

July 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. Joe Wright  
Mr. Jack Warren                              Mr. John Hutchens  
Mr. Charles Ward

THOSE MEMBERS ABSENT: Dr. Wubneh and Mr. Dunn

Ms. Stanley advised the Board that Mr. Bill Dunn had resigned as of July 26, 2005.

VOTING MEMBERS: Farley, Bellis, McLawhorn, Harwell, Wright, Warren and Hutchens.

OTHERS PRESENT: Mr. Ed Lynch, Planner  
Ms. Kathy Stanley, Secretary  
Mr. Les Everett, Chief Building Inspector  
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. Wright to accept the June 23, 2005 minutes as presented. Motion carried unanimously.

## REQUEST FOR A SPECIAL USE PERMIT BY LAKEA SMITH AND YULANDA SMITH – DENIED (Verbatim Transcript)

Chairman Farley: First item on the agenda is a public hearing on a request for a special use permit to allow the operation of a public/private club at 807 Dickinson Avenue. The applicant, Lakea Smith & Yulanda Smith, request a special use permit to allow a public/private club, pursuant to Section 9-4-78(f)(6)m of the Greenville

City Code. The property is located at 807 Dickinson Avenue and is further identified as Tax Parcel 03719. Public hearing on this case is now open. We need to get the participants sworn in at this time.

Mr. Bill Little: Mr. Chair, this was continued from last month.

Chairman Farley: Yes it was there was an issue.

Mr. Little: Questions that Mr. Harwell had asked the Board to approve as a motion will be addressed in the hearing today and that will be the only things that will be further addressed after rebuttal if anybody wanted to do rebuttals or so forth. The two questions were the parking lease. The question was as to who was the true owner, was it a proper lease. The other question was that if you remember the map of the building was a great big square even though we understand there are four units in that particular building we weren't sure which one of the four units, we think we know. When I say we, the Board thought because it was described as being between two small churches. That was the other question Mr. Harwell had asked for clarification.

Chairman Farley: Yea, as I recall the staff's drawings left something to be desired.

Mr. Little: That was the drawing submitted by the applicant.

Chairman Farley: By the applicant. Thank you counselor. Mr. Lynch your preliminary report please.

Mr. Ed Lynch: Thank you sir. As you recall this case was before you last month. It's located at 807 Dickinson Avenue. It's zoned CDF. The property is close to downtown, the 800 block of Dickinson Avenue. The building is split into four units each approximately 1,500 square feet. The proposed club would be one of the four units. The parking requirement for this location is approximately 34 spaces. The applicant proposes to have 36 spaces located at the Pugh's Auto Body Shop and that was contingent upon a valid lease. The Comprehensive Land Use Plan proposes this for commercial uses at this location. It's in Vision Area "G" of the Horizon's Land Use Plan. The site is located outside the downtown subdistrict overlay wherein special use permits for public/private clubs are prohibited. Notices were remailed to adjoining property owners on July 14<sup>th</sup> and notice of the public hearing was published in the Daily Reflector on July 18<sup>th</sup> and July 25<sup>th</sup>. Public/Private clubs is an

establishment where 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 (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 liter and trash mitigation standards or requirements in the particular case. As of this time there has not been any new evidence submitted in your packet by the applicant.

Applicant: Lakea Smith & Yulanda Smith

Request: The applicants, Lakea Smith and Yulanda Smith, desire a special use permit to allow the operation of a public or private club pursuant to Sections 9-4-78(f)(6)m and 9-4-86(f) of the Greenville City Code.

Location: The proposed use is located at 807 Dickinson Avenue. The property is further identified as being Tax Parcel Number 03719.

Zoning of Property: CDF (Commercial Downtown Fringe)

Surrounding Development: Zoning

North: Retail Shops CDF (Commercial Downtown Fringe)

South: Retail Shops  
East: Pugh's Tires  
Fringe) West: Retail Shops  
Fringe)

CDF (Commercial Downtown Fringe)  
CDF (Commercial Downtown  
CDF (Commercial Downtown

Description of Property:

The property has approximately 70 feet of frontage along Dickinson Avenue. The building is split into four units each containing approximately 1500 square feet. The proposed club would be located in one of the four units.

The applicant has provided a lease agreement to allow parking behind Pugh's Tire Company. Public/Private clubs require one (1) parking space per fifty (50) feet of activity area, plus one (1) parking space per every two (2) employees. Based upon the square footage of the building and eight employees the business should have 34 parking spaces. The proposed leased parking area has approximately 36 parking spaces.

Comprehensive Plan:

The City supports and encourages reinvestment and rehabilitation activities in the downtown area and will support and encourage redevelopment activities, which are compatible with traditional character of downtown.

The proposed Public/Private Club is located in Vision Area 'G' of the Horizons Land Use Plan. Vision Area 'G' encourages the revitalization of mixed uses along Dickinson Avenue. The proposed use is in general compliance with the City of Greenville Horizon's Land Use Plan and the Land Use Plan Map, which classifies the property as commercial.

The site is located outside the Downtown Subdistrict Overlay wherein special use permits for public/private clubs are prohibited.

Notice:

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

Staff Comments:

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

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

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

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

1. 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:

Pending the applicant providing proper documentation of a valid parking lease agreement, the 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.

Chairman Farley: Thank you Mr. Lynch. Would the applicant take the stand at this time please. Please state your name and give the Board a little reason why there was no additional information about the parking supplied please.

Ms. Lakea Smith: Hi, my name is Lakea Smith.

Ms. Yulanda Smith: And I'm Yulanda Smith. The parking lease we had talked with Mr. George Pugh. He said he apologized it was a parking lease but being we told him the situation from the last meeting that he's sons name was on the Deed so he pretty much said that his hands were tied. We talked to the landlord which we rent from and he said .. we took pictures and everything, we have the pictures here. That across the street from us we already had free off-street parking allowed for that building. I have the pictures and the pictures of the front of the building they wasn't sure about which duplex we were renting out, so I have that here. And also, Mr. Vick which is the landlord, he indicated that also the areas of the building that has public parking we should be allowed to use the same parking that they have, all the buildings that, you know, joined together on that block is public parking. He said we should be allowed to use the same parking space that they use.

Chairman Farley: Who is it that said that?

Ms. Lakea and Yulanda Smith: Mr. Edward Martin Vick.

Chairman Farley: Does staff concur with that?

Mr. Lynch: They are allowed to use public parking but they have to have off-street parking.

Chairman Farley: Okay, but they can add that into their required count? Yes or No. Ed.

Mr. Little: They have to have off-street parking is a requirement in addition to being allowed to have on..they can park on street but they have to have off-street parking available to them.

Chairman Farley: So is it your opinion at this time that criteria for that falls short?

Mr. Lynch: That's correct.

Mr. Little: In staff's opinion that would. It would be up to the Board to make that as a finding. If the Board finds that's a material fact that would have to be complied with.

Chairman Farley: Thank you counselor. Question. Thank you Mr. Lynch. Go ahead Mr. Harwell.

Mr. Harwell: How many off-street parking spaces are available to be used by your clients? Off-street.

Ms. L. Smith: Off-street, it's approximately 40 spaces across the street from front and left from the side. I have the pictures here.

Mr. Harwell: Do you have a lease on those spaces?

Ms. L. Smith: No sir. We were just told that all the businesses along our side. All the businesses in that area are able to use that parking and being that we had put in our agenda that we would have like after business hours, after all the other businesses were closed, that we felt like we would be able to use those spaces.

Mr. Harwell: Do you have anything in writing to that affect?

Ms. L. Smith: No sir. We were just told to take pictures.

Chairman Farley: Thank you. Do you have anyone else with you tonight to speak in support?

Ms. L. Smith: No sir.

Chairman Farley: Okay. Thank you very much. Any opponents here tonight wish to speak against granting this special use permit? Please state your name and give us your views.

Mr. Greg Jarrell: I'm Greg Jarrell. I own the building that's adjacent to this building. I was prepared to speak on something completely different but the lot across the street that she's referring to is a private lot it's not a public lot. I've spoken to the owners in person and they have no intention of allowing anyone to use their lot. Other than that I don't know what other information I could provide that would help in this decision.

Chairman Farley: Okay, thank you.

Mr. Lynch: Mr. Chairman I do know that the vacant lot that is directly across the street is owned by the Pugh's. I don't know which Pugh but it is owned by the Pugh's.

Chairman Farley: Anyone else wish to speak in opposition? Being as this was continued

Ms. Stanley: Mr. Chairman (motioned that someone in audience was getting up to speak)

Chairman Farley: State your name.

Mr. Frankie Pugh: I'm Frankie Pugh. I am the owner of the corner of 1729 Dickinson Avenue at the corner of Ficklen and Dickinson. The property that you are speaking of. I'm in opposition of them using my land for parking.

Chairman Farley: Well that would be pretty clear cut. Thank you very much that testimony was needed. At this time I'm going to ask for the city staff recommendation.

Mr. Lynch: Since the applicant can not comply with the proper parking standards staff is in opposition of the request.

Chairman Farley: Thank you Mr. Lynch. I'm closing the public hearing at this time. Board members will keep your microphones open while you discuss. Any discussion? This is a special use permit request that you are all familiar with the categories on this. If and when I get to a condition that you wish to have a vote on please call it to my attention. Condition A of a special use permit request is Conditions and Specifications.

Mr. Harwell: Vote.

Chairman Farley: Vote. We'll go ahead and vote on these five items. Compliance with lot area and dimensional standards. Compliance with setback and other locational standards. Compliance with off-street parking requirements. Compliance with all. Vote on that item. Compliance with all additional specific criteria set forth for the particular use. Compliance with all application submission requirements. Mr. Wright how do you vote?

Mr. Wright: No.

Chairman Farley: Mr. Wright votes No. Well will pass by Mr. Ward. Ms. McLawhorn?

Ms. McLawhorn: No.

Chairman Farley: Ms. Bellis?

Ms. Bellis: No.

Chairman Farley: I vote No. Mr. Hutchens?

Mr. Hutchens: No.

Chairman Farley: Mr. Warren?

Mr. Warren: No.

Chairman Farley: Mr. Harwell?

Mr. Harwell: No.

Chairman Farley: Okay, we've sustained a slue of unanimous votes with the Compliance with off-street parking requirements which we heard testimony that the lot that the applicant's were planning on using the owner has no intention of letting them use that. Next item is Comprehensive Plan. C. is Health and Safety. D is Detriment to Public Welfare. E is Existing Uses Detrimental. F is Injury to Properties and Improvements. G is Nuisance or Hazard. We have had some unanimous No votes on Conditions and Specifications number Three. Mr. Wright would you just voice why you voted No.

Mr. Wright: Cause the owner of the property that they were going to use across the street for parking said he didn't want anyone to use it so it was clear cut.

Chairman Farley: Ms. McLawhorn.

Ms. McLawhorn: Inadequate parking.

Chairman Farley: Ms. Bellis.

Ms. Bellis: There is no off-street parking.

Chairman Farley: I would echo the same that we've learned that by the city regulations parking will not be adequate. Mr. Hutchens.

Mr. Hutchens: Inadequate parking. Mr. Warren.

Mr. Warren: Inadequate required parking.

Chairman Farley: Mr. Harwell.

Mr. Harwell: Proper parking standards not met.

Chairman Farley: Counselor would like to make sure that all these reasons are entered into the record.

Mr. Little: That is correct.

Chairman Farley: At this point I'd like to adopt the findings of fact.

Ms. McLawhorn: Motion to adopt.

Chairman Farley: Motion to adopt Ms. McLawhorn. Do I have a second?

Ms. Bellis: Second.

Chairman Farley: Ms. Bellis. All in favor please say "Aye". Any opposed? The findings of fact have been adopted. I need not go any further on this because we don't need a motion to deny. Your special use permit application has been denied. You do have 30 days to appeal to the Superior Court and details of that you can get with Mr. Little after the meeting. Thank you for coming.

REQUEST FOR A SPECIAL USE PERMIT BY FRANK KRIZE OF BARCODE – GRANTED

Chairman Farley stated that the next item is a request for a special use permit by Frank Krize of Barcode. The applicant, Frank Krize of Barcode, requests a special use permit, to allow the continued operation of a public/private club, pursuant to Section 9-4-78(f)(6)m of the Greenville City Code. The property is located at 2217 S. Memorial Drive, and is further identified as Tax Parcels 16786,16784,16785.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on July 18, 2005 and July 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 request is for a renewal of a special use permit to continue the operation of a public or private club. The proposed use is located at 2217 S Memorial Drive. The property is zoned CDF and surrounding zoning is CDF and CG. The property has approximately 125 of frontage along S Memorial Drive and contains approximately 37,304 square feet in total area. The commercial building contains 3,401 square feet of heated floor area. A public/private club requires one parking space per 50 feet of activity area, plus one space for every two employees. Based upon the square footage of the building the business should have 68 parking spaces. The applicant has over 70 parking spaces available on the adjoining lots, which is under the same ownership as the primary lot. The property is located in Vision Area "G" as designated in the Comprehensive

Land Use Plan. Management actions for Vision Area “G” include discouraging strip commercial development along Memorial Drive. Occupying an existing building for a public/private club would not be considered to encouraging or increasing strip commercial development. The proposed use is in general compliance 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 the special use permit is renewed. Mr. Lynch asked that the proposed Findings of Fact be entered into the record.

Applicant: Frank Krize, Barcode

Request: The applicant, Frank Krize of Barcode, desires the renewal of a special use permit to continue operation of a public or private club pursuant to Sections 9-4-78(f)(6)m and 9-4-86(f) of the Greenville City Code.

Location: The proposed use is located at 2217 S Memorial Drive. The properties are further identified as being Tax Parcel Number 16786,16784, and 16785.

Zoning of Property: CDF (Commercial Downtown Fringe)

Surrounding Development:

Zoning

North: Car Werks Auto	CDF (Commercial Downtown Fringe)
South: Schaffers Pest Management	CDF (Commercial Downtown Fringe)
East: Warehouse	CDF (Commercial Downtown Fringe)
West: Greenville Marble & Granite	CG (General Commercial)

Description of Property:

The property has approximately 125 of frontage along S Memorial Drive and contains approximately 37,304 square feet in total area. The commercial building contains 3,401 square feet of heated floor area.

Public/Private clubs require one (1) parking space per fifty (50) feet of activity area, plus one (1) parking space per every two (2) employees. Based upon the

square footage of the building the business should have 68 parking spaces. The applicant has over 70 parking spaces available on the adjoining lot, which is under the same ownership as the primary lot. This parking is ample amount for this request.

Comprehensive Plan:

The property is located in Vision Area “G” as designated in the Comprehensive Land Use Plan. Management actions for Vision Area “G” include discouraging strip commercial development along Memorial Drive. Occupying an existing building for a Public/Private Club would not be considered to encouraging or increasing strip commercial development. The proposed use is in general Compliance with the Land Use Plan Map, which recommends commercial development for the subject property.

Notice:

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

Staff Comments:

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

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

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

“restaurant, conventional” as contained herein.

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

1. 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 liter and trash mitigation standards or requirements in the particular case.

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Mr. Fred Mattox, Attorney at Law, representing the applicant spoke on behalf of the request. Mr. Mattox stated the only item of interest is that the Police Department has contacted Mr. Krize and advised him that someone has complained about the noise in the building. The Police Department has stated that on those occasions they can hear no violation of the Noise Ordinance. Mr. Mattox stated that Mr. Krize has never been cited for a noise violation. Mr. Mattox stated he and Mr. Krize will be glad to

answer any questions. Mr. Mattox advised that this is a typical request to renew the special use permit.

Mr. Gene Hemby spoke in opposition to the request. Mr. Hemby stated he owns the residence at 2232 Dickinson Avenue. Mr. Hemby stated that Mr. Mattox is correct about the noise. The noise is not loud enough noise that it will register on the noise meter that the Police Department carries but you can hear the base at his residence. Mr. Hemby stated that music doesn't cease at 11 o'clock at night during the week, it doesn't cease at 12 mid-night on week-ends. It's going on until 2 or 3 o'clock in the morning. Mr. Hemby recounted and described the number of calls received by the Greenville Police Department to this club. Mr. Hemby stated that if it was closed up so that the music did not disturb them, across the intersection, there might not be a problem. It is a deterrent to public welfare and a nuisance because it, the music, keeps people awake at night explained Mr. Hemby. Mr. Hemby stated he feels the outside area is an eating area during the spring and summer months and music is played outside. Mr. Hamby stated that these are the reasons he is opposed to the renewal of the special use permit.

Mr. Harwell asked Mr. Hemby what the distance is between his home and club.

Mr. Hemby advised that his home is located across from the old Barnes Motor Parts building. He owns one residence and his brother, Gene, owns the other residence.

Mr. Donnie Hemby, resident of 2232 Dickinson Avenue. Mr. Hemby reiterated Mr. Gene Hemby's comments. Mr. Hemby stated that Police Officers recommended that they come before the Board to voice their concerns in hopes that the special use permit would not be renewed.

Mr. Harwell asked Mr. Lynch to indicated where 2232 Dickinson Avenue is on the map. Mr. Harwell also asked if there were any buildings between the propose club and the Hemby's residences.

Mr. Lynch stated that there are several homes on that block which is owned by the Hemby's meaning it is 500 feet from the proposed location. There is a commercial strip with a Pawn Shop located at the corner of Dickinson and Memorial Drive.

There was discussion about the hours of the club and whether the Police Department had contacted the club in reference to receiving noise complaints.

Mr. Kritz stated the Police Officers acknowledged there had been noise complaints but nothing would register on the noise meters to indicate there was a problem. Mr. Kritz stated they have done everything they can do to eliminate the concerns of persons in the area. Mr. Kritz advised there is outside patio surrounded by a 18 foot tall fence.

Mr. Mattox pointed out that the Greenville Motel is closer to this location than the Hemby's residences and they hadn't complained. There is no outside speakers or music of any kind on the patio. The opponents could have contacted the applicants if they have any concerns.

Chairman Farley asked if Mr. Mattox was offering his phone number and his clients phone number to the opponents.

Mr. Mattox stated of course.

Mr. Gene Hemby advised that the Police reports indicates disturbing the peace calls after 1 AM and they did not make those calls. Mr. Hemby reiterated that they don't hear the noise, they hear the music, they hear the vibration from the base. Mr. Hemby stated they only want the music quiet enough so people can sleep and rest.

Mr. Bill Freelove, owner of a business directly across the alley from the club, spoke on behalf of the request. Mr. Freelove stated that he has never had any problem with noise from the club.

There was discussion in reference to the possible decibel readings and the fact that no evidence was presented to positively indicate that the music was generated from the club rather than vehicles traveling the road.

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

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

Motion was made by Mr. Wright, 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.

### REQUEST FOR A VARIANCE BY JAMES P. NASH – GRANTED

Chairman Farley stated that the next item is a request for a variance by James P. Nash. The applicant, James P Nash, requests a variance from the required front yard setback in the R15-S (single family residential) zoning district. The request is for a ten (10) foot reduction of the required thirty (30) foot front yard setback. The property is located at the 211 Pineview Drive in the Lakewood Pines Subdivision, and is further identified as Tax Parcel 21881.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on July 18, 2005 and July 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 Mr. Nash has requested a variance from the minimum public street setback requirements of the Greenville City Code Section 9-4-94-y-3. The property is located at 211 Pineview Drive. The property is currently zoned single family residential. Lakewood Pines Subdivision was platted and developed in 1950. Mr. Nash's home was built in 1951. Subdivision regulations were first adopted by the City of Greenville in 1954 and Zoning was first adopted in 1947. At that time, these developmental regulations were only implemented within city limits. Lakewood Pines was well outside the City Limits of Greenville at the time of its development in the early to mid-1950's. Many of the lots and streets do not meet the current lot or street standards that are applicable in Greenville. The proposed subject site is located within Vision Area "D" as designated in the Horizon's Comprehensive Plan. The Land Use Plan Map designates the area for medium density residential. Mr. Lynch read the specific criteria the Board must consider in order to grant the variance along with staff comments. Mr. Lynch asked that the findings of fact be entered into the record.

Applicant: James Paul Nash

Request: The applicant, James Paul Nash of 211 Pineview Drive has requested a variance from the minimum public street setback

requirements of the Greenville City Code Section 9-4-94-y-3. This request is to allow the addition to an existing house located at 211 Pineview Drive, also identified as Tax Parcel 21881.

Location: The property is located at 211 Pineview Drive in the Lakewood Pines Subdivision.

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

Surrounding Development:

Zoning

North: Residential	R-15S (Single Family Residential)
South: Residential	R-15S (Single Family Residential)
East: Residential	R-15S (Single Family Residential)
West: Residential	R-15S (Single Family Residential)

Description of Property:

The subject lot is located in the Lakewood Pines Subdivision. Lakewood Pines was platted and development of homes began approximately 1950. The house in which Mr. Nash resides was built approximately 1951.

Subdivision regulations were first adopted by the City of Greenville in 1954 and Zoning was first adopted in 1947. At that time, these developmental regulations were only implemented within city limits. Lakewood Pines was well outside the City Limits of Greenville at the time of its development in the early to mid-1950's. Therefore, many of the lots and streets do not meet the current standards that are applicable in Greenville.

Comprehensive Plan:

The proposed subject site is located within Vision Area "D" as designated in the Horizon's Comprehensive Plan. The Land Use Plan Map designates the area for Medium Density Residential.

Notice:

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

Staff Comments:

Staff has reviewed each of the criteria the Board of Adjustment must consider in order to grant variances and has listed comments on each.

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.

Staff Comment – The property is currently being used as a residence, therefore the property is functioning with a reasonable return.

2. Unique Circumstances – The hardship of which the applicant complains results from unique circumstances related to the applicant’s land.

Staff Comment – The property has a unique situation in which the lot is wedge shaped with two street frontages, thus providing limited buildable area on the lot. The lot was created prior to current subdivision standards.

3. Hardship by Applicant’s Action - The hardship is not the result of the applicant’s own action.

Staff Comment – Any hardship stated by the applicant is not one that is created by the applicant’s own actions.

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.

Staff Comment – The parcel of land allows the use that is being proposed.

5. Public Safety and Welfare – The granting of the variance must secure the public safety and welfare and does substantial justice.

Staff Comment – The variance will not negatively impact adjoining or area properties.

Summary Comments:

It is staff's opinion that the granting of this variance would not be a significant deviation from the intent of the ordinance.

Mr. Phil Dixon, Attorney at Law, representing Mr. Nash, spoke on behalf of the request. Mr. Dixon stated this lot is triangular in shape with a lot of buffering to the neighbors. Mr. Dixon stated that Mr. Nash wishes to have a handicapped bathroom constructed on his home for his mother-in-law. Mr. Dixon stated that approximately nine letters were mailed in support of Mr. Nash to Mr. Lynch.

Mr. James P. Nash, 211 Pineview Drive, stated he purchased the home in 1995. Mr. Nash stated the bathroom would be less than 10 feet by 18 feet. The current bathrooms are very small and a wheelchair or walker would not go through the bathroom doors. Mr. Nash stated that the previous owner, Ms. Carrie Swope, never made any renovations to the home to bring it up to standard.

Ms. M.G.F. Gilliland, 216 Pineview Drive, read a letter she wrote to Mr. Lynch in support of Mr. Nash's request into the record (see attached). Ms. Gilliland stated that the Nash's have done a tremendous amount of work on the inside and outside.

Mr. Gary Gilliland, 216 Pineview Drive, stated that the addition of a bathroom to Mr. Nash's home would not be detrimental to the neighborhood. Mr. Gilliland reiterated Ms. Gilliland's comments.

No one spoke in opposition.

Chairman Farley read the criteria in granting/denying a variance.

Motion was made by Ms. Bellis, seconded by Mr. Wright, 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.

REQUEST FOR A SPECIAL USE PERMIT BY BENNET W. LAPRADE OF PANTANA BOB'S – GRANTED

Chairman Farley stated that the next item is a request for a special use permit. The applicant, Bennet W. LaPrade of Pantana Bob's, requests a special use permit, to allow the continued operation of a public/private club, pursuant to Section 9-4-78(f)(6)m of the Greenville City Code. The property is located at 513 Cotanche Street, and is further identified as Tax Parcel 11031.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on July 18, 2005 and July 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 the applicant, Pantana Bob's Inc., desires the renewal of a special use permit to continue operation of a public or private club (Pantana Bob's). The property is zoned CD, Downtown Commercial. The property has approximately 26 of frontage along Cotanche Street. The public/private club has 6641 square feet of floor area. Businesses are exempt from parking standards in the CD (Downtown Commercial) Zoning District. The property is located within Vision Area "H" as designated by the Comprehensive Plan. Management actions for Vision Area "H" include the development of the College Area of downtown as the cultural, recreation, and entertainment center of the city. The site is located outside the Downtown Subdistrict Overlay wherein special use permits for public/private clubs are prohibited. The proposed use is in general compliance 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 special use permit. Mr. Lynch asked that the findings of fact be entered into the record.

Applicant: Pantana Bob's, Inc. (Bennet LaPrade)

Request: The applicant, Pantana Bob’s Inc., desires the renewal of a special use permit to continue operation of a public or private club (Pantana Bob’s) pursuant to Sections 9-4-78(f)(6)m and 9-4-86(f) of the Greenville City Code.

Location: The existing use is located at 513 Cotanche Street. The property is further identified as being Tax Parcel Number 11031.

Zoning of Property: CD (Downtown Commercial)

<u>Surrounding Development:</u>	<u>Zoning</u>
North: Hideaway	CD (Downtown Commercial)
South: Varsity Barber Shop	CD (Downtown Commercial)
East: City of Greenville Parking Lot	CD (Downtown Commercial)
West: East Carolina School of Bartending	CD (Downtown Commercial)

Description of Property:

The property has approximately 26 of frontage along Cotanche Street. The public/private club has 6641 square feet of floor area. Businesses are exempt from parking standards in the CD (Downtown Commercial) Zoning District.

Comprehensive Plan:

The property is located within Vision Area “H” as designated by the Comprehensive Plan. Management actions for Vision Area “H” include the development of the College Area of downtown as the cultural, recreation, and entertainment center of the city.

The site is located outside the Downtown Subdistrict Overlay wherein special use permits for public/private clubs are prohibited.

The proposed use is in general compliance with the Land Use Plan Map, which recommends commercial development for the subject property.

Notice:

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

Staff Comments:

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

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

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

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

1. 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:

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. Conrad Paysour, Attorney at Law, representing the applicant, spoke on behalf of the request. Mr. Paysour stated he and Mr. LaPrade would be available to answer any questions.

No one spoke in opposition.

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

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

Motion was made by Mr. Wright, 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.

REQUEST FOR A SPECIAL USE PERMIT BY JACOB HARTSELL –  
GRANTED

Chairman Farley stated that the next item is a request for a special use permit by Jacob Hartsell. The applicant, Jacob Hartsell of Scores, requests a special use permit, to allow the continued operation of a public/private club, pursuant to Section 9-4-78(f)(6)m of the Greenville City Code. The property is located at 218 East Fifth Street, and is further identified as Tax Parcel 20035.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on July 18, 2005 and July 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 the applicant, Jacob Hartsell, desires a special use permit to continue operation of a public or private club. The proposed use is located at 218 East Fifth Street. The property is zoned Downtown Commercial. The property has approximately 39 feet of frontage along East Fifth Street and contains approximately 3,852 square feet in total building area. The building has direct access to the public parking lot at the rear of the structure. Businesses are exempt from parking standards in the CD (Downtown Commercial) Zoning District. The City of Greenville Horizon's Land Use Plan supports and encourages reinvestment and rehabilitation activities in the downtown area and will support and encourage redevelopment activities, which are compatible with traditional character of downtown. The proposed use is in general compliance with the City of Greenville Horizon's Land Use Plan and the Land Use Plan Map, which classifies the property as commercial. The site is located outside the Downtown Subdistrict Overlay wherein special use permits for public/private clubs are prohibited. Mr. Lynch read the definition of a public/private club and specific criteria the applicant must comply with if granted the special use permit. Mr. Lynch asked that the findings of fact be entered into the record.

Applicant: Jacob Hartsell

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

Location: The proposed use is located at 218 East Fifth Street. The property is further identified as being Tax Parcel Number 20035.

Zoning of Property: CD (Downtown Commercial)

Surrounding Development:

Zoning

North: Stop Shop Convenience	CD (Downtown Commercial)
South: City Parking lot	CD (Downtown Commercial)
East: Pita Pit Restaurant	CD (Downtown Commercial)
West: Backdoor Skate Shop	CD (Downtown Commercial)
East Carolina	OR (Office Residential)

Description of Property:

The property has approximately 39 feet of frontage along East Fifth Street and contains approximately 3,852 square feet in total building area. The building has direct access to the public parking lot at the rear of the structure. Businesses are exempt from parking standards in the CD (Downtown Commercial) Zoning District.

Comprehensive Plan:

The City of Greenville Horizon's Land Use Plan supports and encourages reinvestment and rehabilitation activities in the downtown area and will support and encourage redevelopment activities, which are compatible with traditional character of downtown.

The proposed use is in general compliance with the City of Greenville Horizon's Land Use Plan and the Land Use Plan Map, which classifies the property as commercial. The site is located outside the Downtown Subdistrict Overlay wherein special use permits for public/private clubs are prohibited.

Notice:

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

Staff Comments:

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

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

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

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

1. 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:

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. Jacob Hartsell spoke on behalf of the request. Mr. Hartsell stated he would answer any questions.

No one spoke in opposition.

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

Motion was made by Mr. Wright, 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. 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 TANGI AND BENNIE WILIAMS – GRANTED

Chairman Farley stated that the last item is a request by Tangi and Bennie Williams. The applicants, Tangi & Bennie Williams, request a special use permit to allow the operation of a child day care facility, pursuant to Section 9-4-78(f)(8)(a) of the Greenville City Code. The property is located at 4051 South Memorial Drive, and is further identified as Tax Parcel 33165.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on July 18, 2005 and July 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 Tangi & Bennie Williams, desire a special use permit to allow the use of property located at 4051 S. Memorial Drive for a child day care facility. The property is located at 4051 S. Memorial Drive and is zoned Heavy Commercial. The property is located at the northeast corner of S. Memorial Drive and Chapman Road. The unit has approximately 12,000 square feet, which was formerly used for Champions Fitness. The applicant proposes a 7000 sq foot playground area to the rear of the building for an outdoor recreation for children. The facility has ample parking for a child day care facility, which requires 1 space per employee, plus 1 space per 500 sq. ft. of floor area, plus 4 spaces for unloading and loading persons. The Land Use Plan Map recommends (Commercial) 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 facility. Mr. Lynch asked that the findings of fact be entered into the record.

Applicant: Tangi Williams

Request: The applicants, Tangi & Bennie Williams, desire a special use permit to allow the use of property located at 4051 S. Memorial Drive for a 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 4051 South Memorial Drive. The property is further identified as being a portion of Tax Parcel Number 33165.

Zoning of Property: CH (Heavy Commercial)

<u>Surrounding Development:</u>	<u>Zoning</u>
North: Edwards Construction	CH (Heavy Commercial)
South: Vacant	CH (Heavy Commercial)
East: Vacant	CH (Heavy Commercial)
West: Community Square Shopping Center	CG (General Commercial)

Description of Property:

The property is located at the northeast corner of S. Memorial Drive and Chapman Road. The unit has approximately 12,000 square feet, which was formerly used for Champions Fitness. The applicant proposes a 7000 sq foot playground area to the rear of the building for an outdoor recreation for children.

The facility has ample parking for a child day care facility, which requires 1 space per employee, plus 1 space per 500 sq. ft. of floor area, plus 4 spaces for unloading and loading persons.

Comprehensive Plan:

The property is located within Vision Area "E" of the Horizons Comprehensive Land Use Plan. The Land Use Plan Map recommends (Commercial) 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 July 14, 2005. Notice of the Public hearing was published in the Daily Reflector on July 18, 2005 and July 25, 2005.

Staff Recommendation:

The applicant must comply with all NC Building and Fire codes to operate a child day care facility.

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.

Ms. Tangi Williams stated that the front portion of the building will be used for a day care facility. A portion of the building is being used for their church and the playground area will be located in the rear. Ms. Williams stated that there will be a natural walkway to the side of the building which will travel to the playground area as well as a walkway through the building.

No one spoke in opposition.

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

Motion was made by Mr. Wright, seconded by Ms. McLawhorn, 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 9: 00 PM.

Respectfully submitted

Ed Lynch, AICP  
Planner