

April 28, 2005

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

Mr. Charles Farley, Chairman  
Ms. Sharon McLawhorn                      Ms. Ann Bellis  
Mr. Thomas Harwell                        Mr. John Hutchens  
Mr. William Dunn                            Mr. Charles Ward

THOSE MEMBERS ABSENT: Mr. Warren, Mr. Wright and Dr. Wubneh

VOTING MEMBERS: Farley, McLawhorn, Bellis, Harwell, Hutchens, Dunn and Ward

OTHERS PRESENT: Mr. Ed Lynch, Planner  
Ms. Kathy Stanley, Secretary  
Mr. Les Everett, Chief Building Inspector  
Mr. Koehler Queen, Engineer  
Mr. Tim Corley, Engineer  
Mr. Bill Little, Assistant City Attorney  
Ms. Pat Dunn, Council member

#### MINUTES

Chairman Farley asked if there were any corrections to the minutes. Motion was made by Mr. Harwell, seconded by Mr. Dunn to accept the March 24, 2005 minutes as presented. Motion carried unanimously.

#### REQUEST FOR A SPECIAL USE PERMIT BY JUDY BEAMAN AND FRANK OWENS – GRANTED

Chairman Farley stated that the first item is a request by Judy Beaman and Frank Owens. The applicants, Judy Beaman and Frank Owens, request a special use permit to allow the continued operation of a public/private club and billiard parlor known as On Cue Sports Bar, pursuant to Section 9-4-78(f)(6)l&m of the Greenville City Code. The property is located in the Bells Fork Shopping Center Unit #5 and is further identified as Tax Parcel 42243.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on April 18, 2005 and April 25, 2005. Those wishing to speak for or against the request were sworn in.

Mr. Lynch delineated the area on the map. Mr. Lynch stated that this is a request to renew a special use permit to continue the operation of a public/private club and game room. The proposed use is to be located at 2120-5 East Firetower Road in the Bells Fork Square Shopping Center. The shopping center is located at the intersection of Firetower Road and Charles Boulevard. The property is currently zoned CG, General Commercial. The site is approximately 5600 square feet, which is part of a planned shopping center. There are a total of 296 parking spaces provided for the shopping center. The property is located within Vision Area "C" as

designed by the Comprehensive Plan. Management actions for Vision Area "C" are to encourage development and redevelopment of existing commercial areas. The request is consistent with the Land Use Plan Map, which recommends commercial development for the subject property. Mr. Lynch read the definition of a public/private club and specific criteria the applicant must comply with if granted the permit. Mr. Lynch asked that the proposed Findings of Fact be entered into the record.

Applicant: Judy Beaman & Frank Owens

Request: The applicants, Judy Beaman and Frank Owens, desire the renewal of a special use permit to continue the operation of a public or private club and game room pursuant to Sections 9-4-78(f)(6)l & m and 9-4-86(f) of the Greenville City Code.

Location: The proposed use is to be located at 2120-5 East Firetower Road in the Bells Fork Square Shopping Center. The Shopping Center is located at the intersection of Firetower Road and Charles Boulevard (NC 43). The property is further identified as being Tax Parcel Number 42243.

Zoning of Property: CG (General Commercial)

<u>Surrounding Development:</u>	<u>Zoning</u>
North: Just Hair Salon	CG (General Commercial)
South: ASAP (Film Store)	CG (General Commercial)
East: Vacant	CG (General Commercial)
West: Amoco, Hardees	CG (General Commercial)

Description of Property:

The site is approximately 5600 square feet, which is part of a planned shopping center. There are a total of 296 parking spaces provided for the shopping center.

Comprehensive Plan:

The property is located within Vision Area "C" as designed by the Comprehensive Plan. Management actions for Vision Area "C" are to encourage development and redevelopment of existing commercial areas. The request is consistent with the Land Use Plan Map, which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on April 14, 2005. Notice of the public hearing was published in the Daily Reflector on April 18, 2005 and April 25, 2005.

Staff Comments:

This location was issued a special use permit for a billiard parlor and public/private club in August of 1996 and has annual renewal ever since then.

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

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

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

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

1. Special use permit shall be for a period of one year and must be renewed annually.
2. It shall be the responsibility of the owner/operator to make timely application for permit renewal.
3. The owner (s) and operator(s) of a public or private club shall collect and properly dispose of all litter or 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 property boundaries of the establishment, adjacent sidewalks and public right-of-ways or other adjacent public property open to the public.
4. 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.
5. The Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements in the particular case.

Staff Recommendation:

All applicable permits must be obtained from Building Inspections. 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. Daryl Lancaster, Manager, spoke in favor of the request. Mr. Lancaster stated that they haven't had any problems the past year and would like to continue operation.

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

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

Motion was made by Ms. Bellis, seconded by Mr. Hutchens, 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 SPECIAL USE PERMIT BY BYUNG LEE – GRANTED

Chairman Farley stated that the next item is a request by Byung Lee. The applicant, Byung Lee, request a special use permit to allow an after school child daycare center, pursuant to Section 9-4-78(f)(8)a of the Greenville City Code. The property is located at 2433 Dickinson Avenue, and is further identified as Tax Parcel 19629.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on April 18, 2005 and April 25, 2005. Those wishing to speak for or against the request were sworn in.

Mr. Lynch delineated the area on the map. Mr. Lynch stated this is a request for a special use permit for a after school child day care center to be located at 2433 Dickinson Avenue. The property is currently zoned OR, Office-Residential. The development consists of two lots totaling 3.5 acres with access only on Dickinson. The northeast property line is a tributary of the Tar River and thus subject to the Tar River buffer rules. Currently the property is wooded and any development will be subject to sedimentation and erosion controls. The property is located within Vision Area "F" of the Horizons Comprehensive Land Use Plan. The Land Use Plan Map recommends (Mixed Use/ Office/Institutional) use for this property. It is the determination of staff that the proposed is in general compliance with the Horizons Comprehensive Land Use Plan. Mr. Lynch read the definition of a day care center. Mr. Lynch asked that the proposed Findings of Fact be entered into the record.

Applicant: Byung Lee

Request: The applicant, Byung Lee, desires a special use permit to allow the use of property located at 2433 Dickinson Avenue for an after school Child Day Care Facility pursuant to section 9-4-78(f)(8)a of the Greenville City Code.

Location: The proposed use is to be located at 2433 Dickinson Avenue.

The property is further identified as being a portion of Tax Parcel Number 19629.

Zoning of Property: OR (Office Residential)

Surrounding Development:

Zoning

North: Commercial Uses  
Single Family Residential

Office & General Commercial South:  
R-6 (High Density Residential)

East: Residential & Commercial  
(A.A., Salvation Army)

R-9 & General Commercial)

West: Single Family Residential

R-9 & R-6

Description of Property:

The property is located on Dickinson Avenue just north of the intersection with Arlington Blvd. The development consists of two lots totaling 3.5 acres with access only on Dickinson. The northeast property line is a tributary of the Tar River and thus subject to the Tar River buffer rules. Currently the property is wooded and any development will be subject to sedimentation and erosion controls.

Comprehensive Plan:

The property is located within Vision Area "F" of the Horizons Comprehensive Land Use Plan. The Land Use Plan Map recommends (Mixed Use/ Office/Institutional) use for this property. It is the determination of staff that the proposed is in general compliance with the Horizons Comprehensive Land Use Plan.

Comments:

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

(e) *Child day care facilities.*

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

Notice:

Notice was mailed to the adjoining property owners on April 14, 2005. Notice of the public hearing was published in the Daily Reflector on April 18, 2005 and April 25, 2005.

Staff Recommendation:

Site plan approval required prior to issuance of a building permit.

Planning staff is of the opinion that the request can meet all of the developmental standards required for the issuance of a special use permit.

Mr. Jon Day, representing the applicant, spoke on behalf of the request. Mr. Day advised that the property was recently rezoned to Office-Residential. Mr. Day submitted a revised map that indicates a sewer easement that was discovered at the rear of the property and the drainage ditch on the east side of the property is not on the property as indicated on the maps submitted with the application, therefore, the 50 foot riparian buffer is not applicable.

Mr. Byung Lee stated he would answer any questions.

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

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

Motion was made by Mr. Hutchens, seconded by Mr. Ward, 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 SPECIAL USE PERMIT BY DANIEL & FELISHA BLACK – GRANTED

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on April 18, 2005 and April 25, 2005. Those wishing to speak for or against the request were sworn in.

Mr. Lynch delineated the area on the map. Mr. Lynch stated this is a request for a special use permit to place a mobile home onto a private lot located at 1713 Charles Buck Road. The property is currently zoned RA20, Residential-Agricultural. The property is approximately 11,154 square feet. The property is located within the 100 yr. flood plain. The immediate area consists of several mobile homes, including a small mobile home park directly to the east. Access to the lot is via a private road off Pictolus Highway (NC 33). Wastewater will be served by an on site septic system and proper permits have been obtained. The property is located in Vision area "B" of the Comprehensive Land Use Plan. The Land Use Map classifies the

area for low density residential. The proposed use is in general compliance with the City of Greenville's Horizon's Land Use Plan. Mr. Lynch stated that the set up of the mobile home must comply with the Flood Prevention Ordinance meaning the mobile home must be elevated two (2) feet above the BFE (Base Flood Elevation) Mr. Lynch asked that the proposed Findings of Fact be entered into the record

Applicant: Daniel & Felisha Black

Request: The applicants desire a special use permit to place a mobile home onto a private lot pursuant to Section 9-4-78(f)(2)g of the Greenville City Code.

Location: The property is located at 1713 Charles Buck Road. This property is further identified as Tax Parcel Number 10221.

Zoning of Property: RA-20 (residential-agriculture)

<u>Surrounding Development:</u>	<u>Zoning</u>
North: Vacant Agricultural Property	RA-20
South: Single Family Home	RA-20
East: Mobile Home Park	RA-20
West: Single Family Home (Mobile Home)	RA-20

Description of Property:

The property is approximately 11,154 square feet. The property is located within the 100 yr. flood plain. The immediate area consists of several mobile homes, including a small mobile home park directly to the east. Access to the lot is via a private road off Pactolus Highway (NC 33). Wastewater will be served by an on site septic system and proper permits have been obtained.

Comprehensive Plan:

The property is located in Vision area "B" of the Comprehensive Land Use Plan. The Land Use Map classifies the area for low density residential. The proposed use is in general compliance with the City of Greenville's Horizon's Land Use Plan.

Notice:

Notice was mailed to the adjoining property owners on April 14, 2005. Notice of the public hearing was published in the Daily Reflector on April 18, 2005 and April 25, 2005.

Staff Recommendation:

All applicable permits must be obtained from Building Inspections.

The set up of the mobile home must comply with the Flood Prevention Ordinance, Title 9 Chapter 6 Mobile home must be elevated two (2) feet

above the BFE (Base Flood Elevation)

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. Daniel Black stated that the mobile home will be utilized as rental property. Mr. Black stated he would answer any questions.

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

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

Motion was made by Ms. Bellis, seconded by Mr. Harwell, to approve the request. Motion carried unanimously.

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

#### REQUEST FOR A SPECIAL USE PERMIT BY JESSIE D. COREY – DENIED

Chairman Farley: Next Item, Item 4 on the agenda. Public hearing on a request for a special use permit to allow a home occupation, specifically a home day care at 208 Country Club Road. The applicant, Jessie D Corey, request a special use permit to allow a home occupation, specifically a home daycare, pursuant to Section 9-4-78(f)(3)b of the Greenville City Code. The property is located at 208 Country Club Drive and is further identified as Tax Parcel 07776. I'll open the public hearing at this time. We need to get the speakers sworn in. Please get sworn in only if you think you may need to speak. Mr. Lynch.

Mr. Lynch: This is a request for a home occupation, specifically the use of this home occupation would be a child day care center located at 208 Country Club Drive. The property is located within Greenville city limits. It is located directly east of the Greenville Country Club abutting the 9<sup>th</sup> hole. The property is zoned R15S. The north is a single family residences which I believe is under construction right now. To the south is Greenville Country Club's driving range. To the east is a single family residence, residential lot which is vacant. The property is located. The property has 111 feet of frontage on Country Club Drive and the total lot area is 37,573 square feet. The single family dwelling on the property has 3,770 heated square feet and has access on Country Club Drive. The Land Use Plan has the area designed for conservation, directly east of that is conservation. The property in question is single family residential. Located in Vision Area "E" of the Greenville Comprehensive Land Use Plan. The Land Use Plan allows home occupations as long as they comply with the issuance of a special use permit. You'll see in the aerial it is located directly adjacent to Greenville Country Club. One thing that was interesting and I thought the Board needs to know is from the 9<sup>th</sup> tee box the property is directly 100, 200 yards from the 9<sup>th</sup> tee box, a stray golf ball would be landing near the home of this request. Public hearing notices were sent to adjoining property owners on



April 14<sup>th</sup>. Notice of the public hearing was published in the Daily Reflector on April 18<sup>th</sup> and April 25<sup>th</sup>. The specific standards that pertain to a child day care facility in a commercial sense allow six or more children to be monitored within any 24 hour period. This is a home occupation so it would be five or less children can be kept at any time at this location. Specific standards for a home occupation are the following: (1) Only permitted within single family dwellings; (2) Shall not be permitted within any accessory buildings; (3) Shall not constitute an accessory use to the principle use; (4) Shall not occupy more than 20 percent of the heated floor space of the dwelling unit which in this case would be 754 square feet; (5) Shall not employ more than one person other than those legally residing within the principle use dwelling; (6) Shall not be visible from any public street right-of-way or adjacent property line; (7) Shall not involve the on-site sale of products; (8) Shall not involve the outside storage of related materials, parts or supplies; (9) Shall have signage in accordance with Article N, Sign Regulations; and (10) Shall not create any nuisance or hazard to the occupants residing or working within the principle use dwelling or to area residents or properties. A home occupation is an activity conducted for financial gain in an owner occupied dwelling. If the applicant is issued a special use permit for a home occupation he/she must comply plus live within the dwelling. Any questions?

Applicant: Jessie Corey

Request: The applicant, Jessie Corey, desires a special use permit to establish of a home occupation (home daycare) pursuant to Section 9-4-7-78(f)(3)b and 9-4-86(v) of the Greenville City Code.

Location: The proposed home occupation is located in an existing residence at 208 Country Club Drive. The property is further identified as being Tax Parcel Number 07776.

Zoning of Property: R-15S (Low Density Single Family Residential)

<u>Surrounding Development:</u>	<u>Zoning</u>
North: Residence	R-15S (Low Density Single Family Residential)
South: Greenville Country Club	R-15S (Low Density Single Family Residential)
East: Residence	R-15S (Low Density Single Family Residential)
West: Greenville Country Club	RA-20 (Rural Residential-Agricultural)

Description of Property:

The property is located at the entrance of Greenville Country Club at 208 Country Club Dr. The property has 111 feet of frontage on Country Club Drive with a total lot area of 37573 square feet. The single-family dwelling located on the lot has 3770 heated square feet. The property has driveway access on Country Club Drive.

The location of this property is directly adjacent the 9<sup>th</sup> hole of Greenville Country Club. The property is approximately 200 yards from the tee box of the 9<sup>th</sup> hole. Potentially this could be a hazardous situation for children playing in and around the house. There are a substantial amount of large trees that should protect the property and any children from any stray golf balls.

Comprehensive Plan:

The property is located within Vision Area "E" of the City of Greenville Comprehensive Land Use Plan. The Land Use Plan allows home occupations, provided that they comply with the specific standards upon issuance of a special use permit by the board of adjustment.

Notice:

Notice was mailed to the adjoining property owners on April 14, 2005. Notice of a public hearing was published in the Daily Reflector on April 18, 2005 and April 25, 2005.

Staff Comments:

The City of Greenville has specific standards that pertain to Child Day Care facilities in a commercial sense. These facilities allow 6 or more children within any 24-hour period. Since this would be a home occupation, which is an accessory to the primary residential use, it should not have more than 5 children at any one time.

Staff Recommendation:

If approved, the applicant shall comply with the following pursuant to section 9-4-86, Specific Criteria:

Home Occupations shall meet the following characteristics:

1. Shall be only permitted within single-family dwellings;
2. Shall not be permitted within any accessory buildings;
3. Shall constitute an accessory use to the principal use;
4. Shall not occupy more than (20) percent of the heated floor space of the dwelling unit (maximum of 754 square feet in this case)
5. Shall not employ more than one (1) person other than those legally residing within the principal use dwelling;
6. Shall not be visible from any public street right-of-way or adjacent property line;
7. Shall not involve the on-site sale of products;
8. Shall not involve the outside storage of related materials, parts or supplies;
9. Shall have signage in accordance with article N, Signs; and
10. Shall not create any hazard or nuisance to the occupants residing or working within the principle use dwelling or to area residents or properties.

A Home Occupation is an activity conducted for financial gain in an owner occupied dwelling. If the applicant is issued a special use permit for a home occupation she must occupy the home as a residence.

Staff is under the opinion that the request meets all the development standards required for the issuance of a Special Use Permit.

Staff also recommends that this permit be limited to the supervision of no more than five (5) children in any 24-hour period.

Chairman Farley: Thank you Mr. Lynch. Questions from the Board. None at present. Would the applicant take the stand at this time please. Please state your name and give us a idea of your plans should this be approved tonight.

Ms. Jessie Corey: My name is Jessie Corey. I did day care from 2000 until 2005, the last of January. I did that for those years in Winterville on Davenport Farm Road and when I moved to Greenville I found out then that I had to give my license up until I came to the Board to be able to do day care again. Home day cares, there's a great need for that for working parents and since I have been doing day care for those years I've enjoyed working with children and the parents have enjoyed me. The parents that I had to give up it was painful for them as it was for me too as not knowing whether I could do it again that I had to come before the Board. I really, really enjoy working with my kids and I have never had any problems out of those years. I hope I can have my license back soon.

Chairman Farley: I guess the Board is curious you mentioned that you lost your license you say?

Ms. Corey: When I got ready to come to Greenville I had to turn them in until I come to the Board because once you come in Greenville, before you can do day care you have to go to the Board.

Chairman Farley: Okay Mr. Little can you explain?

Mr. Bill Little: State licensing requirements are only site specific and so it was approved for that particular site that she had in Winterville plus Winterville may have had their own special use requirements, permitting requirements that may be different from Greenville. Even if they were the same she would have had to discontinue operation until she obtained the required licensing, in this case, a special use permit by the City of Greenville even if the State gave her a waiver and allowed her to continue.

Chairman Farley: I see but the applicant understood that and was not already operating a day care.

Mr. Little: That is correct. The term "lost of license" it may be a generalized term. The authority under the jurisdiction to operate may be more an appropriate term. The State had not withdrawn her license to my knowledge.

Chairman Farley: Then there's no negligence on the applicant's part?

Mr. Little: That is correct, to our knowledge that is correct sir.

Chairman Farley: Does the Board have any questions for the applicant?

Mr. Harwell: Yes sir. Is this your residence?

Ms. Corey: Yes sir.

Mr. Harwell: You live there permanently?

Ms. Corey: Yes, leasing to own.

Mr. Harwell: Okay, lease to own. Thank you.

Chairman Farley: Any more questions for the applicant from the Board? Thank you very much. You may sit down. Any one here who wishes to speak in favor of the applicant? Yes, just state your name madam. Take the podium.

Ms. Denise Hankins. Thank you for giving me this opportunity. I'm Denise Hankins. I just wanted to come in support of Ms. Corey. She use to be my next door neighbor on Davenport Farm Road. I just wanted to let the Board know that during the time that she operated her home day care there we had absolutely no problem with anything related to that day care. In terms of the signage they had a very small sign right in front of their home in fact I'd say it was like in the bushes almost. If you really didn't know it was there you wouldn't but it was just a very small sign that said the name of the day care center on it. Because it is a home day care there weren't a lot of children there. If you didn't know there was day care there you probably wouldn't know. Once in awhile during the warm weather which I would certainly expect you would see the children outside but it was not a noisy situation. Frankly, I would have been more concerned if I hadn't seen them outside once in awhile because I considered it my neighbor's job I did not go over, plus I was working so you're not there much 8 to 5. I would not go over during what I considered her working hours any more than I would expect someone to come and visit me on my working hours. The times that I did have an occasion to go over there and very briefly say something or ask a question or something like that, everything seemed quite in order, quite orderly. Again, it was not noisy. As parents came she was providing what I think was a wonderful service for working parents sometimes on different shifts so people were coming at different times of the day and evening to pick up their children. To me I almost considered that an access because it was nice to know that there was somebody next door who was kind of up at different hours of the day and night kind of watching over the neighborhood so I did not consider that a detriment at all. I don't know a lot of specific things that went on in her day care center but I do know in terms of being a next door neighbor the entire time that it was in operation there was absolutely no problem and if anything I considered it an access. I know this does not relate to her day care center per se but I can say that the whole family were some of the finest neighbors that we have ever had in that spot and some of the finest neighbors I've had any where I lived and I've lived in four states.

Chairman Farley: Do you still live in Winterville now madam?

Ms. Hankins: Yes I do I'm at the same residence.

Chairman Farley: Does the Board have any questions for this witness? Thank you very much. Is there anyone who wishes to speak in opposition?

Mr. Fred Mattox: Mr. Chairman, my name is Fred Mattox and I'm here tonight on behalf of Lynndale Development Company who are the developers of Westover Subdivision and frankly I've forgotten how many lots there are but there are 14 or 15 lots that surround this. At a point in time Lynndale Development Company purchased this property and my recollection is we put it under restrictive covenants that may very well interfere with the proposed use. I know this Board is not concerned with restrictive covenants but I say that only to alert the applicant that she needs to examine the records in the courthouse to determine whether it would affect it. Westover Subdivision was, frankly, developed to be a, not a retirement, but at least a subdivision area. It's small, there's only one entrance into it and out of it and frankly it is developed for folks that don't have young children running around that would enjoy the entities of the golf course which is immediately adjacent thereto. The corporation feels that this would be detrimental to the sale of the unsold lots in the subdivision. The people who build out there are all in retirement or approaching retirement and some of them are here tonight and I'm sure they'll speak for themselves because they was the life style they chose and what they wanted to get away from. I believe that the use of this adjacent property for young children playing outside would be detrimental to the property in Westover Subdivision and frankly I think that it's inconsistent with the two of them. The people there have built their homes in an effort to live away from that type of activity. As they said there will be people coming and going during the day and at night. There will be children playing out in the yard. In all candor a golf course is an attractive nuisance. If any of those kids are big enough to climb a fence they are going to go exploring. There're golf carts out there, you just get on them and push the pedal down and they go. There are people who are driving golf balls. I'm not a member of the club and if you saw me swing my driver you'd understand why. I can hit a ball over 200 yards but I can't hit one in the direction I want it to go in over 200 yards. I feel like the Board ought to seriously consider the possibility of having young children out there in the line of fire of that particular tee. We would request that you not grant the application. Thank you.

Chairman Farley: Any one else to speak in opposition?

Mr. John Ferren: First I want to speak on behalf of the Greenville Country Club.

Chairman Farley: And your name is?

Mr. Ferren: John Ferren. I am this year's President of the Greenville Country Club and I speak for the Board of Governors and the almost 500 family members that we have at Greenville Country Club. Our biggest issue with this request is safety. Folks that have lived in this current house have in the past complained about golf balls coming over the net of the driving range and causing potential problems and we've had to get liability insurance for that. This particular property though I happen to be one of the homeowners who will be a next door neighbor in the next month in Westover Subdivision. Our house is under construction right now and the lower half of our lot actually abuts this property. In terms of the safety issue, it's one thing for

an occasional ball to come over a net from like 280 yards away but when people. Golfers for the most part are well intentioned people. We try to hit everything straight but it just doesn't always work that way. Even with my house under construction, I've been there everyday, I have found numerous golf balls in my yard and I don't look in anybody else's yard but I just learned that everybody that lives along that particular street, close to that tee, finds golf balls almost everyday. I would be really concerned, we would be really concerned if small children were playing in the rear yard and a ball comes over. Golf balls can break windshields, they can dent cars, and they can really hurt people. The second concern we have is the curve that is on Country Club Drive that comes in as you enter to what we call the Folger house, the house under question right now. That curve is sharp. The driveway to this property is a U-shaped driveway either side. I've driven in there several times and come out is limited sight visibility, line of sight visibility, from one end of that driveway to the other. If somebody was building house right there right now I don't think they would design it but this was back in the 50's when it was designed. If parents are going to be bringing children to and from that particular residence we're concerned that with a blind curve there like that there could be problems there. If you don't mind I'll switch hats for a moment and talk about being a new neighbor to the Corey's. We won't occupy our house until probably the later part of next month but the reason we choose that particular lot, which we bought from Lynndale Corporation, was its location and its view of the 9<sup>th</sup> fairway. I'm an advent golfer, my wife doesn't like it but she puts up with it. I play several times a week since I retired about 3 ½ years ago. The location for that, just like the Country Club, was ideal for me. When the Country Club was established in 1923 it was in the country. That's why they called it a Country Club and people hit golf balls into the woods, it wouldn't hurt anybody, no body was hurt. We have grandchildren but they live in Atlanta and they may visit twice a year and I'm not concerned because they're almost teenagers now. We would like our view to be the view we had when we built the house which is what it is now. I'm concerned, my wife and I are concerned that with several more children playing in the backyard hours, certain hours, that it may negatively impact our property and we're opposed both the Country Club and my wife and I would oppose approval.

Mr. Hutchens: Mr. Chairman, I have a couple of questions.

Chairman Farley: Mr. Ferren, Mr. Hutchens has a few additional questions.

Mr. Hutchens: Do you of specific knowledge know that golf balls from the 9<sup>th</sup> hole fall on the property in question?

Mr. Ferren: Yes.

Mr. Hutchens: You have specifically seen it on, not on your property, I'm asking about the property in question.

Mr. Ferren: Well I can make it even more specific for you I've hit balls into that backyard before. I hit the plate glass window several times.

Mr. Hutchens: Second question. Had you known that a day care center was going to be or a day care home occupation was going to be on the property in question would you have purchased the property that you now own?

Mr. Ferren: No.

Chairman Farley: Thank you very much. Is there anyone else who wishes to speak in opposition? Would the applicant like to take a moment to rebut anything they've heard?

Ms. Corey: I would like to speak.

Chairman Farley: Okay, just return to the podium.

Ms. Corey: As I said this is a small day care home and this is a home as if I had my own kids. It's not like having a great big business where you have kids out everywhere roaming around. We have apartment sections which is right down the highway, kids are coming back there anyway. They have it where I think if kids go back there they will have someone to ask the kids out from that part of the neighborhood because of it being the Country Club. I have seen golf balls in the yard. In the area that they're talking about that's in the front those two big trees that were there they have been cut neatly and trimmed neatly. I have a parent that I have now with two kids that I babysit and they would tell you that when they drive out on either end it has nothing to do with them being able to see for safety. Even for me if I'm out there it's safe in every area. I think this is really a point where no one wants day care at that particular area. That's what I think I'm heading for right now.

Chairman Farley: You're saying you don't think the golf balls are that big of a threat?

Ms. Corey: No I don't. I really don't. It's not that many to come in the yard.

Chairman Farley: Yes, Ms. McLawhorn.

Ms. McLawhorn: Ms. Corey, how long have you lived at that residence?

Ms. Corey: I've been there now every since the first of February.

Ms. McLawhorn: And approximately how many golf balls would you say you've seen in that yard since you've been there?

Ms. Corey: Since I've been there I've probably have picked up about 15, 10 or 15. They're mainly on the front that I have picked them up. My kids are mainly going to be on the back to the far side anyway.

Chairman Farley: Thank you very much. Mr. Harwell?

Mr. Harwell: I'm a little concerned concerning what Mr. Mattox stated concerning restrictive covenants. Did you understand what he commented on?

Ms. Corey: Yes I understand that but I was told that there was no restriction where you could not have a small day care home in your home.

Mr. Harwell: So you believe and this is what I'm asking

Ms. Corey: That's what I was told.

Mr. Harwell: For your own protection and it doesn't matter to me one way or another I just wanted to make sure (unclear).

Ms. Corey: If I had known that it was then I would never went there myself.

Mr. Harwell: Okay, you might want to look into that. That's the only thing and that's not for an evaluation on it. The other thing I want to ask you were you aware that number six of the home occupation rules require that "the home occupations shall not be visible from any public street or right-of-way or adjacent property"? How do you intend to address that?

Ms. Corey: Well as I stated in the front for going in and out you can see around there good because I have trimmed everything up. Before I moved there it was a mess.

Mr. Harwell: I don't think you understand what number six said in that as I understand it that "home occupations shall not be visible from any public street". That means that you couldn't see it as I understand it and you couldn't see it from any adjacent properties. In other words from the Country Club you couldn't see it, from the house next door you couldn't see it and from the road you couldn't see it. I stand by for a legal interpretation on that but I just wanted to make sure that you understood one of these restrictions that was proposed addresses that. Counsel will probably address that as we speak.

Mr. Little: In response to that Mr. Harwell, when we talk about not being seen it does not give it the appearance when you're talking about that interpretation is there is no appearance of a business going on. It doesn't have the flashing neon signage that Zaxby's or something like that, a Tripp's Restaurant, or something of that nature, it doesn't come across that way. In the past we've talked about having playground equipment, which would be something that you would find in a home whether you had a day care there or not, and so that would not be issues that would be visible. Once you decorate the place, if you put something on the outside, some decoration ornaments on the outside like teddy bear, Teddy Patch Day Care like you would have down County Home Road that then gives it that outward appearance to the public and adjacent property owners that this is a business. That was what that particular clause has been interpreted and the Board has followed that interpretation in the past when we've had to address and approve day care, home day care operations.

Chairman Farley: I think the (unclear) point is that if you see children in the backyard that's not a violation.

Mr. Harwell: That's what I wanted to make sure of.

Ms. Corey: And there is some toys in the back.

Chairman Farley: Also why we have the counsel on record Mr. Mattox mentioned or eluded to the existence of the protective restricted covenants whatever and of course Mr. Harwell explained that even if we approve this you might may still find yourself embroiled in a law suit just cause the city has approved it doesn't insulate you from that. Do you understand that, right? Ms. Bellis.



Ms. Bellis: Is this house, your house is not in the Westover Subdivision is it?

Ms. Corey: Right after you pass, how far is it up in here? I have a map.

Mr. Mattox: Beside it.

Ms. Bellis: It's beside it but it isn't in it.

Mr. Mattox: It's not in it but it was owned by the same owner who incorporated it in the same restrictive covenants.

Ms. Bellis: So it would fall under those restrictive covenants.

Chairman Farley: Thank you we'll have to keep that.

Mr. Little: As far as the restrictive covenants goes and the city ordinances concerning special use permits that is not a controlling factor as far as the city goes (unclear) because the ordinance would take a superior role as it applies to the general public. Somebody may contract for less than that but that is up to the individuals between buyer and seller (unclear) homeowners association but it's not before this Board or should not be a part of the Board's consideration as to whether or not this may or may not violate some restrictive covenants.

Chairman Farley: Mr. Mattox is free to mention it?

Mr. Little: He's free to mention it. The Board can consider it or not consider it but it is not a requirement. They should not play any definitive interest in a decision.

Chairman Farley: Thank you counsel. Is there anyone else who wishes to speak in opposition please advance and be recognized.

Ms. Stanley: He wasn't sworn.

Chairman Farley: Then you'll have to get him now. Yes sir.

Dr. Sam Atkinson: My name is Dr. Sam Atkinson. I live at 218 Country Club Drive. I daily compute that curve in fear of my life. I am on record as having called the city on repeated occasions about the narrowness of the street and the shortness of the curve and the drop-off's inside where people force me to drive when they come over the centerline of the curve. Any traffic coming in and out of this lot creates an additional hazard and a completely blind curve. Only at night, if I'm going to the hospital with lights on, do I have any idea who may be coming around that curve at me. Any additional traffic of people slowing down and stopping is going to be terribly at risk. Secondly, I do not see any parking on the side of this street. It's already posted with no parking. I heard earlier the requirements about adequate parking and adequate access in egress, this does not exist on this lot. As a property owner in that subdivision I want to go on record as significantly opposing this measure.

Chairman Farley: Are there sidewalks in that subdivision?

Dr. Atkinson: There are none.

Chairman Farley: Thank you very much sir. Mr. Harwell, who are you directing your question too?

Mr. Harwell: I think to Mr. Mattox.

Chairman Farley: Mr. Mattox you want to take the stand then we'll get ready to wrap this up.

Mr. Harwell: We were passed a document which became part of the record as I understand it.

Mr. Mattox: Which I haven't seen.

Mr. Harwell: Which you have not seen. I would like to pass this over to Mr. Mattox for him to review the back side of this document.

Mr. Mattox: Yes sir.

Mr. Harwell: On the back side of that document that lot is labeled Lot 15, is that correct?

Mr. Mattox: I won't swear it's correct but I'll tell you what I remembered which is what I've already testified to. At a point in time Lynndale Subdivision, who owned the acreage that became Westover, purchased what is known as the Folger house, incorporated it into the area and if you will look at that lot you'll notice that an original lot line that went sort of like this has gotten whacked off this way and part of the Folger lot was incorporated into Lot 13. At a point in time the Folger house and the Garret property which became Westover was owned by one individual corporation and the intent was to develop it all as an entity.

Mr. Harwell: Thank you sir.

Chairman Farley: Okay, if any one else doesn't feel a need to speak I'm going to close the public hearing on this. Mr. Lynch did you have something to add? Ms. McLawhorn also had a question for you.

Ms. McLawhorn: For this particular case we didn't receive the list of adjoining property owners some of which we heard from tonight.

Chairman Farley: Does that invalidate the report in any way.

Mr. Lynch: No it doesn't. All adjoining property owners were notified.

Chairman Farley: Normally we would expect to have that in our report. You were going to say.

Mr. Lynch: I was just going to give my recommendation.

Chairman Farley: Okay, take your podium.

Mr. Lynch: Staff does not object to the request and feels that the applicant can meet all developmental standards with the condition that the operation would be limited to five children per any 24-hour period. That the applicant must comply with all State, local and federal licensure requirements for a day care center.

Chairman Farley: Thank you very much. I'll close the public hearing at this time. Board discussion. It doesn't seem to me we can ameliorate the hazard or the law suits or the liability issues of golf balls dropping on the children short of placing them under a carport.

Mr. Dunn: Who would have legal responsibility if a golf ball falls...

Chairman Farley: That's for this Board to pursue, to explore.

Mr. Harwell: The other concern I have is safety there. I have avoided that house many times driving down that road.

Chairman Farley: It's a sharp curve.

Mr. Harwell: It's a very sharp curve. That house is in front of it. When I first moved here I bought a car from Lee Folger and I found out where he lived and I said

Chairman Farley: And you visited him?

Mr. Harwell: No I never visited in that house. I've observed that house going by and if you drive by you can certainly go straight there and it could be a hazard. I believe we had some testimony to that affect.

Chairman Farley: Do you see parking as being additional trouble?

Mr. Harwell: They maybe able to conquer the parking. I don't know about that. I have not observed it that closely. I have observed the, wondering why in the world anybody would build a house there, was my question about it. Then I found out and I understood.

Chairman Farley: Any other members have any comments? I don't think we need to add any special conditions to this so with your permission, yes.

Mr. Ward: I was just going to ask about whether or not I should vote.

Chairman Farley: It's rather late in the game for you to bring up a conflict.

Mr. Ward: And it's not a big conflict.

Chairman Farley: Then we would have to go back and ask the applicants so unless anyone here on the Board feels strongly that .... You live near the subdivision?

Mr. Ward: I'm a member of the club.

Chairman Farley: Oh. We'll vote on this straight up and down. You'll are all familiar with the categories. If you're going to call for a vote please mention the specific subcategory that you're calling for a vote on. This is a special use permit request. (a) Conditions and Specifications. (b) Comprehensive Plan. (c) Health and Safety.

Mr. Harwell: Call for a vote.

Chairman Farley: We have a call for a vote on Health and Safety on 1, 2 and 3.

Mr. Harwell: 4, 5 and 6.

Chairman Farley: 4, 5 and 6. If you vote Yes, that's in favor of the applicant. If you vote No, that is against the applicant. This is Health and Safety 4, 5 and 6. Mr. Ward how do you vote?

Mr. Ward: No.

Chairman Farley: Ms. Bellis?

Ms. Bellis: Yes.

Ms. McLawhorn: (unclear)

Chairman Farley: We can wrap that up afterwards.

Ms. McLawhorn: Yes.

Chairman Farley: I will vote No. Mr. Hutchens?

Mr. Hutchens: No.

Chairman Farley: No for Mr. Hutchens. Mr. Dunn?

Mr. Dunn: No.

Chairman Farley: Mr. Harwell?

Mr. Harwell: No.

Chairman Farley: Okay, at this point we have a number of negative votes. Counselor how do I proceed from here?

Mr. Little: We need to complete findings.

Chairman Farley: Fine. I will just roll right into completing.

Mr. Little: We also need to have each person who voted No state on the record

Chairman Farley: And you wish for that to be done now?

Mr. Little: That is correct, yes sir.

Chairman Farley: Anyone who voted No starting on my right please give their reason.

Mr. Ward: Again I think there is a car hazard. I to have been there I've seen that and it certainly could be.

Chairman Farley: Ms. Bellis?

Ms. Bellis: I voted Yes.

Chairman Farley: I voted No because I do see a problem with parking, safety and that very sharp turn on that road.

Mr. Hutchens: I voted No for the reason and I've had my car attacked by golf balls and know it can be very hazardous.

Chairman Farley: Mr. Dunn have you repaired some.

Mr. Dunn: No I have not repaired any. I voted No due to the traffic hazard and the golf balls falling.

Chairman Farley: Mr. Harwell you called for the vote.

Mr. Harwell: I voted No, called for the vote and voted No, due to Health and Safety and potential health and safety of small children in that area particular with that sharp curve there and also for the golf ball potential hazard.

Chairman Farley: Right and you referenced reasons 4,5 and 6.

Mr. Harwell: Yes sir.

Chairman Farley: Okay, next item to vote on is (d), Detriment to Public Welfare. Next item is Existing Uses Detrimental (f) Injury to Properties or Improvements (g) Nuisance or Hazard.

Mr. Harwell: Call for question on Nuisance or Hazard.

Chairman Farley: You'd like a vote on Nuisance or Hazard Mr. Harwell?

Mr. Harwell: Yes sir.

Chairman Farley: Okay there are 1,2,3,4,5,6 categories in that. Do you reference any particular one?

Mr. Harwell: Just the danger.

Chairman Farley: Just the danger? Okay. Mr. Ward how do you vote?

Mr. Ward: No.

Chairman Farley: Ms. Bellis?

Ms. Bellis: Yes.

Chairman Farley: Ms. McLawhorn?

Ms. McLawhorn: Yes.

Chairman Farley: I vote Yes. Mr. Hutchens?

Mr. Hutchens: Yes.

Chairman Farley: Mr. Dunn?

Mr. Dunn: Yes.

Chairman Farley: Mr. Harwell?

Mr. Harwell: No.

Chairman Farley: Okay. That concludes the vote.

Mr. Little: Since we have two votes on that category I also need to have them state the particular facts that they're referencing why it's a nuisance or why it's a hazard.

Chairman Farley: Right, right.

Mr. Little: The (unclear) includes or that's not a limited, there are (unclear) facts that were there brought out in the testimony, they can state that.

Chairman Farley: Mr. Harwell, will you go on record for the Counselor?

Mr. Harwell: Yes sir. I voted No, Nuisance or Hazard, I think it's a hazard to small children in particular a quantity of small children in that area due the golf balls and also due to the automobile situation in the curve.

Chairman Farley: Thank you very much Mr. Harwell. At this point.

Ms. Stanley and Mr. Little: You need to get Mr. Ward.

Chairman Farley: Mr. Ward.

Mr. Ward: Similar, I'll ditto that if that's okay.

Chairman Farley: Mr. Ward agrees with everything Mr. Harwell has said.

Mr. Little: (Unclear) factual findings.

Chairman Farley: At this point I have to inform the applicant that they received too many. I need to adopt the findings of fact.

Mr. Little: Call to adopt the findings of fact as modified by the statements made by

the individuals in the two categories.

Chairman Farley: Motion to adopt the findings of fact will all the additional information that we have heard this evening.

Mr. Dunn.

Chairman Farley: Mr. Dunn. Seconded by Mr. Harwell. In favor please say Aye. Any opposed please say Nay. The findings of fact have been adopted. I will not call for a motion to approve the petition because you received too many negative votes based on the evidence and mostly concerns about safety. Thank you for coming tonight.

REQUEST FOR A SPECIAL USE PERMIT BY THE OAKWOOD SCHOOL, INC. – GRANTED

Chairman Farley stated that the last item is a request by The Oakwood School, Inc. The applicant, The Oakwood School Inc., request a special use permit to allow a high school, pursuant to Section 9-4-78(f)(8)g of the Greenville City Code. The property is located on the 3900 block of MacGregor Downs Road and is further identified as tax Parcel 59694

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on April 18, 2005 and April 25, 2005. Those wishing to speak for or against the request were sworn in.

Mr. Lynch delineated the area on the map. Mr. Lynch stated that this is a request to expand an existing private school located along the 3900 block of MacGregor Downs Road. The property is currently zoned RA20, Residential-Agricultural. The property is currently a vacant farm tract of 5.77 acres. The tract fronts along MacGregor Downs Road. The vacant tract depicted as baseball fields on the site plan is not included in this application. The property is located within Vision Area “F” of the City of Greenville Comprehensive Land Use Plan. The Land Use Plan Map classifies the area as Medium Density Residential. Schools are permissible with a special use permit in all medium density residential districts. The City of Greenville has specific standards that pertain to schools. Schools shall be subject to all bufferyard regulations and no principal or accessory building shall be located within fifty (50) feet of any adjoining property or public street right-of-way line. Mr. Lynch asked that the findings of fact be entered into the record.

Applicant: Oakwood School, Inc.

Request: The applicant, Oakwood School, Inc., desires a special use permit to expand an existing private school pursuant to Section 9-4-78(f)(8)(g) & 9-4-103(b) of the Greenville City Code.

Location: The proposed school expansion is to be located along the 3900 block of MacGregor Downs Road. The property is further identified as being Tax Parcel Number 59694.

Zoning of Property: RA-20 (Rural Residential)

Surrounding Development:

Zoning

North: Oakwood School  
South: Agricultural  
East: Agricultural  
West: Residential

RA-20 (Rural Residential)  
RA-20 (Rural Residential)  
RA-20 (Rural Residential)  
RA-20 (Rural Residential)

Description of Property:

The property is currently a vacant farm tract of 5.77 acres. The tract fronts along MacGregor Downs Road. The vacant tract depicted as baseball fields on the site plan is not included in this application.

Comprehensive Plan:

The property is located within Vision Area "F" of the City of Greenville Comprehensive Land Use Plan. The Land Use Plan Map classifies the area as Medium Density Residential. Schools are permissible with a special use permit in all medium density residential districts.

Notice:

Notice was mailed to the adjoining property owners on April 14, 2005. Notice of a public hearing was published in the Daily Reflector on April 18, 2005 and April 25, 2005.

Staff Comments:

The City of Greenville has specific standards that pertain to schools. Schools shall be subject to all bufferyard regulations and no principal or accessory building shall be located within fifty (50) feet of any adjoining property or public street right-of-way line.

Staff Recommendation:

Staff is under the opinion that the request meets all the development standards required for the issuance of a special use permit.

The applicant must comply with all applicable NC State Building Codes for schools.

Mr. Steve Janowski, Baldwin and Associates, representing The Oakwood School, spoke on behalf of the request. Mr. Janowski stated that the plan is to build a building with four classrooms now with a shell for four more in the future. Oakwood School is growing at a pace of one class per year. The first classroom would house 9<sup>th</sup> graders and 10<sup>th</sup> graders the following year with the potential they could double classroom sizes.

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



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

Motion was made by Mr. Hutchens, seconded by Ms. McLawhorn, 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.

There being no further business the meeting adjourned at 8:30 PM.

Respectfully submitted

Ed Lynch, AICP  
Planner

APPROVED

Charles Farley, Chair