

January 27, 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. Ann Bellis Mr. Thomas Harwell
Mr. John Hutchens Mr. Charles Ward
Mr. Jack Warren

THOSE MEMBERS ABSENT: McLawhorn, Wubneh, Dunn and Wright

VOTING MEMBERS: Farley, Bellis, Harwell, Hutchens, Ward and Warren

OTHERS PRESENT: Mr. Ed Lynch, Planner
Ms. Kathy Stanley, Secretary
Ms. Sylvia Brown, Code Enforcement Officer
Mr. Les Everett, Chief Building Inspector
Mr. David Brown, City Engineer
Mr. Koehler Queen, Engineer
Mr. Wayne Bowers, City Manager
Mr. Bill Little, Assistant City Attorney
Ms. Pat Dunn, Council member

Chairman Farley stated the Board is sitting with six members which means the applicant must sustain six of six positive votes for their request to be granted. Chairman Farley asked if there was anyone who wished to have their request continued. No one spoke for a continuance.

MINUTES

Chairman Farley asked if there were any corrections to the minutes. Motion was made by Mr. Harwell, seconded by Ms. Bellis to accept the December 17, 2004 minutes as presented. Motion carried unanimously.

REQUEST FOR A SPECIAL USE PERMIT BY CORNELIA YVONNE STEWART – GRANTED

Chairman Farley stated that the first item is a request by Cornelia Yvonne Stewart. The applicant, Cornelia Yvonne Stewart, requests a special use permit to operate a home occupation, specifically a Hair Salon, pursuant to Section 9-4-78(f)(3)a of the Greenville City Code. The property is located at 204 Pearl Drive and is further identified as Tax Parcel 22111.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on January 17, 2005 and January 24, 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 the proposed home

occupation is located at 204 Pearl Drive. The property has an existing residential structure that was built in 1973. The property is located at the Red Oak Subdivision off SW Greenville Blvd. The property has 110 feet of frontage on Pearl Drive with a total lot area of 15582 square feet. The single-family dwelling located on the lot has 1649 heated square feet. 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. Mr. Lynch read the specific criteria the applicant must comply with for a home occupation. Mr. Lynch asked that the proposed Findings of Fact be entered into the record.

Applicant: Cornelia Yvonne Stewart

Request: The applicant, Cornelia Yvonne Stewart, desires a special use permit to establish of a home occupation (Beauty shop/hair salon) pursuant to Section 9-4-7-78(f)(3)a and 9-4-86(v) of the Greenville City Code.

Location: The proposed home occupation is located at 204 Pearl Drive. The property has an existing residential structure that was built in 1973. The property is further identified as being Tax Parcel Number 22111.

Zoning of Property: RA-20 (Residential-Agricultural)

<u>Surrounding Development:</u>	<u>Zoning</u>
North: Residence	RA-20 (Residential-Agricultural)
South: Residence	RA-20 (Residential-Agricultural)
East: Vacant Lot	RA-20 (Residential-Agricultural)
West: Residence	RA-20 (Residential-Agricultural)

Description of Property:

The property is located at the Red Oak Subdivision off SW Greenville Blvd. The property has 110 feet of frontage on Pearl Drive with a total lot area of 15582 square feet. The single-family dwelling located on the lot has 1649 heated square feet. The property has driveway access on Pearl Drive.

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 January 13, 2005.

Notice of a public hearing was published in the Daily Reflector on January 17, 2005 and January 24, 2005.

Staff Comments:

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 329 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.

Mr. Harwell stated that the map indicates the home occupation is for a day care instead of a beauty shop. Mr. Harwell stated that item number nine should read "shall have signage" instead of "shall not have signage".

Mr. Lynch acknowledged the corrections.

Ms. Stewart spoke on behalf of her request. Ms. Stewart stated the beauty shop would have a separate entrance from her resident. Ms. Stewart advised the beauty shop would be operated on an appointment only basis.

Mr. Stewart spoke on behalf of his wife's request.

No one spoke in opposition.

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

Motion was made by Mr. Warren, 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 POHL PARTNERSHIP – GRANTED

Chairman Farley stated the next item is a request by POHL Partnership. The applicant, POHL Partnership, requests a special use permit to operate an automobile sales and service lot, pursuant to Section 9-4-78(f)(11)f of the Greenville City Code. The property is located along Hwy 43 South and is addressed 3840 Bells Chapel Road. The property is further identified as Tax Parcel 02118 and was once the site of Tripp's seafood restaurant.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on January 17, 2005 and January 24, 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 the applicant, POHL Partnership, desires a special use permit to allow the automobile, truck, recreational vehicle and boat sales and service pursuant to Section 9-4-78(f)(11)f. The proposed use is to be located along Highway 43 South (Charles Blvd) and is addressed 3840 Bells Chapel Road. The proposed use has a total lot area of approximately 1.5 acres. The property has two driveways that front along Charles Blvd. The property was formerly a restaurant which has since been demolished. The property is located within Vision Area "D" of the Comprehensive Plan. Vision area D recommends in-fill development, smart growth and redevelopment within existing commercial areas. The Land Use Plan Map recommends commercial use for this property. An automobile sales and service lot would be in general conformity with the Comprehensive Land Use Plan. Mr. Lynch asked that the findings of fact be entered into the record.

Applicant: POHL Partnership.

Request: The applicant, POHL Partnership, desires a special use permit to allow the automobile, truck, recreational vehicle and boat sales and service pursuant to Section 9-4-78(f)(11)f of the Greenville City Code.

Location: The proposed use is to be located along Hwy 43 South (Charles Blvd) and is addressed 3840 Bells Chapel Road. The property is further identified as being a portion of Tax Parcel Number 02118.

Zoning of Property: CG (general commercial)

Surrounding Development: Zoning

North: Trade Mart	CG (general commercial)
South: Church	RA-20 (Residential Agricultural)
East: Automobile Sales Lot	CH (Heavy Commercial)
West: Residential	RA-20 (Residential Agricultural)

Description of Property:

The proposed use has a total lot area of approximately 1.5 acres. The property has two driveways that front along Charles Blvd. The property was formerly a restaurant which has since been demolished.

Comprehensive Plan:

The property is located within Vision Area "D" of the Comprehensive Plan. Vision area D recommends in-fill development, smart growth and redevelopment within existing commercial areas. The Land Use Plan Map recommends commercial use for this property. An automobile sales and service lot would be in general conformity with the Comprehensive Land Use Plan.

Notice:

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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. Durk Tyson, Rivers & Associates, representing the applicant, spoke on behalf of the request. Mr. Tyson stated the applicant wishes to lease this property to operate an automobile sales and service.

No one spoke in opposition.

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

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

Motion was made by Mr. Ward, seconded by Mr. Warren, 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 REHEARING FOR A SPECIAL USE PERMIT BY
WINSTEAD PROPERTIES – CONTINUED

Chairman Farley stated that the applicants were denied a special use permit last year and they are here tonight asking for a rehearing.

Chairman Farley stated that the last item is a request by Winstead Properties. The applicant, Winstead Properties, requests a special use permit to allow a conventional restaurant on property zoned OR (Office Residential), pursuant to Section 9-4-78(f)(10)h of the Greenville City Code. The property is located along the SW side of Redbanks Rd at the 400 block between Greenville Blvd and Dartmouth Dr. The property is further identified as Tax Parcel 14406.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on January 17, 2005 and January 24, 2005. Those wishing to speak for or against the request were sworn in.

Mr. Bill Little stated that a petition for a rehearing is a two-step process. The first step is the rehearing petition. The applicant has made a request for a rehearing on a previously denied special use permit and they must show that there is now new facts that exist that did not exist or the ability to obtain that information at the original hearing and these new facts or evidence will substantially change the conditions that existed in the original case. The second criteria is that the petitioner would have to show that procedural rules in place at the original hearing were not substantially followed and as a result there was a material impact to the procedural rights. Mr. Little stated that if step one is granted, the Board would proceed with the permit application and testimony heard in the first step can be carried over to the second step.

Chairman Farley asked if the Board would be hearing solely from the applicant.

Mr. Little stated the applicant will be heard and if there is anyone as information or evidence to show there were no substantial changes they would be heard also. Mr. Little advised that the Board could make findings of fact as to what conditions are present and then make a decision under a simple majority rule to either grant or deny the rehearing. If the rehearing is granted, then the Board can proceed to hear the special use permit application.

Mr. Lynch delineated the area on the map. Mr. Lynch stated that the proposed use is to be located along the southwest side of Red Banks Road, approximately 215 feet southwest of the intersection of Red Banks Road and Greenville Boulevard. The property contains approximately 2.32 acres of total lot area. The new restaurant area will be approximately 5,898 square feet. The property is located within Vision Area "D" as designed by the Comprehensive Plan. Management actions for Vision Area "D" include to "Encourage development and redevelopment within existing commercial areas". The subject property is in general compliance with the Land Use Plan Map,

which recommends OIMF (Office-Institutional-Multifamily) representing light intensity non-residential or multi-family development uses for the subject property. Due to the fact that the preferred land use pattern is recommended for OIMF, the property is currently zoned OR (office-residential) in accordance with the OIMF recommendation and a restaurant is a special use option in the OR District. Mr. Lynch read the findings of fact from the original hearing. Mr. Lynch asked that the findings of fact be entered into the record.

Applicant: Winstead Properties LLC

Request: The applicant, Winstead Properties LLC, has resubmitted a request for a special use permit to allow a conventional restaurant pursuant to Section 9-4-78(f)(10)h of the Greenville City Code. The applicants were denied a special use permit for a conventional restaurant on August 28, 2003. In order for this new request for a special use permit be considered the board must hold a rehearing hearing.

Rehearings: An application for a rehearing is made in the same manner as the original hearing. The application may be submitted by the original petitioner or by an aggrieved party. Evidence to support a rehearing shall initially be limited to that which is necessary to enable to board to determine at least one (1) of the following:

- 1) New facts or evidence is available for which there was no capacity of being obtained at the previous meeting and that will substantially change the conditions of the case.
- 2) Procedural rules which substantially changed the conditions of the case were not followed. However, no harmless error shall be grounds for granting a rehearing. A harmless error is one which would not have changed the outcome of the matter, or for which refusal to rehear does not deny a substantial right.

The application for a rehearing shall be denied if the board in its record does not find at least one (1) of the two (2) conditions stated above to be true. A vote in simple majority of the board members present is required to grant an application for a rehearing. If the Board finds that a rehearing is in order. The burden of proof shall be on the person(s) requesting the rehearing.

If the board finds in favor of the applicants request for a rehearing, the board shall schedule a public hearing at a subsequent meeting per the applicants desired date.

Location: The proposed use is to be located along the southwest side of Red Banks Road, approximately 215 feet southwest of the intersection of Red Banks Road and Greenville Boulevard. The property is further identified as being Tax Parcel Number 14406.

Zoning of Property: OR (office-residential)

Surrounding Development:

Zoning

North: BB&T Bank, Adams Car Wash	CG (general commercial)
South: Lynndale Townhomes	OR & R6 (residential)
East: Law Office, Lynndale Townhomes	OR & R6
West: Single-family	R15S (residential-single-family)

Description of Property:

The property contains approximately 2.32 acres of total lot area. The new restaurant area will be approximately 5,898 square feet.

Comprehensive Plan:

The property is located within Vision Area "D" as designed by the Comprehensive Plan. Management actions for Vision Area "D" include to "Encourage development and redevelopment within existing commercial areas". The subject property is in general compliance with the Land Use Plan Map, which recommends OIMF (Office-Institutional-Multifamily) representing light intensity non-residential or multi-family development uses for the subject property. Due to the fact that the preferred land use pattern is recommended for OIMF, the property is currently zoned OR (office-residential) in accordance with the OIMF recommendation and a restaurant is a special use option in the OR District.

Notice:

Notice was mailed to the adjoining property owners on January 13, 2005. Notice of the public hearing was published in the Daily Reflector on January 17, 2005 and January 24, 2005 .

Findings of Fact from original hearing:

1. Conditions and Specifications. That the application filed as Request BOA 03-19 meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a special use permit application.
2. Notice. That those persons owning property within one hundred (100) feet of the proposed development or use, as listed on the current county tax records, were served notice of the public hearing by mail in accordance with applicable requirements; and that notice of a public hearing to consider the special use permit was published on August 18, 2003 and August 25, 2003 in The Daily Reflector, a newspaper having general circulation in the area, as required by law.
3. Comprehensive Plan. That the proposed use is in general conformity with the Comprehensive Land Use Plan of the City and its extraterritorial jurisdiction.
4. Health and Safety. That the proposed use would not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed

use.

5. Detriment to Public Welfare. That the proposed use would not be detrimental to the public welfare or to the use or development of adjacent properties or other neighborhood uses.
6. Existing Uses Detrimental. That the proposed use would not be adversely affected by the existing uses in the area in which it is proposed.
7. Injury to Properties or Improvements. That the proposed use **will** injure, by value or otherwise, adjoining or abutting property or public improvements in the neighborhood.
8. Nuisance or Hazard. That the proposed use **will** constitute a nuisance or hazard.

Staff Comments:

It is the interpretation of the staff that at the time of the request for a rehearing that there has been no new facts or evidence that would substantially change the conditions of the case. It is also the interpretation of the staff that the procedural rules of the August 28, 2003 hearing were followed correctly.

The property owner has submitted a request to the City Council to close the street stub of Claredon Drive. The closing of this street stub would prevent any extension of Claredon Drive to Red Banks Road. It is the opinion of staff that this would be a significant change of facts that were not available at the time of the original hearing. On January 18, 2005 the Planning and Zoning Commission has recommended that a public hearing be set for consideration of a petition to close the street. City Council would not take final action on the closure until its March meeting. If the board is comfortable it may take action and rehear this case contingent upon the street closure.

Mr. Fred Mattox, representing the petitioner, spoke on behalf of the request. Mr. Mattox stated that they will be submitting information dealing with a change in the condition. Mr. Mattox stated that the map used August of last year shows Claredon Drive being connected from Granville over to Red Banks Road. Mr. Mattox stated that the petitioner was not aware of this map when the original request was made. The request was for submission of the total tract of land and a number of conditions were submitted to the Board to consider if the permit was granted. One of the conditions was that the permit shall be limited to that portion of Tax Parcel Number 14406. The petitioner was not requesting that the land on the west side of the extension of Claredon Drive be rezoned before the Board that night. Mr. Mattox stated that a request has been made to close a portion of Claredon Drive, the unimproved portion. The request was submitted to the Planning and Zoning Commission and recommended for approval. The request will be considered by City Council in March for their final action. Mr. Mattox stated that if the special use permit is denied the petitioner does not want to close Claredon Drive. If the special use permit is granted the petitioner does want Claredon Drive closed. Mr. Mattox stated if the permit is granted the petitioner will submit conditions they feel should be imposed. Mr. Mattox stated that with the closing of the unimproved portion of Claredon Drive it means that property owners on each side would gain

one-half of the right-of-way.

For clarification purposes Mr. Little made reference to a memorandum dated January 25, 2005 from Mr. Merrill Flood, Director of Planning & Community Development, with the subject being the procedures in the closing of Claredon Drive.

Mr. Bob Pittman spoke in favor of the request to close that portion of Claredon Drive.

Mr. Frank Trotta spoke in favor of the request to close that portion of Claredon Drive.

Ms. Diane Kulik, President of Lynndale Neighborhood Association, stated that the neighborhood association does not object to the closing of Claredon Drive extension.

Mr. Thomas D. Mincher, representing the developer, stated that previously the road imposed an obstacle in design for the restaurant and by closing this portion of the street the building will be repositioned further from the residents. Mr. Mincher stated that with closing the unimproved street it is a substantial change than from the previous hearing.

Ms. Jackie Leonard spoke in opposition to a rehearing on the request. Ms. Leonard stated that Claredon Drive was not the issue at the original hearing. Ms. Leonard stated that the same issues that were of concern then are still a concern at this time.

There was discussion as to whether or not the change, closing that portion, would increase/decrease the buffering to protect the residents.

Motion was made by Mr. Harwell, seconded by Mr. Ward to approve the request for a rehearing. Motion carried. Those voting to rehear: Bellis, Harwell, Hutchens and Ward. Those voting not to rehear: Farley and Warren.

Chairman Farley asked if the applicant would like to proceed with a hearing for a special use permit.

Mr. Little advised that Mr. Mattox has requested that the matter for the special use permit be continued to the next meeting.

There being no further business the meeting adjourned at 8:15 PM

Respectfully submitted

Ed Lynch, AICP
Planner

Approved

Charles Farley, Chair