of the property. They have approximately 55.18 feet of frontage along Johnston Street and approximately 55.31 feet of frontage along E. 4th Street, a total of 0.14 acres. This is the Land Use Plan. The property is located within Vision Area "I" and is in general compliance with the Land Use Plan which requires medium density residential development for the subject property. You've got the Thoroughfare Plan here, showing East Fifth Street as a minor thoroughfare. Notices were mailed to adjoining property owners on November 8th and notice of the public hearing was published in the Daily Reflector on November 6 and the 13th. I'll briefly go over the criteria for a variance. In order for the Board of Adjustment it must find in favor of the applicant on each of the criteria in order to grant the variance request. The first of these criteria is Reasonable Return – The applicant could not comply with the literal terms of the ordinance and still secure a reasonable return or make reasonable use of the property. 2 Unique Circumstances – The hardship of which the applicant complains results from unique circumstances related to the applicant's land. 3. Hardship by Applicant's Action - The hardship is not the result of the applicant's own action. 4. General Purpose of the Ordinance – If granted, the variance would be in harmony with the general purpose and intent of the ordinance and would preserve its spirit. 5. Public Safety and Welfare – The granting of the variance must secure the public safety and welfare and does substantial justice. Under staff comments. Shall meet NC State residential building code in that exterior walls with a fire separation distance of less than three feet shall have not less than a one-hour fire resistance rating with exposure from both sides. If you have any questions about that comment we have our Chief Building Inspector with us tonight who can better explain that. I included a map here tonight to show you or to demonstrate that we have 13 different properties in this immediate neighborhood that do contain two or more dwelling structures on that one piece of property.

Applicant: Robert E. O'Conner

Request: The applicant, Robert E. O'Conner, desires a variance from the rear yard setback requirement (Section 9-4-94(e)(5)) and the minimum lot area requirement (Section 9-4-94(e)(1)) to allow the subdivision of a developed lot having two existing homes. The requested variance will be for 9.6 feet for the 804 A&B Johnston Street principal structure and 13 feet for the 805 E. 4th Street principal structure. The parent lot containing two dwelling

structures is 6,206.01 square feet and the proposed resulting lots will contain 2,761.39 square feet and 3,444.62 square feet respectively.

Location: The property is located at 804 A&B Johnston Street and 805 E. 4th Street. The property is further identified as being Tax Parcel Number 05518.

Zoning of Property: R6S (Residential-Single-Family)

<u>Surrounding Development:</u>	<u>Zoning</u>
North: Multi-Family	R6S (Residential-Single-Family)
South: Residential Structures	R6S (Residential-Single-Family)
East: Residential Structures	R6S (Residential-Single-Family)
West: Residential Structures	R6S (Residential-Single-Family)

Description of Property:

The property has approximately 55.18 feet of frontage along Johnston Street and approximately 55.31 feet of frontage along E. 4th Street with a total lot area of approximately 0.14 acres.

Comprehensive Plan:

The property is located within Vision Area "I" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Land Use Plan, which recommends medium density residential development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on November 8, 2006. Notice of the public hearing was published in the Daily Reflector on November 6, 2006 and November 13, 2006.

Variance Criteria:

The Board of Adjustment must find in favor of the applicant on each criteria I

n order to grant the requested variance.

1. Reasonable Return – The applicant could not comply with the literal terms of the ordinance and still secure a reasonable return or make reasonable use of the property.
2. Unique Circumstances – The hardship of which the applicant complains results from unique circumstances related to the applicant’s land.
3. Hardship by Applicant’s Action - The hardship is not the result of the applicant’s own action.
4. General Purpose of the Ordinance – If granted, the variance would be in harmony with the general purpose and intent of the ordinance and would preserve its spirit.
5. Public Safety and Welfare – The granting of the variance must secure the public safety and welfare and does substantial justice.

Staff Comments:

Shall meet NC State residential building code in that exterior walls with a fire separation distance of less than three feet shall have not less than a one-hour fire resistance rating with exposure from both sides.

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the criteria required for issuance of a variance upon proper findings by the Board.

Chairman Wubneh: Thank you. Any questions for the city from the Board? Yes Ms. Bellis.

Ms. Bellis: Mr. Laughlin. If this one lot is divided into two lots, tell me first what does R6S mean? If that 6,000 square feet.

Mr. Laughlin: 6,000 square foot minimum, yes madam.

Ms. Bellis: Will both of those lots have 6,000 square feet if that lot is subdivided?

Mr. Laughlin: No madam.

Ms. Bellis: Will either lot have 6,000 square feet if it's subdivided?

Mr. Laughlin: No madam. As it stands the lot is approximately 6,200 square feet. The proposed resulting lots are going to be approximately 2,700 square feet and 3,400 square feet.

Ms. Bellis: So right now we have one lot that is barely conforming and we would create two nonconforming lots.

Mr. Laughlin: Well we have a nonconforming lot already because of coverage requirements. You know you can't exceed 40 percent lot coverage and we well exceed that with two homes on this small of a lot.

Ms. Bellis: I think we'd be creating two nonconforming lots.

Mr. Laughlin: That's right, yes madam.

Mr. Little: If I might, basically to resolved some of the big potential questions. What we have here is really two variance requests in one. One we're going to take one nonconforming lot and what they would like to do is create two nonconforming lots. The second part of that is neither one of the lots because of the distance from the back of one to the back of the other will meet the rear setback so it would be an additional request if it is approved and the lot is divided. Not only would you be creating two nonconforming out of one nonconforming but you also would agree to vary the rear setback lines that are required for all the property lines. There's two variance request in this one piece of property.

Chairman Wubneh: Even now does it meet the setback requirements? Still that's also nonconforming correct? As it is now.

Mr. Little: It doesn't really apply now as far as the setbacks because it's one lot. If two lots were created then you would have the additional problem with it not meeting the rear setbacks. So in affect it's two, you can't separate the two, you can't

say I'll approve one and not approve the other. They're really two together but they're two variance requests that are built in on this site that have to be addressed.

Mr. Harwell: For the staff, on these staff comments concerning the one-hour fire resistance rating. Does that exist now or how would that be handled if this is approved?

Mr. Laughlin: I'll let Mr. Everett explain that he's probably better at answering that question.

Mr. Everett: Good evening. My name is Les Everett, Chief Building Inspector. It might be better explained if I kind of change the scenario just a bit. If you could think of a duplex townhome. You have living quarters on both sides with a wall separating the two. There are fire resistance measures that have to be constructed to protect each side, each living quarters. It's protected on the interior of this unit and on the interior of this unit, it's protected on both sides. In this case we do not have an adjoining structure but it would be within three feet of the property line. The reference in the code on that is yes he would have to protect it from both sides through additional fire rating methods such as sheetrock on the inside and some type of noncombustible material that would meet the code standards on the interior and exterior.

Mr. Harwell: So we would need to include that as a condition?

Mr. Little: Yes sir.

Chairman Wubneh: Okay, any other questions? Yes Ms. Bellis.

Ms. Bellis: Would this be Mr. Laughlin. Do we wait now or do we ask the applicant about when the property was bought in relation to zoning changes.

Mr. Laughlin: You want to ask that of the applicant?

Ms. Bellis: When is the proper time to ask that?

Chairman Wubneh: That might be a question to refer to the applicant when the applicant makes a presentation. This has to be specific to the city and his presentation. Of course, we can always go back and ask.

Mr. Laughlin: I don't have that information. Date of purchase versus the date of the zoning change.

Chairman Wubneh: Any other questions for the city? Thank you. Would the applicant come forward and tell us about the application.

Mr. Bryan Becker: Good evening ladies and gentlemen. I'm Bryan Becker representing the applicant. If I might approach your Honors. I put together an additional packet dealing with some of the laws regarding this matter. If I may approach.

Chairman Wubneh: You want to share that with.

Mr. Becker: May I approach your Honors.

Chairman Wubneh: I believe this will be part of the record.

Mr. Little: While Mr. Becker is handing out. There are a couple of items that are referenced (unclear) the other is a (unclear) Amjur which is basically a legal encyclopedia that talks about all kinds of jurisdictions not relating to North Carolina and may not even include North Carolina. Section 9-5-2 is part of the City Code. One of the purposes he has, you are still the folks who interrupt the law according to the guidelines set by the ordinances of the city and the authority granted in those ordinances for Board of Adjustment as defined for variance request.

Mr. Becker: Mr. Chairman may I proceed?

Chairman Wubneh: Yes please.

Mr. Becker: Again, my name is Bryan Becker and I'm the attorney for the applicant. What I have brought to you all today and I think the best thing I can give as the lawyer on the applicant's side of the matter is just to kind of touch base on some of the laws that apply tonight that you'll be enforcing. The first tab I wanted to show ya'll is directly from the North Carolina Statutes about your board. We've highlighted in there just for convenience sake. If you'll turn to Tab 1, page 480, it's the second page of Tab 1. I've highlighted under subsection (d) and ya'll hear this all the time about the unnecessary hardship but I just wanted to point out in the

Statute that it says “when practical difficulties or unnecessary hardships”. So I would submit to you that the test you’ll be applying tonight is whether you believe our client has practical difficulties with this property or unnecessary hardship. The second issue I want to touch on tonight in my portion of the presentation is also what’s highlighted about the spirit of the ordinance being observed. My focus tonight as Mr. O’Conner’s counsel would be on practical difficulties/unnecessary hardship and the spirit of the ordinance. If you turn to Tab 2 what Mr. Little said is correct in American Jurisprudence is a binder that most law firms will have and what it does is summarizes the law all across the country. In Board of Adjustment matters, not surprisingly a lot of decisions by Boards don’t end up being published in the case books because they’re not appealed. There is relatively few that are appealed that get published. One benefit of Amjur is that it will summarize areas of the law what the different states are doing. There is one case in here I want to point out to you and if you would turn to the third page of Tab 2 it’s numbered page 721 at the bottom of it. So the third page of Tab 2, last page of Tab 2, Section 858 and this is the section you’re going to hear the most about tonight. It’s about our client’s inability to obtain conventional financing on the property since there is two homes on one lot. You’ll see in the paragraph that’s been highlighted it talks about this “the owner of land is refused financing for a permitted use based upon the lender’s expert opinion that such use is not feasible because the land is unsuitable, this may be regarded by the court as evidence of unnecessary hardship. Thus, in cases upholding the propriety of use variances in cases where the variance granted by the Board was confirmed by the court it says that “the courts have referred to the refusal of local bankers to lend money for residential development and number two, this is the case out of Pennsylvania that is fairly close to the one tonight. To expert testimony, which you will hear tonight that neither FHA nor VA financing would be available for development of the subject property. That is what you will hear about tonight is that when a lot has two houses on it it does not qualify for FHA, Fannie Mae financing. This is the situation unfortunately Mr. O’Conner has found himself in after the fact. He wasn’t aware of that when he bought this home. It was seller financed at the time, this property and when he went to apply for conventional financing he found out this is a problem with this property. Again, Mr. O’Conner is here to talk about that. The last, excuse me, Tab 4 and this goes to the spirit of the ordinance requirement. This is an excerpt from the Task Force on Preservation of Neighborhoods and Housing. I have a complete copy, Bill, of the Task Force Report and I would just ask that the court take judicial notice of it. It’s already been submitted to City Council and so for evidence purposes today that the court take judicial notice what the Task Report is. I’ve got a copy here is anybody wants to

look at it. Bob Dietrich is here tonight who was a member of the Task Force. If you will turn to page 3 of section 4 it's entitled Neighborhood Improvement Strategies. Again, the first thing you're going to hear tonight is that this property does not qualify for conventional financing. The second thing you're going to hear is the Neighborhood Task Force wants this neighborhood to become more owner occupied and less rented and I have a feeling that a lot of us in this room would like to see that. Right now the property as it stands, when you have a home on one part of a lot and a duplex on the other you can't just buy one of them you have to buy both or none. The chances of that property being owner occupied, the home that's on it, are probably close to zero because you'd need an owner occupier who also wants to have rental property on the same lot so it limits the group that can buy it. You'll see strategy 7 is "to create economic incentives to encourage reinvestment in established single family neighborhoods." On the next page which is Appendix 7 to that Task Force Report the members were asked to rate what they considered to be the most important issue in this report. Overwhelmingly they voted that the rental versus the owner occupier issue was the most important issue to them by a score of 33 with the next highest factor being only 18. On the next page of Tab 4 they talked also, and it's highlighted, about the conversion of rental homes to owner occupied in single family neighborhoods. The staff agreed to provide additional detail on how they can encourage people to convert these rental units to owner occupied. If ya'll grant the variance today you will by definition have made the home on one-half of this lot much more attractive as an owner occupier because it will have been. The duplex is dead weight that's holding it down from owner occupancy would have been cut off so someone could actually step in and occupy the quaint little home that was built in the 30's that's on part of that lot. I just want to point out to you that the subdivision line in essence makes this block flow the way it should. When 5518 is subdivided, if that's what ya'll choose to do, it will flow nicely with the properties on both sides of it. That concludes my presentation. Mr. O'Conner is here who I have a feeling will be able to answer most of your questions like your question madam when the property was bought. My understand is it was bought in June of 2005. Mr. O'Conner's, the gentleman that he does loans with from The Little Bank, Eddie, is here to talk about the financing issue. What I would like to do is hear what questions you have for me. Then I would like to have Dr. Dietrich and Joe Davis go ahead and express their support so that they can leave. I think their comments will be fairly short. Having said that I'll be glad to answer any questions.

Chairman Wubneh: First let's see if the Board has any questions to you. Any questions for Mr. Becker?

Mr. Harwell: I think that one questions that was ask is if you have any knowledge on the three story brick, the two story brick structure, was built also in 1930?

Mr. Becker: No sir. I think that was built in the 50' s.

Mr. Estes: It appears that was built originally as a duplex.

Mr. Becker: I believe that' s right. That' s the way it looks to me.

Mr. Estes: It wasn' t converted into one?

Mr. Becker: I don' t think so.

Mr. Estes: Doesn' t look like it' s symmetrical.

Mr. Becker: Yes sir.

Mr. Estes: So we would be. There' s actually three dwellings on this lot right now.

Mr. Becker: Yes sir.

Mr. Estes: We' d be, you' re asking for the variance to subdivide the lot so we' d have one dwelling on one property facing, I guess it would be Third Street, Fourth Street and then the duplex would face Third Street.

Mr. Becker: I think Johnston.

Mr. Estes: Johnston, something like that. There it is, Johnston Street.

Mr. Becker: The properties, they both, it' s interesting they both have separate utilities and separate addresses. It seems to be a good example of a case where it would work fairly easily with a subdivision. One thing I would add is, variances are meant to bring properties into conformance by definition they provide an exception to the requirements. My view on this is you would actually be taking a nonconforming property and making it conform with the subdivision because of the variance.

Chairman Wubneh: I have a question also. My question is probably more of a

clarification from our counsel. There are some specific criteria that Mr. Becker is raising such as, and I think this would help the Board to understand, unnecessary hardship and yet that is not one of the criteria. I don't see it being one of the criteria that the Board is suppose to use as far as our criteria for, deciding one or the other is concerned. In fact I think he raised three of them, practical matter, unnecessary hardship and the spirit of the ordinance. I personally would like your help in terms of how this factor or criteria that Mr. Becker has raised mesh with the specific criteria that the ordinance requires that the Board have to use when making matters of decision.

Mr. Little: Yes sir. I'll take the easy one first and that is the spirit of the ordinance. That would be Item #4 that was addressed by Mr. Laughlin which is the General Purpose of the Ordinance. That is the one most closely allied or related to the reference by Mr. Becker. The other ones really fall under the first item Reasonable Rate of Return or Reasonable Return under hardship. The case law, the North Carolina case law, which is the only thing that is applicability here and the interpretation under North Carolina law looks at reasonable return as the hardship. Is there a hardship that is created if the variance is not granted. I was going to save this for a little bit later but it may be just as easy to talk about it now. Remember in variances you are being asked to not rewrite or waive or ignore an ordinance. You're asked to vary it. That makes a very, maybe an over simplification of what a variance is. A good example might be is if the ordinances said that you must build your driveway out of concrete or asphalt and the applicant says I'd like to use shredded tires because that's not only more economical but its also environmentally friendly plus when I fall down I don't get hurt. You don't have many skinned knees from falling on shredded tires. That would be a request to vary what the ordinance is and is that request within the spirit, the general purpose of the ordinance which required it to be paved. So would it be within that confines. Now, further, in reference to the item mentioned out of Amjur where it talked about the financing issue. Since Mr. Becker has brought up case law, brought up references to the law, North Carolina has only one case that I was able to locate on this and it's Showcase Realty Construction Company versus the City of Fayetteville Board of Adjustment. I believe you have probably seen that one Bryan. That's a copy you can use, I've read it. The highlight of that it talks about any variance, it must be approved, must be established by substantial evidence and that's what a reasonable person would accept as a conclusion. What you hear the evidence to be of what a reasonable person would accept. Your findings of fact must be based on that substantial evidence. The other part is under the undo hardship criteria or reasonable return. Would it create a undo

hardship, could the person use that property. Would there be a reasonable use of that property if the variance was not granted, could it be used. That Showcase case noted specifically that by and of itself financial burdens is not an undo hardship under North Carolina law. By and of itself. There are other issues in addition but by and of itself that cannot be the sole determiner of what is reasonable return on that property. The other question dealing with the ordinance, Greenville established its first zoning ordinance in 1947. The bungalow was build in 1930' s. It was referenced that the duplex was put on in the early 50' s at the rear of the property. So it has been nonconforming for a long time.

Dr. Wubneh: The other question I have is what is the responsibility of this Board in terms of taking the recommendations of the Task Force Report?

Mr. Little: You can take that recommendation, the report itself. You can consider that as any other information that you receive from any witness or any document. If you find that is substantial evidence to satisfy the whole record, whether it' s one criteria or two criteria or meets all four or five criteria. Whatever you find you can use that information in the Task Force. But and I caution you, make sure that if you accept it that you ask questions to satisfy that it is not a generality but relates specifically to this case. That' s what we have to address is the variance as to this particular case not a group wide. It' s much like when we have a question about if something is going to be constructed does it cause the property to lose value. It has to be decided does it cause that property to lose value not other pieces of property that may not be zoned the same. I think that' s probably the example we had in one of our cases a year or so ago that we all dearly remember. Does that answer the question. I hope I didn' t do my typical beat around it.

Dr. Wubneh: I think there might be some more. It has helped me.

Mr. Harwell: I' m not sure if my question should be directed to you or the Building Inspector and I' m sure if I' m expressing it correctly. My understanding of the matter and this is rather strange to me, two buildings on the same property. That if one or both of these properties is destroyed by earthquake, fire, whatever, greater than a certain percent that the build back has to conform with current criteria.

Mr. Little: I' ll definitely defer that one. I think I know the answer but I' d rather like the expert have it.

Mr. Everett: I believe years ago it was addressed a little more specifically in the Code book but now I believe without having it right in front of me, it's defined as substantial damage. If I can refer back to when we had the flood, there were evaluations done, the understanding was that substantial damage meant more than 50 percent damaged. There are some exceptions to having to meet the entire current code.

Mr. Harwell: In this case my real question was. Individual structures, each structure stands on its own or is it a combination structure? If one of these structures was the major valued structure was substantially damaged then would the whole, both have to be built back or just one?

Mr. Everett: No sir. Structure specific.

Mr. Harwell: Structure specific. Thank you.

Dr. Wubneh: There's a question for you

Mr. Little: There's one additional part to your question Mr. Harwell that Mr. Everett mentioned to me as he was going by. If one of those buildings was burned beyond reparability or just burned to the ground because of its current status you could not rebuild on that lot.

Mr. Harwell: Period.

Mr. Little: Period because it would be a nonconforming lot. What was grandfathered in because of its existence the grandfathered not longer exist if it was torn down or had to be torn down.

Dr. Wubneh: Let we just follow that, another question. Follow the questions that Mr. Harwell raised. If this building was not grandfathered then it is in violation. Correct? It's nonconforming now.

Mr. Little: It's nonconforming now and it has not...

Dr. Wubneh: Therefore, if it were to be burnt down, the property owner would not be able to rebuild.

Mr. Little: That is correct. Could not be rebuilt.

Ms. Bellis: And if it was subdivided and either of those structures were destroyed or substantially damaged, then no structure could be put on that lot because it would be nonconforming?

Mr. Little: What would have to happen because, remember, a variance runs with the land as long as the variance requirements exist. If one of those houses burn down the lot that were the burned down house was, the burned down structure was would be a nonconforming lot. Would not meet the 6,000 square feet. You could not rebuild on it unless a waiver or variance was granted. It would lose all of its “protection” if it burned down. It would have to start a new.

Dr. Wubneh: Any other questions? One questions Mr. Becker. I believe you said it would not qualify for FHA loan if the individual were to go and try to get a loan.

Mr. Becker: Yes sir.

Dr. Wubneh: But would he be able to get any other loan?

Mr. Becker: Yes. We can get a commercial loan.

Dr. Wubneh: What would be in your estimate between a what the individual would have gotten if they were to qualify versus what they would get with the alternative.

Mr. Becker: My understanding and Eddie can talk about this after some of the other folks. Approximately 25 percent more in cost through a commercial loan. The dollars add up quickly on that sizable loan.

Mr. Little: If I could make just one clarification. Under Section 9-4-30 of the Code, if it were burned down or a storm or whatever, flood, caused it to be damaged more than 50 percent, if within 180 days of the demolition, whatever the cause of that demolition was. The owner got a building permit to reconstruct the variance would still have life. Once you went to 181 days then they would have to come back and reapply. The variance would still be there up to 180 days they would have to get a building permit, after that it's gone. They would have to come before the Board and ask for a variance.

Dr. Wubneh: Any other questions for the applicant? Who is the other person you wanted to come and speak?

Mr. Becker: I'd like to call Dr. Dietrich.

Dr. Wubneh: Okay. Dr. Dietrich. Please.

Mr. Becker: If it's okay with the court I would ask permission for the witnesses just to testify in an narrative as opposed to questions and answers.

Dr. Wubneh: Okay but just for clarification purposes where they sworn?

Mr. Becker: Yes sir.

Mr. Robert Dietrich: My name is Robert Dietrich. Thank you Board members for listening to me. I'm speaking in support of this application. I have interest in abutting properties. In studying the property and issue and looking at it from the perspective of an abutter I find no significant impact on my property or on the neighborhood property, on the neighborhood in general. In regards to positive aspects I do support the concept of splitting off the one single family dwelling could make that property potentially more attractive to a non-investor, to a family. A professor, a graduate student who wants to live in that house and make it a home. In that regards I'd like to make a proposal to support the variance.

Dr. Wubneh: You're just speaking in support of the application?

Mr. Dietrich: Yes I am.

Dr. Wubneh: Thank you. Any questions? Anyone else here to speak in favor of the application?

Mr. Becker: I apologize, we're going out of order. The only other person I would ask to go out of order is Joe Davis.

Dr. Wubneh: Okay Mr. Davis.

Mr. Joe Davis: I appreciate you're letting me come early. Turns out my wife is having a birthday and I promised to take her out to a fancy restaurant. I might even carry her tray for her I don't know. I like, Bob Dietrich, am an adjacent property

owner. I own the single family house right beside the duplex in question. I support the petition to separate it. Like Bob and everybody of all the things that Bryan Becker told us tonight the most significant thing I think is the fact house and duplex are already there. If we split those into two the really only affect that I can see is that somebody might be able to sell the house to a family. I don't think anybody denies that's the best thing over there is to have families as opposed to renters.

Dr. Wubneh: Thank you. Any questions for Mr. Davis? From the Board? Thank you

Mr. Becker: Mr. Chairman, next I would ask Robert O'Conner to come up. The applicant.

Dr. Wubneh: We're going out of order but we accommodate as much as we can.

Mr. Robert O'Conner: Thank the Board for entertaining this application. Let me introduce myself. My name is Rob O'Conner. I first come to Greenville in 1988 as a freshman at East Carolina University and lived in the university area. Once I got out of undergraduate and was going to grad school I liked the university area and that's where I bought my first property as a graduate student at ECU. From that point when I came in '88 I've pretty much been involved with the university. Been involved in the neighborhood itself as far as a landlord and as a caretaker of the neighborhood as well. While my permanent address is in Charlotte, North Carolina I am pretty much in Greenville working and playing landlord and also a realtor here in Greenville. I am member of the local multi-listing service so I do work here in Greenville. I am from Charlotte, I do keep a house in Greenville in the university area for myself. I am involved with the university as well as the neighborhood coalition along with university that goes with the neighborhood. I'm involved with that. I attended their meeting last night. Working with them trying to make the neighborhood a better place and just trying to let everyone know that I am, while my address is in Charlotte, I really am here 2 weeks a month doing work, buying and selling property as a realtor as well as maintaining the properties. While I'm not here in Greenville full time I'm here half the time. I do keep permanent residence here to myself. Originally what I was looking for kind of dilapidated properties that haven't been keeping up and duplex that was on Johnston Street was really run down and in poor condition. I contacted the owner who was Charles McLawhorn or Sonny McLawhorn, a local attorney in town, and I inquired to him about purchasing the property (unclear) go in there rehab the properties, redo the kitchens, redo the bathrooms, to make them a nicer property. When I contacted him I was going to do

that and what I was going to do was get a normal mortgage and go in there and rehab the properties but the condition of the duplex, it had been years since anything had been done to it. It was in such poor condition that at that point you couldn't get a loan on the property because it was such poor condition. In the summer of 2004, I owner/financed the property with Sonny McLawhorn to give me a year time to go in here rehab everything. Rip out the kitchens, rip out the bathrooms and make it a nicer property and upgrade it to the condition that the neighborhood really deserves. After that point, I spent \$30 to \$40 thousand dollars rehabbing just that one duplex and it's really beautiful inside. I live in one side when I'm here in town, that's my side. What happened was when I got the rehab done I went to Eddie Brooks, he's been my loan officer for other properties and I said okay let's go ahead and do this. During the course of going through the application they found out that because there's two separate houses on one piece of property it does not conform to be able to get a conventional loan. To get a conventional loan you have to have comparable properties if you ever refinance your house, bought a house. The appraiser would go out and try to find similar properties and to find ones that have sold in that area that have two separate residences and two separate addresses that are on two different streets on one property there is none. There was no comparable so all of a sudden I'm facing, I have this property that I have to pay off the owner/finance and all of a sudden I'm stuck. I have no way to get a loan on this as conventional. Luckily, one of my friends that I went to East Carolina here with is a commercial loan officer, so I went to him and begged him so without an appraisal he approved me with a short-term adjustable rate mortgage just so I could go ahead and pay off the owner/finance. Now that I have that and that was 2005 in the summer when rates were pretty much at their lowers. I have another year or so on that and the rate on that was 8.5 percent on a commercial loan. That was locked in the 30 year lowest rate there possibly was. Now with the year or so left in, the three years is up, and the rates have gone up substantially, what was before a 8.5 percent loan I'm looking at 10 or 11 percent on a commercial loan. At that point, even if it was completely rented out I'm still negative in the hole and I didn't understand or didn't have knowledge that I had purchased just a problem until I had already purchased it. After rehabbed it I found out that I was in a bad position. What I'm asking you now is, apparently the property on both sides, the property owners. Robert Dietrich owns two of the properties to the east and Joe Davis owns the one property to the west and those are the only ones that abut it. If you look at the map you can see where at one point where those properties were separated before. For some reason this property was, the owner at the time, didn't want to do it or didn't do it so both the properties on both sides have been split up to smaller lots and this one was overlooked at the time. Now I'm coming to

the Board asking if I can be just like the two properties on either side of me with support of those owners to have that small invisible line on the map as they do because the subdivision. The only thing it will allow me to do is have that single family house hopefully eventually put that into the incentive program with the university, Michelle Lederman. I've been working with her she's the one doing the incentive program and have that. At this point I can't do that. One, I'm stuck with a loan, a house that I can't get a mortgage on and I can't see that to a single family if I was going to sell the property because they would be forced to buy the duplex behind there. If I couldn't find a loan the person who wanted to buy the little single family would have to pay cash for both the properties to be able to do it. I'm in a hard place at the moment and I'm asking the Board to consider the variance to allow that. All it really is it would be the same invisible line that's on both sides of the property that's already existing, it was probably just overlooked and I would just like, hopefully, subdivide that so it would be equal and similar to both properties on both sides of it.

Dr. Wubneh: Any questions? Yes Ms. Bellis.

Ms. Bellis: Mr. O'Conner you mentioned it and I would like to follow up on it. You say you own several properties in that neighborhood?

Mr. O'Conner: Yes madam.

Ms. Bellis: Are any of those owner-occupied. You own them have you at any time attempted at any time to sell that to a single family or are they all rental units?

Mr. O'Conner: They are all rental units. I've lived in several of them over the years that I've lived in Greenville. Other than the unit that I live in myself they are all rentals.

Ms. Bellis: So why would you not continue to rent this one and receive compensation from that rather than...

Mr. O'Conner: At this point it is my intention to still maintain the property as a rental unit. If in the future, hopefully, in the future if I do sell all the properties that one will be able to be sold to an individual where right now it can't be. It can't be because it's attached to the investment property and the person who wanted to live there would be unable to obtain a loan for it.

Ms. Bellis: I understand in the handout that we have, you have another property with two buildings on the same property, two residences. Will you be asking for a variance for that?

Mr. O' Conner: There's no single family, it's a very large house on Fifth Street, Fifth and Student, a historic house with a smaller duplex behind that. It's not a single family, it's just one property itself and they're both multi-families.

Dr. Wubneh: Any other questions?

Mr. Estes: Do you own all three dwellings right now?

Mr. O' Conner: When you say three dwellings, there's the duplex, there's the single family greenhouse and the other dwelling is a small garage that goes with the.

Mr. Estes: I'm sorry I was thinking the duplex would be two.

Mr. O' Conner: I'm sorry.

Mr. Estes: And the one story siding dwelling, you own all of those, both of those.

Mr. O' Conner: That is correct.

Dr. Wubneh: If I remember correctly, my memory serves me right, I think in your application there is a reference to there are other homes in that area that are pretty much in the same situation as yours. I believe there is a reference to that in your application.

Mr. O' Conner: That was one of the exhibits that they had shown as well. The different other properties. When looking at the exhibit I wasn't aware of the other properties that were in that same situation.

Dr. Wubneh: There's something reference to that. My question is has the city given a variance on any one of those. Maybe that's a question only appropriate for Mr. Laughlin than to you.

Mr. Laughlin: The lots that were split before were split prior to the zoning ordinance

in the middle 1940's.

Dr. Wubneh: So there has not been any variances?

Mr. Laughlin: No sir, not that I'm aware of.

Dr. Wubneh: Thank you. Yes Ms. Bellis.

Ms. Bellis: If we grant this variance will it be setting a precedence so that any of the other lots can come up for the same situation?

Mr. Little: It would not prohibit any other nor would it guarantee that just because a variance was granted in one case. If you make a finding that all the criteria are met that's unique to this lot. Another one of the 13 properties were it exist if they come in and say they want to have a variance also they would still have to meet the same criteria. If they could not meet the criteria the variance would not be granted. They would have to meet the criteria themselves. A variance application request is unique to itself.

Dr. Wubneh: Any other questions?

Mr. Hutchens: One quick question Mr. Chairman. Mr. O'Conner if I understood correctly, maybe I'm confused. You're asking for this variance because some point in the future you may wish to sell and this would make it a more marketable property or because you want to sell it now?

Mr. O'Conner: In the future. Actually, the request for the variance, the initial request is in the future when it is sold it could be sold as single family. My immediate hardship is the fact that the property does not allow financing, conventional financing and once the initial loan is up, with the interest rates as they are now, I will be completely negative margin and losing money on the property.

Mr. Hutchens: So it's your intent for the immediate future to continue renting the property?

Mr. O'Conner: For the immediate future, yes that is my intent.

Ms. Safford-White: When you say conventional you're saying that you can actually get a loan you just don't want to get a higher rate loan?

Mr. O'Conner: I applied for different, the conventional loan is like one you would get for your house, normal investment house. Actually, if I didn't have a close friend and gentleman at the bank I couldn't have gotten approved for a conventional loan because you have to have an appraisal to show the value. When the banks look at giving loans regardless of it's a commercial or conventional loan, if worse case scenario the property was foreclosed on, the bank could not marketability sell that to someone else because (1) they would either have to pay cash for it or try and find some other loan because it has two houses on one property.

Dr. Wubneh: Did you get your answer?

Ms. Safford-White: I'm a little confused now because I thought your attorney said you could get a loan. It may not be the one that you wanted but you could actually get a loan. Did I miss something?

Dr. Wubneh: That's correct. 25 percent was the margin that Mr. Becker gave me.

Mr. Becker: I may be a little confused. We've got the loan officer here. I was saying what my understanding was of it and I may not be correct on that. Sounds like the one he has now is 25 percent more. It sounds like what he was saying is that was kind of a unique situation (unclear). Fortunately, we've got the expert on that field here so I have a feeling he may be best one to ask.

Dr. Wubneh: Let's finish first in case there are other questions.

Mr. Shook: Mr. O'Conner is the financing that you have in place now that is not permanent financing. Is that correct? Is that a temporary loan is that what you're saying?

Mr. O'Conner: Temporary three year loan.

Mr. Shook: Are you paying interest and have a balloon? Are you at some point in time expecting to pay that loan out? At the end of three years.

Mr. O'Conner: Three years, that's correct. Or refinance it if the variance is approved then I can get a conventional mortgage on both properties and finance both of those

that way. Right now, I was on a great favor from a very close friend. If that gentleman was not an associate of mine I don't know where I would have been. I would have been defaulting on the loan to the owner/finance because I would not have the money to do that. If it weren't for a good friend I'd be in a worse situation than I am now.

Mr. Estes: I have one question for you. We grant this variance then what was one lot becomes two. At that point are we subject to any new laws or guidelines. For instances, I looked that this from both sides of the street it doesn't appear, maybe there is a sidewalk across the street. Would you need to upgrade that property to come into compliance with whatever the zoning laws are for it?

Mr. O' Conner: Both the properties themselves are self-sufficient without needing the other property. There wouldn't be any structural, the variance would really, wouldn't allow me to do anything different to the properties. I can't build anything, I can't change anything, I can't do anything at all except possibly sell one of them to a single family and be able to actually get a normal conventional loan. Other than that it allows me to do absolutely nothing. It just makes me similar to the properties that abut both sides of me that have already been split up.

Mr. Laughlin: The city wouldn't have any additional requirements were it granted. Nothing would have to come into conformity I think in the sense of the question that you're asking. Other than the fire codes.

Mr. Estes: The fire codes. Thanks.

Dr. Wubneh: Yes Mr. Harwell.

Mr. Harwell: I normally would not ask this but it's data that was submitted to us in this form right here. I'm just asking are these figures are correct to your best knowledge that the current tax value is \$144,460? Sell's price is apparently what you paid for it is \$266,000?

Mr. O' Conner: Yes sir.

Mr. Harwell: Thank you.

Dr. Wubneh: Any other questions? Anyone else here who is in favor of the application? Mr. Becker did you want to add something?

Mr. Becker: The last person to be heard is from The Little Bank.

Mr. Eddie Brooks: Hell, good evening, my name is Eddie Brooks. I am a Mortgage Banker. Basically I just wanted to come and testify on behalf of Mr. O'Conner. I have done several loans for him on several properties over the last few years. He's been a very good customer of mine. This property that he has the problem is that if you're going to go on the secondary market, that's what's going to give you the best interest rate on a permanent long term loan, you must have an acceptable appraisal. An acceptable appraisal is going to consist of a minimum of three similar properties that have sold in the last six months to a year that are within five miles of the property that are going to show the value and the marketability of the subject property. That's the problem. There's not a rule that says you can't finance two houses on one lot. There is a rule that says you have to have an acceptable appraisal and that is the problem that we are having here. As it's stated, there are other properties that it showed that are in that area that have two dwellings on one parcel but they're not recent sales. That's basically where his problem is in getting a good long term loan without having a good appraisal the only loan he will get on this property is either an in-house or what is called a portfolio loan with a bank and that is going to have a three or five year balloon or a commercial loan which is going to have a substantial higher interest rate. That's basically the problem.

Dr. Wubneh: How high is that commercial loan?

Mr. Brooks: I do not do commercial loans but I can tell you right now prime, the prime lending rate is at 8.25. A few years ago it was at 4.25. Right now you can borrow money for 30 years at 6 percent. To borrow it over night it's prime plus so in my opinion I would say that if he is going to get a commercial loan he's looking at somewhere in the prime to prime plus one range.

Dr. Wubneh: So around 9.

Mr. Brooks: 8.25 to 9.25. However, conventional 30 year fixed mortgages because of the inverted yield curb that we have in the market right now it's in the 6 percent range.

Dr. Wubneh: So in your opinion bottom line is this margin of interest rates is not a question of not being able to get a loan it's just it would be one point above or the

margin in which this case you gave me is 8.25 he would have to pay 9.25.

Mr. Brooks: Right. Well there's two issues there. The first issue is there would be a, in my opinion, a 2 or 3 percent increase in his interest rates which certainly adds up over time. The other issue is that you can't get long term permanent fixed rate financing.

Dr. Wubneh: It has to (unclear).

Mr. Brooks: Right. It's has to be on a 3 year or 5 year balloon or it's going to have, it has to be an adjustable where it is subject to adjust after an initial period. The only way you're going to get a good cheap 30 year loan is to have good solid appraisal on a property. The reason he can't get that is because this is an extremely unique property.

Dr. Wubneh: Okay. Ms. Safford-White had a question earlier. Is that question answered for you?

Ms. Safford-White: Yes.

Mr. Hutchens: I have a question Mr. Chairman.

Dr. Wubneh: Ms. Bellis had a question.

Mr. Hutchens: Go ahead.

Ms. Bellis: You said for it to be able to be financed you have to have three comparable properties that have sold within a certain period of time within five miles did you say?

Mr. Brooks: Well the underwriters', in a perfect world we would have three comps sold a month ago within a one mile but we're not in a perfect world. When a mortgage underwriter gets an application, excuse me, when they get an appraisal they will allow the comps to be up to five miles. They would have to write an addendum that is typical for that area. In eastern North Carolina that can be typical but anything more than five miles they're going to have an underwriting issue.

Ms. Bellis: So you say it would be difficult to find comparable properties within five

miles of that?

Mr. Brooks: That's what I'm being told by appraisers.

Ms. Bellis: How likelihood would it be that you'd find comparable properties within five miles if the variance were granted?

Mr. Brooks: Then you're looking at, if the variance was granted, you'd have a single family detached dwelling and a duplex. They sell everyday.

Ms. Bellis: On a nonconforming lot, nonconforming lots.

Mr. Brooks: Okay, when you say nonconforming is that in reference to

Dr. Wubneh: They don't meet the zoning requirements of the city.

Mr. Brooks: Okay the zoning thing I'll be honest I know nothing about that. I can't speak on that part of it.

Mr. Laughlin: I would say that a very large number of the homes in this neighborhood were built prior to our current standards and are going to be 8, 9, 10 feet off the side lot line there. Most of the homes, not most of the homes but I'd say many are nonconforming.

Ms. Bellis: But neither of these lots would meet the R6 requirements.

Mr. Laughlin: That's correct.

Ms. Bellis: So if the house was substantially damaged, no house could be built.

Mr. Laughlin: It could be built, it could rebuilt on the very same footprint were a building permit ..

Ms. Bellis: Within ...

Mr. Laughlin: 180 days.

Ms. Bellis: Would have affect the marketability of the loan?

Mr. Brooks: The zoning issue?

Ms. Bellis: Yea.

Mr. Brooks: I'm not an underwriter nor an appraiser so I'm going, that's a tough question for me to answer. In my opinion if it were grandfathered in or if it were allowed per variance I don't see why. I mean the property would be legal. Here's what's going to happen, when an underwriter gets that appraisal and their going to look at it, they're going to see two dwellings on one lot even if they have three comps they're going to naturally think, and they're all trained to think this way, if I have to foreclose on this property can I sell it. Number two, what can I sell it for. One problem that I can see when an underwriter would get their hands on an appraisal on this property other than the lack of comparable properties would be that if I were going to sell this property the majority of the home buying public is a person about to buy a house, a home. They're not going to buy this property. They have to buy two homes to buy this property. Even if you had comparable properties an underwriter is really going to scrutinize this appraisal and they'll probably ask the appraiser to provide two more comparable properties. They're going to look at it as if what am I going to do with this property if I foreclose. Can I sell it to the average homebuyer. As it is now, that answer would be no.

Mr. Hutchens: Just a very quick question sir. By any chance are you the lender from whom Mr. O'Conner has his current loan?

Mr. Brooks: No sir.

Mr. Hutchens: Thank you.

Mr. Brooks: No sir. Not on this property. Other properties.

Dr. Wubneh: Any other questions? Anyone else here in favor of the application? Thank you. Anyone opposed to the application?

Ms. Inez Fridley: Good evening Dr. Wubneh. My name is Inez Fridley. I reside at 2003 East Fifth Street. I am speaking in opposition to the request. I'm on the Board of the Tar River Neighborhood Association. The Board has not really discussed this so we have shared the information with each other and there are concerns about this but no vote has been taken so I'm not speaking on behalf of the Association this

evening. As to the factors the Board of Adjustment must consider in granting a variance relative to Mr. O' Conner. To Item 1 of Mr. O' Conner's presentation he can clearly secure reasonable return and make reasonable use of his property as it is currently configured. In fact he is already doing so as both of the properties are rented out. As he has told you himself he is an investor in this neighborhood, he owns I think seven properties in the area and he's been investing in there for quite some time. I would assume that he would not have invested in this property just a year ago if he not expected to make a reasonable return on his investment. There's been a lot of talk this evening about interest rates, reasonable return or whatever. It's quite realistically that as long as someone owns a piece of property whatever they have to pay, secure whatever financing they need, they simply pass on to their tenants. I would present to you that doesn't really cause a hardship either. If in fact he has to pay a higher rate for a loan he could simply pass that on to his tenant and he gets that back. The hardship of which he complains is not unique. There are nonconforming lots throughout this neighborhood as staff reports and as many of you know. Basically his request takes one big nonconforming lot and just makes it two smaller nonconforming lots. In the application Mr. Becker and Mr. O' Conner repeatedly referred to the Task Force on Preservation of Neighborhoods and suggest that somehow through the subdivision of this property an owner-occupant would be enticed to purchase a 1,000 square foot lot with two bedrooms on a postage size lot. Actually on a postage stamp size lot with no yard to speak of and surrounded by rental property. I would suggest that in fact an owner-occupant could be found they would be more interested in purchasing the entire lot then they could at least control the duplex rental behind them and adjacent to their back door. This is typical in this area. Many times people have other properties and as long as you can control them you have some control as to what goes on around you. As you know the property was developed in the 1930 and 50's when there weren't zoning regulations in Greenville. Granted it's not what you'd like to see in a residential area. However, the property has been zoned R6 since the 1960 when we instituted of zoning and the recent change to R6S has made no changes in the property as to how it can be used. Mr. O' Conner has not been disadvantaged by changes to the zoning ordinance. Mr. O' Conner cannot guarantee any future use of the property should he decide to sell it so all this talk and rational about owner-occupants to me is kind of (unclear) because there are not guarantees about who he would eventually sell it too. The references to mortgage lending is also not relevant to this request in my opinion. Mr. O' Conner could secure financing whether it's low cost or not and he has already secured that. He has actually improved the property with financing that he has already secured. Future owners, whoever that might be, will also have to make the best personal

financial decisions for themselves as to whether they desire to purchase this property and how they choose to finance it. We do have a concern that if something like this is passed there are other lots in the area. Sometimes when you do something like this you almost set a precedent as to what comes next. Since we really don't know what all those other lots are that need to be combined or recombined, separated or so forth, we're concerned about the deleterious effect that this variance might set. I'd also question and no one's brought this up but I'd also question since both of these properties are in the College View Historic District how any type of fire retardant material could be applied to the exterior of these dwellings because that would be controlled. There's also been a lot of comment tonight about these indivisible lines. If you actually look at the map, this is a very tight property with building all over it with little separation. The other properties even though there is a line through them are single stand alone individual dwellings with no other dwellings on the property. So I really don't think comparing them to what is next door is actually that reasonable because this is a unique piece of property that is unlike the properties that surround it. So my request, our request would be that you deny the variance. (Unclear) Thank you.

Dr. Wubneh: Any questions for Ms. Fridley?

Ms. Fridley: I'm not an expert in any of these things.

Dr. Wubneh: Is this in the Historic District?

Ms. Fridley: Pardon? This is in the historic district yes sir.

Dr. Wubneh: So any variation or material would have to be scrutinized by the Historic Commission.

Mr. Little: The owner of either or both of the lots where the fire retardant material was placed on the exterior, not the interior because that's not controlled by the ordinance of the Historic Preservation, Certification of Appropriateness would have to be approved either as minor work approved by staff or as a regular COA, Certification of Appropriateness which would go before the Commission itself.

Ms. Fridley: If I could for clarification. My understanding is that if this was passed the City would require that there be some type of fire retardant.

Mr. Little: That is correct.

Ms. Fridley: So in other words, this would have to be done by Mr. O'Conner? This would have to be done immediately. It's not when someone else buys the property?

Mr. Little: That is correct.

Ms. Fridley: I thought that was correct.

Dr. Wubneh: Any other questions for Ms. Fridley? Thank you. Anyone else here in opposition to the application? Hearing no other person in opposition. Members of the Board I now close the public hearing and call for a Board discussion. Please keep your mike open for discussions.

Ms. Bellis: Mr. O'Conner bought this property in June, 05. I was unsure of the date of the Task Force and Mr. Becker very conveniently pointed out that the Task Force on the Preservation of Neighborhoods and Housing was reported to City Council in December, 2004. Which was six months prior to the purchase date so that Mr. O'Conner would be aware of the desire to keep this as one property.

Dr. Wubneh: The date on that Task Force Report is on December 13, 2004.

Ms. Bellis: Which is six months before his purchase date. So if this is a hardship it's a hardship he should have been aware of at purchase time.

Dr. Wubneh: Any more discussion? Okay. Members of the Board this is a variance request and I will read the criteria by reference. If you want a vote please stop me otherwise by your silence you will be voting in support of the application. The first criteria is Reasonable Return.

Ms. Bellis: Vote.

Dr. Wubneh: There's a vote. We'll start with Ms. Safford-White.

Mr. Harwell: Explain Yes or No.

Dr. Wubneh: If you vote Yes you're voting in favor of the application. If you vote No you are voting against the application. Once we vote we come back to your

reasons why you're voting Nay.

Ms. Safford-White: Yes.

Mr. Ward: Yes.

Ms. Bellis: No.

Dr. Wubneh: No.

Mr. Estes: No.

Mr. Hutchens: Yes.

Mr. Harwell: No.

Dr. Wubneh: Four Nays. Unique Circumstance.

Mr. Little: You need to state the reasons for your vote to the Board.

Dr. Wubneh: Thank you.

Mr. Little: Just the No votes.

Dr. Wubneh: Ms. Bellis.

Ms. Bellis: Well I feel that he's getting a reasonable return on three of the units. Apparently rented and he will continue to rent them.

Dr. Wubneh: My reason is that the major factor is financial burden he still gets a reasonable return as Ms. Bellis pointed out. It's just a questions that the burden is probably heavier than he would have gotten. That's why I voted No. Mr. Harwell.

Mr. Harwell. I used the figures that he provided and my calculations indicate, at least to me, that he could get a reasonable return.

Mr. Estes: I agree. The rate of return was I thought reasonable for a business investment.

Dr. Wubneh: Okay. We'll move on to the next criteria. Unique Circumstance, Hardship by Applicant's Action.

Ms. Bellis: Vote.

Dr. Wubneh: Vote. Again, this time Ms. Safford-White.

Ms. Safford-White: No.

Dr. Wubneh: Mr. Ward.

Mr. Ward: Yes.

Ms. Bellis: No.

Dr. Wubneh: Yes.

Mr. Hutchens: Yes.

Mr. Harwell: No.

Mr. Estes: Yes.

Dr. Wubneh: Okay. Ms. Safford-White.

Ms. Safford-White: When he purchased this property he knew before hand that it was designed to stay one lot. A hardship, he purchased it, there is no hardship thereafter (unclear).

Dr. Wubneh: Ms. Bellis.

Ms. Bellis: I feel that he was aware of the circumstances of the Task Force. It had already come to City Council. He knew about this so if it's a hardship he created it.

Dr. Wubneh: Mr. Harwell.

Mr. Harwell: I again, going to the data that was provided, particularly the data that was provided as number 5 in the handouts, that the hardship financial, financial

hardship would have been created by him.

Dr. Wubneh: Okay. Mr. Estes did you vote Nay?

Mr. Estes: I voted Yes.

Dr. Wubneh: The next criteria is General Purpose of the Ordinance, Safety and Welfare. I believe the applicant has sustained several negative votes on at least two of the criteria. Do we go ahead and approve the findings of fact still? At this point.

Mr. Little: You still have to approve the findings of fact and then the application based on the findings of fact that information, the comments made by the Board members becomes part of the findings of fact which would have to be part of the motion.

Dr. Wubneh: We would still have.

Mr. Little: Based upon the votes that were taken the application (unclear) results.

Dr. Wubneh: We don't have to do a motion to approve then? I'd like to get a motion.

Mr. Harwell: Question on finding of facts. The staff comments "Shall meet NC State residential building code in that exterior walls with a fire separation distance of less than three feet shall have not less than a one-hour fire resistance rating with exposure from both sides." Is that part of the findings of fact and if not I'd like to make it so.

Mr. Little: It's not unless you make it.

Dr. Wubneh: Unless you make it that's correct.

Mr. Harwell: I would like to make that part of the finding of facts.

Dr. Wubneh: Do we vote on that to make it a part of the finding of facts? Or because it is public record it becomes automatically a finding of fact?

Mr. Little: You would have to find it as one of the facts.

Mr. Harwell: Had testimony to that fact and I would make a motion.

Dr. Wubneh: Motion to approve the finding of facts.

Mr. Little: I believe the motion that Mr. Harwell made was to approve the inclusion of the fire code requirements as part of the finding of facts before you get to the other findings.

Mr. Harwell: I have a specific reason for this.

Dr. Wubneh: If it would help do you want to give us an explanation of why?

Mr. Harwell: I'd like this to be in the record so if this came down to, as it did before one time, it will be part of the finding of facts.

Dr. Wubneh: Okay. There is a motion to include a matter concerning the fire code by Mr. Harwell. Is there a second?

Mr. Estes: Second.

Dr. Wubneh: Second by Mr. Estes. Those in favor of including this fire code motion included in the finding of fact, please indicate by saying "Aye". Opposed? Okay, I'd still like to get a motion to approve the finding of facts including the motion that was included.

Mr. Harwell: Motion.

Dr. Wubneh: Motion by Mr. Harwell.

Ms. Safford-White: Second.

Dr. Wubneh: Second by Ms. Safford-White. All those in favor or approving the finding of facts as presented please indicate by saying "Aye". Opposed?

Mr. Little: Your notation was then that based upon the failure on two of the criteria (unclear).

Dr. Wubneh: Based on Criteria no 1 and Criteria 3 the negative votes, your application is denied.

Mr. Little: For the record, it is noted that the final decision of the Board is appealed to the Superior Court. It's within 30 days. Initially what we've done is within 30 days after the Order has been signed that way (unclear) makes it Christmas. That gives him time.

Dr. Wubneh: So the applicant has only 30 days.

Mr. Little: 30 days, the Order is drawn up and signed by you. We'll use that as the criteria.

Dr. Wubneh: Any other matters that we need to discuss? Motion to adjourn.

COMMENTS

Ms. Bellis stated that she appreciates the maps that were included in the packets. They were easier to identify the subject areas with than other maps previously submitted.

There being no further business the meeting adjourned at 8:57 PM.

Respectfully submitted

Seth Laughlin
Planner