

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT

May 22, 2014

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of City Hall.

Scott Shook, Chairman-\*

Charles Ewen \*  
Linda Rich X  
Justin Mullarkey \*  
Kevin Faison \*

Claye Frank X  
Sharon Ferris X  
Bill Fleming \*  
Thomas Taft, Jr. \*

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

VOTING MEMBERS: Mullarkey, Ewen, Shook, Taft, Faison, Fleming

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney  
Mr. Michael Dail, Planner  
Mr. Thomas Weitnauer, Chief Planner  
Ms. Amy Nunez, Secretary  
Mr. Tim Corley, Civil Engineer  
Mr. Jonathan Edwards, Communications Technician

**MINUTES**

Mr. Mullarkey made a motion to approve the February 27, 2014 minutes as presented, Mr. Taft seconded and the motion passed unanimously.

**AGENDA**

Mr. Fleming made a motion to remove item #2 from the agenda, Mr. Taft seconded and the motion passed unanimously. The applicant from item #2 withdrew their application after agendas were sent out.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY KEVIN MARCUSE AND TODD MILNER- APPROVED**

The applicants, Kevin Marcuse and Todd Milner, desire a special use permit to operate a dining and entertainment establishment pursuant to Appendix A, Use (6)m.(1) of the Greenville City Code. The proposed use is located at 113 E. 5th Street. The property is further identified as being tax parcel number 12848.

Mr. Dail delineated the area on the map. He stated that the property is located in the City’s core in the downtown area. It is located along the minor thoroughfare of W. 5<sup>th</sup> Street.

**Zoning of Property:** CD (Downtown Commercial)

**Surrounding Zoning:**

North: CD (Downtown Commercial)  
South: CD (Downtown Commercial)  
East: CD (Downtown Commercial)  
West: CD (Downtown Commercial)

**Surrounding Development:**

North: City of Greenville Public Parking Lot  
South: Peasants Pub, G-Vegas Magazine, 5<sup>th</sup> Street Distillery  
East: Halfway House, The Varsity Club  
West: Side Bar, The Scullary

**Description of Property:**

The subject property is a 6,813 square foot commercial building located north of E. Fifth Street and is the former Pirates Den.

**Comprehensive Plan:**

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

**Notice:**

Notice was mailed to the adjoining property owners on April 10, 2014 and May 8, 2014. Notice of the public hearing was published in the Daily Reflector on April 14, 2014, April 21, 2014, May 12, 2014 and May 19, 2014.

**Related Zoning Ordinance Regulations:**

Definition: *Dining and entertainment establishment.*

An eating and entertainment establishment open to the general public and which meets all of the following:

- (1) May require a membership, cover or minimum charge for admittance or service during special periods of operation in accordance with this chapter;
- (2) Has sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.
  - (a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishments kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.
  - (b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service, or gratuity which is not specified in this subsection (2) as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.
  - (c) A membership, cover, or minimum charge for admittance or service shall not be included in either

the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state. For purposes of determining compliance under this subsection (2), the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the state;

- (3) Does provide sit-down dining area(s);
- (4) May provide food attendant (waiter/waitress) table ordering and busboy services;
- (5) May offer food in disposable containers;
- (6) May offer carry-out and/or off-site delivery services;
- (7) Does not offer drive-in attendant services;
- (8) May exhibit one but not both of the following operational functions or characteristics:
  - (a) Drive-through service; or
  - (b) Over the counter service. For purposes of this section, the term over the counter service shall include both customer ordering and the receipt of food, excepting beverages, condiments, utensils and the like, from an order/delivery station or counter remote to the on-site place of consumption.
- (9) May have one or more of the following activities or services, which is open to the establishments patrons and general public and is limited to the hours of operation of complete food services including regular menu food ordering, food preparation and on-premises food consumption, except as otherwise provided in this subsection (9): full service bar, live or recorded amplified music, floor show and dancing area. Complete food services including regular menu food ordering, food preparation and on-premises food consumption services may be suspended at the option of the owner/operator not less than one hour prior to the close of business each evening. For purposes of interpretation of this section, when a dining and entertainment establishment closes for business at 12:00 a.m. (midnight) complete restaurant services including regular menu food ordering, food preparation and on-premises food consumption shall be provided until not less than 11:00 p.m. of the same day;
- (10) Shall be limited to a maximum mechanically conditioned floor area requirement and shall comply with a minimum separation and security requirement as specified under sections 9-4-86 and 9-4-103;
- (11) Does not qualify under the definition of restaurant, fast food or restaurant, conventional as contained herein; and
- (12) Any dining and entertainment establishment that does not meet the aforesaid requirements shall be classified as a public or private club for purposes of zoning regulation.

Specific Criteria: *Dining and entertainment establishments.*

- (1) (a) A special use permit for a dining and entertainment establishment is subject to revocation in accordance with the provisions of this subsection (F)1. Nothing herein shall prohibit or restrict the authority of the Board of Adjustment to rescind or revoke a special use permit for a dining and entertainment establishment in accordance with the provisions of section 9-4-83.
- (b) An annual review shall be conducted by the Director of Community Development or his or her authorized representative of a dining and entertainment establishment which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the Director of Community Development or his or her authorized representative as a result of this annual review shall be compiled in a written staff report.
- (c) At a meeting of the Board of Adjustment, the Director of Community Development or his or her authorized representative shall present to the Board of Adjustment the staff report of a dining and entertainment establishment for which the annual review includes a finding of one or more instances of noncompliance with applicable laws, codes, and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (F)1.(4) below shall be provided notice of the meeting and a copy of the staff report.
- (d) Based on the staff report, the Board of Adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit.
  1. An order for a rehearing shall be based upon a determination by the Board of Adjustment that either:
    - a. The use of the property is inconsistent with the approved application;
    - b. The use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code;
    - c. The use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard; or
    - d. The use is not compliant with any additional conditions of approval established by the Board and set out in the order granting the permit.
  2. The rehearing shall be in the nature of, and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the Board of Adjustment may grant a special use permit with

conditions imposed pursuant to this subsection (F)1. and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the Board of Adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a dining and entertainment establishment.

- (e) The requirements and standards set forth in this subsection (F)1. are in addition to other available remedies, and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a dining and entertainment establishment shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a dining and entertainment establishment shall comply with the provisions of Title 11, Chapter 9, of the City Code entitled Litter Control in Parking Lots.
- (3) In addition to subsection (F)1.(2) above, the Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a dining and entertainment establishment, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the Director of Community Development an acknowledgment of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgment shall be made on forms provided by the planning office.
- (5) May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation.
- (6) Weekdays. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 11:00 p.m. each Monday, Tuesday, Wednesday, and Thursday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment.
- (7) Weekends. Except as further provided under subsection (F)1.(8) below, dining and entertainment establishments shall not have amplified audio entertainment after 2:00 a.m. each Friday and Saturday night and before 11:00 a.m. of the next day, and shall not have amplified audio entertainment after 11:00 p.m. each Sunday night and before 11:00 a.m. of the next day. For purposes of this section, amplified audio entertainment@ shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification

other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at a low amplification and not intended as a principal form of entertainment shall not be deemed amplified audio entertainment.

(8) Provisions for extended hours of operation for amplified audio entertainment.

(a) The allowable period for amplified audio entertainment for any dining and entertainment establishment in any zoning district may be extended, at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above to not later than 2:00 a.m. the following day on December 31 (New Year's Eve).

(b) The allowable period for amplified audio entertainment for any dining and entertainment establishment that meets the separation requirements as specified under subsection (F)l.(8)(d) below may be extended at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above on each Thursday night to no later than 2:00 a.m. the following day.

(c) The allowable period for amplified audio entertainment for any dining and entertainment establishment that meets the separation requirements as specified under subsection (F)l.(8)(d) below may be extended, at the option of the owner/operator, from the times specified under subsections (F)l.(6) and (7) above to no later than 2:00 a.m. the following day on March 17 (St. Patrick's Day), May 5 (Cinco de Mayo); July 4 (Independence Day) and October 31 (Halloween).

(d) To qualify for extended hours of operation for amplified audio entertainment as provided in subsections (F)l.(8)(b) and (F)l.(8)(c) above, the dining and entertainment establishment shall not be located within a 500-foot radius, including street rights-of-way, of (i) a conforming use single-family dwelling located in any district, or (ii) any single-family residential zoning district. The required measurement shall be from the building or structure containing the dining and entertainment establishment to the nearest single-family dwelling lot line or single-family residential zoning district boundary line. For purpose of this subsection, the term "single-family residential zoning district" shall include any RA20; R15S; R9S; R6S; and MRS district.

(e) In no event shall the noise generated by amplified audio entertainment exceed the noise control provisions as provided in Title 12, Chapter 5, of the Greenville City Code.

(9) Shall have sales of prepared and/or packaged foods, in a ready-to-consume state, in excess of 30% of the total gross receipts for the establishment during any month.

(a) In determining the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state, the following sales shall be included: food prepared in the establishments kitchen and served as a meal to be consumed on the premises or as a take-out order; packaged food sold to accompany the meal; and non-alcoholic beverages sold to accompany the meal.

(b) The following shall not be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state: mixed alcoholic beverages, including the mixer; any other alcoholic beverage; grocery items not ordered and purchased with meals; and any other product, item, entertainment, service or gratuity which is not specified in this subsection as a sale to be included in the portion of sales that can be attributed to the sales of prepared and/or packaged food in a ready-to-consume state.

(c) A membership, cover or minimum charge for admittance or service shall not be included in either the total gross receipts for the establishment or in the portion of sales that can be attributed to the sale of prepared and/or packaged food in a ready-to-consume state.

(d) For purposes of determining compliance under this subsection, the Zoning Enforcement Officer may utilize and rely upon any routine or special audit report prepared by a department, division of a department, or agency of the State of North Carolina.

- (10) Records related to the sale of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be maintained on premises for not less than one year and shall be open for inspection or audit at all reasonable hours during any period of establishment operation by the Zoning Enforcement Officer. The Zoning Enforcement Officer may view the records on the premises of the establishment or may request copies of the written records be delivered to the city. Records of sales of prepared and/or packaged food in a ready-to-consume state and the sale of all other products and services shall be filed separate and apart from all other records maintained on the premises. The requirements of this subsection shall be for the purpose of determining compliance with subsection (F)1.(9) above. Failure to provide all records required by this subsection in a timely manner, to be determined by the city, upon written request of the Zoning Enforcement Officer shall constitute a violation of the zoning regulations.
- (11) A lighting plan shall be submitted to the Director of Community Development or authorized agent for review and approval, and lighting fixtures shall be installed and maintained pursuant to the approved plan which illuminates all exterior portions of the building, lot area and parking lot as determined appropriate by the Director of Community Development, or authorized agent. Lighting shall be located and shielded to prevent the light cone of all exterior fixtures from encroaching beyond the property boundary line and into any adjacent public right-of-way, property or dwelling. Required or additional optional lighting shall comply with this subsection and section 9-4-104.
- (12) A parking plan which conforms to the provisions of Article O shall be submitted to the Director of Community Development or authorized agent for site plan review and approval in accordance with the provisions of the Land Development Administrative Manual. The exemption provisions of section 9-4-243(B) shall not apply to a dining and entertainment establishment, and each establishment shall provide all required parking spaces specified under section 9-4-252 on-site or in an approved remote parking facility in accordance with section 9-4-250.
- (13) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall contain more than 7,000 total square feet of mechanically conditioned floor area, including but not limited to any activity area, kitchen, restroom, interior walk-in storage room, hallway, foyer, bar and serving station, seating area, dance floor and sound stage.

- (14) No dining and entertainment establishment located in a CN (Neighborhood Commercial) District shall be located within a 200-foot radius of an existing or approved dining and entertainment establishment located within any CN (Neighborhood Commercial) District as measured from the nearest lot line.
- (15) When a dining and entertainment establishment both: is located within a 500-foot radius, including street rights-of-way, of a residential zoning district as measured from the building or structure containing a dining and entertainment establishment to the nearest residential zoning district boundary; and the establishment provides or utilizes amplified audio entertainment as defined herein after 11:00 p.m. on any day, the establishment shall be subject to a security requirement during and after such period of amplified audio entertainment as follows:
- (a) Establishments that have an approved occupancy above 50 but less than 200 total persons as determined by the Building Inspector shall employ not less than one uniformed off-duty law enforcement officer, or not less than one uniformed security guard provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
  - (b) Establishments that have an approved occupancy of 200 or more total persons as determined by the Building Inspector shall employ not less than two uniformed off-duty law enforcement officers, or not less than two uniformed security guards provided by a security guard and control profession licensed in accordance with the provisions of G.S. Chapter 74C, to patrol the parking lot, and to disperse the crowd, and to direct traffic during the period 11:00 p.m. to the close of business and later to such time that all patrons and other persons, other than employees, have vacated the premises and associated parking area. The required security personnel shall remain on duty and visible outside the establishment, and shall be accessible to law enforcement officers at all time. This section shall apply regardless of the number of patrons actually within the establishment at the time of amplified audio entertainment.
  - (c) For purposes of this section, the term residential zoning district shall include the following districts: RA-20, R-6MH, R-6, R-6A, R-6A-RU, R-6N, R-6S, R9, R9S, R-15S, PUD, MR and MRS.

**Staff Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy.

**Staff Recommendation:**

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



Chairman Shook asked how long had this club gone without operating as a public/private club.

Mr. Dail stated it has been longer than 6 months.

Chairman Shook stated the last occupant was not a club and asked if the designation stays with the property.

Mr. Dail state no since it ceased activity for more than 6 months.

Chairman Shook opened the public hearing.

Mr. Kevin Marcuse, applicant, spoke in favor of the request. He has been in the restaurant business for over 20 years. They have 2 Fitzgerald's Irish Pub locations: about 2 ½ years ago they opened in Charlotte and in May 2013 they opened in Chapel Hill. They are full service restaurants. He stated they exceed the state guidelines for food requirements and no issues on their licenses. They will upgrade the proposed location. They will serve lunch and dinner 7 days a week.

Chairman Shook asked when they will open.

Mr. Marcuse stated mid to late July.

Mr. Taft asked what the hours of operation are.

Mr. Marcuse stated 11am to 2am and some nights close at midnight.

Chairman Shook stated that the dining and entertainment ordinance allows charging a cover Thursday to Saturday. He asked if the applicant wanted to explore that option.

Mr. Marcuse stated yes.

Mr. Don Edwards, owner of property, spoke in favor of the request. He stated he vetted the applicant and has visited the current Fitzgerald's locations. He stated they have a clean record and this would be a fabulous asset to the Uptown Area.

No one spoke in opposition of the request.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

Mr. Mullarkey stated that this is what people want downtown and it meets criteria.

Chairman Shook read the required findings criteria. No objections.

**Mr. Fleming made a motion to adopt the finding of facts with the stated conditions, Mr. Mullarkey**

seconded and the motion passed unanimously.

Mr. Ewen made a motion to approve the petition with the stated conditions, Mr. Taft seconded and the motion passed unanimously.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY DANIEL LALONE-APPROVED**

The applicant, Daniel Lalone, desires a special use permit to operate a tattoo shop establishment pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 331 E. Arlington Boulevard. The property is further identified as being tax parcel number 34012.

Mr. Dail delineated the area on the map. He stated that the property is located in the center portion of the city's jurisdiction. It is located at the intersection of 2 major thoroughfares- E. Arlington Boulevard and SE. Greenville Boulevard.

**Zoning of Property:** CG (General Commercial)

**Surrounding Zoning:**

- North: CG (General Commercial)
- South: CG (General Commercial)
- East: CG (General Commercial)
- West: CG (General Commercial)

**Surrounding Development:**

- North: Big Time Sweepstakes, Kmart Shopping Center
- South: Capel Rugs, US Cellular, Jackson Hewitt, Jersey Mikes, Ichiban Hibachi
- East: Vacant Commercial Building
- West: Sherwin Williams

**Description of Property:**

The subject property contains a multiple unit commercial building. The property is 0.45 acres in size and has approximately 120 feet of frontage along E. Arlington Boulevard. Existing uses in the building include Our House Home Care, Boulevard Bagel, My Sisters Closet and Mi Cabana.

**Comprehensive Plan:**

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

**Notice:**

Notice was mailed to the adjoining property owners on April 10, 2014 and May 8, 2014. Notice of the public hearing was published in the Daily Reflector on April 14, 2014, April 21, 2014, May 12, 2014 and May 19, 2014.

**Staff Recommended Conditions:**

Must obtain a permit from the Department of Public Health as required by NCGS §130A-283 and comply with any other health department requirements including but not limited to sanitation, first aid, vaccinations, health certifications, disposal of needles and other bio hazard waste materials.

No outdoor seating or loitering permitted outside of business.

Shall comply with the City of Greenville Sign Ordinance.

**Staff Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy.

**Staff Recommendation:**

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

Mr. Taft asked what is the punishment or mediation for putting up the signs before getting a sign permit by the City.

Mr. Dail stated first there is a warning. Then \$50 first day, \$100 second day, and \$250 every day after.

Mr. Faison asked if the sign would need to be removed or just get the permit.

Mr. Dail stated he needs to apply for a permit then correct or remove as necessary according to the permit. He stated he noticed the sign this week and took a picture today.

Mr. Ewen asked if the permit would be okay.

Mr. Dail stated he does not know what the allowed square footage for signage for this property. He stated he had communicated with the applicant when he applied for the special use permit that he would need to get a sign permit before putting up signs.

Chairman Shook opened the public hearing.

Mr. Daniel Lalone, applicant, spoke in favor of the request. He stated at his previous location he had graffiti art on the side of the building and Mr. Dail told him that he couldn't do that now. He stated he researched the laws and regulations for signage and followed size, mounting procedures and safety for the signs he put up. He said he was unsure if he needed permits.

Mr. Faison stated a permit is still needed and needs to be applied for as soon as possible.

Mr. Lalone stated that at his prior location the landlord said he could do what he wanted.

Mr. Mullarkey asked where the former location was.

Mr. Lalone stated 3004 E. 10<sup>th</sup> Street across from Hastings Ford.

Mr. Taft asked if he could do graffiti art inside.

Mr. Lalone stated yes.

Chairman Shook stated if the special use permit is approved it would be with the stated staff conditions that include he complies with the sign permit requirement.

Mr. Lalone stated he is aware of not loitering in front of the store. He will have a smoking area at the rear of the store.

Mr. Ewen asked why he moved location.

Mr. Lalone stated the previous landlord didn't want to fix anything, the roof was leaking and the property required maintenance. He stated he put his own money in for repairs.

Mr. Faison asked if he has all his health permits and licenses.

Mr. Lalone stated his and his wife's have expired and they are not tattooing now, but he has licensed staff. He stated he needs to get the special use permit approved first before he can renew his with Mary Paige with the Health Department.

Mr. Mullarkey asked if he was opened for business currently.

Mr. Lalone stated hopefully tomorrow.

Mr. Mullarkey stated he would have to comply with the Health Department.

Mr. Lalone stated they are 4 employees, including him, and he is going to pay all Health Department fees for all.

Mr. Mullarkey asked if he was no longer an artist and if he still tattoos.

Mr. Lalone stated he is an artist and does tattoo.

Mr. Mullarkey stated he mentioned his license has expired and asked if he was going to renew.

Mr. Lalone stated yes. It expired in February and he has not been tattooing since then.

Mr. Randy Whitlow, former landlord of applicant, spoke in opposition of the request. He stated the roof had a leak last November but has already been repaired. He stated Mr. Lalone's attitude is not good and increased his rent hoping that he would move out. There have been numerous problems and complaints regarding Mr. Lalone. Other tenants were not happy with things going on in his business and he was not given permission to graffiti the side of the building.

Mr. Mullarkey asked for specific problems and issues.

Mr. Whitlow stated they clogged the toilet and wanted him to fix it. When he arrived Mr. Lalone and his friends would gang up on him and yell and insult. There were loitering issues at the front and back of the store.

Mr. Lalone spoke in rebuttal. He stated he fixed up the building taking it from a shell and brought it back to life. He stated he kept up the vacant store next to him and swept up cobwebs and leaves in parking lot.

Mr. Ewen asked no outdoor sitting or loitering outside is not just the front of the store.

Mr. Dail stated the intent is to prevent loitering.

Mr. Mullarkey stated hanging out is not permitted. He asked if an employee goes out back for a break or smoke would that be considered loitering.

Mr. Taft stated it would take a group to loiter.

Attorney Little stated the loitering ordinance does not differentiate between front and back. Since state law prohibits smoking inside of any business, a smoke area is okay as long as there is appropriate butt disposal but it cannot be a hang out spot.

Chairman Shook stated there can be an area in the back but if it becomes a general nuisance, there is a possibility you can come before this board again and it could have an effect on your special use permit.

Mr. Lalone stated he understood. He stated the location has a break room. He stated he wants to be a friendly tattoo shop. He spoke with the adjacent neighbors and has a good relationship with them. No hanging out.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection with the recommended conditions.

Chairman Shook closed the public hearing and opened for board discussion.

No comments made during board discussion.

Chairman Shook read the required findings criteria. No objections.

**Mr. Fleming made a motion to adopt the finding of facts with the stated conditions, Mr. Taft seconded and the motion passed unanimously.**

**Mr. Taft made a motion to approve the petition with the stated conditions, Mr. Fleming seconded and the motion passed unanimously.**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY PAUL GIANINO- APPROVED**

The applicant, Paul Gianino, desires a special use permit to operate a woodworking shop pursuant to Appendix A, Use (14)g. of the Greenville City Code. The proposed use is located at 1901 Chestnut Street. The property is further identified as being tax parcel numbers 009053 and 009054.

Mr. Dail delineated the area on the map. He stated that the property is located in the central portion of the city's

jurisdiction. It is close to a major thoroughfare- Dickinson Avenue.

**Zoning of Property:** CDF (Downtown Commercial Fringe)

**Surrounding Zoning:**

- North: R6 (Residential)
- South: IU (Unoffensive Industry)
- East: CDF (Downtown Commercial Fringe)
- West: CDF (Downtown Commercial Fringe)

**Surrounding Development:**

- North: Single Family Residences, Destinee's Childcare
- South: Muffler Connection, Revitalife
- East: Aladdin Cab Co., Greenville Glass Co.
- West: 2<sup>nd</sup> Look Paint and Body Shop, Home Builders Supply

**Description of Property:**

The subject property contains a 5,712 commercial building. The property is 0.62 acres in size and has approximately 160 feet of frontage along Chestnut Street and 175 feet of frontage along Higgs Street.

**Comprehensive Plan:**

The property is located within Vision Area "G" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on May 8, 2014. Notice of the public hearing was published in the Daily Reflector on May 12, 2014 and May 19, 2014.

**Staff Recommended Conditions:**

The use shall not produce any noise audible from any point located on any property zoned for residential purposes between the hours of 6:00 pm to 8:00 am. Measurement standards shall be human auditory senses.

**Staff Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy.

**Staff Recommendation:**

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

Mr. Taft asked where the daycare was.

Mr. Dail indicated on a map showing it was across the street.

Chairman Shook opened the public hearing.

Mr. Paul Gianino, applicant, spoke in favor of the request. He stated he needs more space.

Mr. Ewen asked what type of woodworking.

Mr. Gianino stated 18<sup>th</sup> and 19<sup>th</sup> century furniture restoration.

Mr. Ewen asked if he works with period tools.

Mr. Gianino stated yes. He doesn't work with loud machines and normally ends work at 5pm. He stated he is not a production shop. He stated they work with a lot of hand tools.

Mr. Ewen asked how many people work with him.

Mr. Gianino stated he teaches some and has about 4 people come in to study with him.

Mr. Faison asked if he had another location.

Mr. Gianino stated he currently is on S. Pitt Street behind the police department. He stated he needs more space and this location is available. He brings tour groups from schools to encourage. He has taught at the ECU Design Department.

No one spoke in opposition of the request.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

No comments made during board discussion.

Chairman Shook read the required findings criteria. No objections.

**Mr. Ewen made a motion to adopt the finding of facts with the stated conditions, Mr. Mullarkey seconded and the motion passed unanimously.**

**Mr. Fleming made a motion to approve the petition with the stated conditions, Mr. Ewen seconded and the motion passed unanimously.**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY HOLTON WILKERSON-  
APPROVED**

The applicant, Holton Wilkerson, desires a special use permit to operate a private club pursuant to Appendix A, Use (6)m. of the Greenville City Code. The proposed use is located at 703 Dickinson Avenue. The property is further identified as being tax parcel number 12632.

Mr. Taft stated he has a financial interest in this application and asked to be recused.

Attorney Little stated the meeting started with 6 members that made quorum. He stated business could still be conducted with 5 members and still operate under a simple majority.

**Mr. Fleming made a motion to recuse Mr. Taft from the application/hearing/vote due to financial interest, Mr. Mullarkey seconded and the motion passed unanimously.**

Mr. Dail delineated the area on the map. He stated that the property is located in the central portion of the city's jurisdiction. The intent of the application is to have a microbrewery. It is located along the major thoroughfare of Dickinson Avenue.

**Zoning of Property:** CD (Downtown Commercial)

**Surrounding Zoning:**

- North: CD (Downtown Commercial) & CDF (Downtown Commercial Fringe)
- South: CD (Downtown Commercial)
- East: CD (Downtown Commercial) & CDF (Downtown Commercial Fringe)
- West: CD (Downtown Commercial)

**Surrounding Development:**

- North: Cabinets Plus, Vacant Commercial, Greenville Times, Church
- South: Cupola Building (Taff Office), UNX Chemicals
- East: Law Offices
- West: Future Go Science Center

**Description of Property:**

The subject property is 0.47 acres in size, has approximately 137 feet of frontage along Dickinson Avenue and contains a three unit 6,060 square foot commercial building that is currently vacant. The applicant proposes to convert the western most unit of the building into a 2,037 square foot micro brewery with an attached 1,000 square foot outdoor patio.

**Comprehensive Plan:**

The property is located within Vision Area "G" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on May 8, 2014. Notice of the public hearing was published in the Daily Reflector on May 12, 2014 and May 19, 2014.

**Related Zoning Ordinance Regulations:**

Definition:

*Public or private club.*

- (1) An establishment of which the principal use is entertainment and which meets all of the following:



- (a) May be open to the general public;
- (b) May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation;
- (c) May provide live or recorded amplified music;
- (d) May provide a floor show;
- (e) May provide a dance area;
- (f) May offer a full service bar;
- (g) May offer food services;
- (h) May provide food attendant (waiter/waitress) table ordering and busboy services; and
- (i) Does not qualify under the definitions of restaurant, fast food; restaurant, conventional; or dining and entertainment establishment as contained in this section.

(2) Any proposed or established dining and entertainment establishment that does not comply with the definition, standards or requirements applicable to dining and entertainment establishments as contained herein shall be classified as a public or private club for purposes of zoning regulation.

Specific Criteria:

(F) *Public or private club.*

- (1) (a) A special use permit for a public or private club is subject to revocation in accordance with the provisions of this subsection (F)(1). Nothing herein shall prohibit or restrict the authority of the Board of Adjustment to rescind or revoke a special use permit for a public or private club in accordance with the provisions of section 9-4-83.
- (b) An annual review shall be conducted by the Director of Community Development or his or her authorized representative of a public or private club which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the Director of Community Development or his or her authorized representative as a result of this annual review shall be compiled in a written staff report.
- (c) At a meeting of the Board of Adjustment, the Director of Community Development or his or her authorized representative shall present to the Board of Adjustment the staff report of a public or private club for which the annual review includes a finding of one or more instances of noncompliance with applicable laws, codes and ordinances, including but not limited to

noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (F)(4) below shall be provided notice of the meeting and a copy of the staff report.

- (d) Based on the staff report, the Board of Adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit.
  - 1. An order for a rehearing shall be based upon a determination by the Board of Adjustment that either:
    - a. The use of the property is inconsistent with the approved application;
    - b. The use is not in full compliance with all specific requirements set out in this chapter;
    - c. The use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard; or
    - d. The use is not compliant with any additional conditions of approval established by the Board and set out in the order granting the permit.
  - 2. The rehearing shall be in the nature of and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the Board of Adjustment may grant a special use permit with conditions imposed pursuant to this subsection (F) and section 9-4-82 or deny the special use permit. The grant or denial of the special use permit by the Board of Adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a public or private club.
- (e) The requirements and standards set forth in this subsection (F)(1) are in addition to other available remedies and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a public or private club shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a public or private club shall comply with the provisions of Title 11, Chapter 9 of the City Code, whether or not the establishment is a nightclub, bar or tavern.

- (3) In addition to subsection (F)(2) above, the Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a public or private club, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the Director of Community Development an acknowledgment of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgment shall be made on forms provided by the planning office.
- (5) Any public or private club that has been issued a special use permit by the Board of Adjustment, that is subject to mandatory annual renewal, shall continue under the terms and conditions of the issued special use permit, until the expiration of the permit. All subsequent special use permit approvals for the location shall be subject to the specific criteria set forth under this subsection (F).
- (6) No public or private club located in any district shall be located within a 500-foot radius of an existing or approved public or private club as measured from the nearest lot line in accordance with the following. When a public or private club is located or to be located on a lot exclusive to itself, the measurement shall be from the perimeter lot line of the exclusive lot. When a public or private club is located or to be located in a separate structure exclusive to itself on a lot containing multiple uses, the measurement shall be from the perimeter lot line of the lot containing multiple uses. When a public or private club is located or to be located in a common structure with other uses such as a shopping center on a common lot, the measurement shall be from the perimeter lot line of the common lot.
- (7) At the time of special use permit approval, a public or private club shall not be located within a 500 foot radius, including street right-of-ways, of (i) a conforming use single-family dwelling located in any district, or (ii) any single-family residential zoning district. The required measurement shall be from the building or structure containing the public or private club to the nearest single-family dwelling lot line or single-family residential zoning district boundary line. For purpose of this section, the term "single-family residential zoning district" shall include any RA20, R15S, R9S, R6S, and MRS district.

**Staff Recommended Conditions:**

Site plan approval required prior to constructing parking improvements or building additions.

No loitering permitted outside of the establishment or outdoor activity area.

Outdoor activity area shall be fenced or enclosed in order to prevent patrons from entering and exiting the outdoor activity area except by going through the interior of the private club.

No private club outdoor activity shall be allowed outside the enclosed outdoor activity area. Specifically, no outdoor activity shall be permitted to overflow into any parking area or yard area.

There shall be no live outdoor music, floor show, or dancing associated with any outdoor activity area.

Outdoor amplified sound, including music, shall be allowed, provided (i) any sound transmission device, system, and/or speaker shall be oriented in a manner that directs all mechanical and/or amplified sound toward the private club building and away from any abutting property line, and (ii) no amplified sound shall be audible from any point located on any property. Outdoor amplified sound is defined as any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside through open door(s) or window(s) or other openings in the building. Measurement standards shall be human auditory senses.

Exterior lighting associated with the outdoor activity area shall be directed away from all public and/or private streets.

**Staff Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy.

**Staff Recommendation:**

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

Mr. Faison asked that no speakers outside and no fashion show outside.

Mr. Dail stated he didn't say no speakers outside, but nothing more than background noise, similar to the outside area at Mellow Mushroom.

Chairman Shook opened the public hearing.

Mr. Don Edwards, representative for the applicant, spoke in favor of the request. He is the member-manager of the Tobacco Warehouse District, LLC which has ground leased this property for 99 years and will serve as the landlord for the property. The applicant, Holton Wilkerson, has done award winning work with Live Work Space in Wilson with Community Smith, great downtown revitalization work. He also is involved with the Superblock Project on E. 5<sup>th</sup> Street in Greenville which is an adaptive reuse with historical tax credits. The application is a similar project. The Longleaf Brewing Company will run a microbrewery. An excess of a half million dollars will be put into this project which will increase the tax base and be an asset to the community. The applicants are graduates of the SEED program which helps young entrepreneurs get going and creating economic development in the heart of the city. There is support from Uptown Greenville, The Chamber of Commerce, and the City of Greenville.

No one spoke in opposition of the request.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

Mr. Faison asked if the City is creating a new zoning ordinance for a microbrewery since it is not a club or a restaurant.

Mr. Dail stated an effort had been made but at this time this category is what best fit them.

Mr. Ewen asked if there would be memberships involved.

Mr. Dail stated it would be determined by how they are classified with the state.

Chairman Shook stated the last Chamber of Commerce Issues Committee meeting provided an update that staff is working on a special classification.

Chairman Shook read the required findings criteria. No objections.

**Mr. Fleming made a motion to adopt the finding of facts with the stated conditions, Mr. Mullarkey seconded and the motion passed unanimously.**

**Mr. Fleming made a motion to approve the petition with the stated conditions, Mr. Ewen seconded and the motion passed unanimously.**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY JOHN HALLOW- APPROVED**

The applicant, John Hallow, desires a special use permit to operate a bingo parlor pursuant to Appendix A, Use (6)d. of the Greenville City Code. The proposed use is located at 1202 N. Memorial Drive. The property is further identified as being tax parcel number 44159.

Mr. Dail stated that 2 previous special use applications for the same use had been approved by the Board for this property but did not come to fruition. Since it has been more than 6 months, another application is necessary. The first was issued January 2014 and the second April 2013.

Mr. Dail delineated the area on the map. He stated that the property is located in the northern portion of the city's jurisdiction across from the Pitt Greenville Airport. It is located on the major thoroughfares of N. Memorial Drive and Airport Road.

**Zoning of Property:** CH (Heavy Commercial)

**Surrounding Zoning:**

- North: CH (Heavy Commercial)
- South: CH (Heavy Commercial)
- East: IU (Unoffensive Industry)
- West: IU (Unoffensive Industry)

**Surrounding Development:**

- North: Vacant Commercial Building, Hardees, Dollar General
- South: Trade Gas Station, Blount Gas Company, Mini-Storage, Community Christian Church
- East: Vacant Property
- West: Pitt Greenville Airport

**Description of Property:**

The subject property contains a 27,016 square foot commercial building with two units. The property has a total lot area of 2.92 acres in size and has approximately 260 feet of frontage along N. Memorial Drive and 152 feet of frontage along Airport Road. The applicant's proposed unit contains 6,046 square feet and was formerly Dollar General.

**Comprehensive Plan:**

The property is located within Vision Area "A" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on May 8, 2014. Notice of the public hearing was published in the Daily Reflector on May 12, 2014 and May 19, 2014.

**Related Zoning Ordinance Regulations:**

Definition:

*Game center.* Any establishment that has more than five coin/token operated or other amusement devices or whose principal purpose is the operation of a game center regardless of the total number of amusement devices. For purposes of this definition, the term amusement devices shall include electronic games and similar machines, and any other game table or device. Bingo parlors shall be considered as game centers regardless of the number of participants.

**Staff Recommended Conditions:**

No loitering permitted outside of the establishment.

Trash receptacles must be placed outside of the establishment.

The applicant must comply with any annual State licensing requirements for beach bingo operations that may be imposed in addition to the licensing requirements of the City of Greenville.

The special use permit is subject to the applicant's continued compliance with the operational requirements and restrictions provided in Chapter 14, Article 37 of the North Carolina General Statutes for beach bingo operations.

**Conditions Placed on Previous Special Use Permits:**

Establishment shall not open until 3:00 pm on Sundays.

**Staff Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy.

**Staff Recommendation:**

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

Chairman Shook opened the public hearing.

Mr. John Hallow, applicant, spoke in favor of the request. He owns Lou's Beach Bingo on 10<sup>th</sup> Street in Greenville. Has been in business as a family since 1980. The 10<sup>th</sup> Street Connector project is taking some of his parking. He stated they have been as asset to the community and university without problems and would like to continue his business.

Mr. Ewen asked how beach bingo is different from regular bingo.

Mr. Hallow stated beach bingo can be played 24 hours a day but limited on payout. Charity, or regular bingo, can only play once a week and payout \$2,500.00 a night or twice a week and payout \$1,500.00. He stated his business is open day and night and some nights close at 10:30pm, or later depending on the crowd. His current location is next door to a church and never has had an issue. He stated they open every day at noon except for Sundays which they open at 1:30pm. He stated he is willing to compromise and open at 2:30pm.

Chairman Shook asked what time does he want to open on Sunday.

Mr. Hallow stated 2:30pm.

Mr. Michael Overton, commercial realtor, spoke in favor of the request. The proposed location has been vacant for a while. It is unfortunate that the 10<sup>th</sup> Street Connector is displacing Mr. Hallow but it is good for the City. There is no drinking or alcohol served at bingo. There has never been any issues or complaints about noise or problems.

No one spoke in opposition of the request.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

Mr. Fleming stated that the staff report mentioned previous 3pm opening for Sundays. He asked if there was a reason to not grant him an earlier time.

Chairman Shook stated there are no restrictions on hours of operations for general bingo. The church had requested that in past application for 3pm, but they are not here.

Mr. Faison asked if they could leave the hours to applicant's discretion.

Attorney Little stated that Mr. Hallow stated his normal hours are 1:30pm on Sunday and no one spoke in opposition. The last special use has expired and therefore the conditions on that have also expired. He stated Mr. Hallow stated he would change to 2:30 if the Board felt it was appropriate.

Mr. Faison asked that they are not required to add conditions.

Attorney Little stated yes.

Chairman Shook stated he is fine with the staff recommended conditions.

Mr. Fleming asked why he would need a time restriction since he has been in business for 30 years.

Mr. Ewen stated if an issue was to arise, they could figure it out later.

Chairman Shook read the required findings criteria. No objections.

**Mr. Fleming made a motion to adopt the finding of facts with the stated conditions, Mr. Ewen seconded and the motion passed unanimously.**

**Mr. Mullarkey made a motion to approve the petition with the stated conditions, Mr. Fleming seconded and the motion passed unanimously.**

**PUBLIC HEARING ON A REQUEST TO AMEND A SPECIAL USE PERMIT BY T PROPERTIES OF GREENVILLE, LLC- APPROVED**

The applicant, T Properties of Greenville, LLC, desires to amend a special use permit to operate a restaurant and to add regulated outdoor activities pursuant to Appendix A, Uses (10)h. and (10)j. of the Greenville City Code. The proposed use is located at 420 Red Banks Road. The property is further identified as being tax parcel number 14406.

Mr. Dail delineated the area on the map. He stated that the property is located in the central portion of the city's jurisdiction. It is Tripp's Restaurant and has been there since 2005. It is located by the minor thoroughfare of Red Banks Road and the major thoroughfare of SE. Greenville Boulevard.

**Zoning of Property:** OR (Office Residential)

**Surrounding Zoning:**

- North: CG (General Commercial)
- South: R15S (Residential Single Family) & R6 (Residential)
- East: OR (Office Residential) & CG (General Commercial)
- West: R15S (Residential Single Family) & OR (Office Residential)

**Surrounding Development:**

- North: BB&T, Adams Carwash
- South: Single Family Residences (Lynndale Neighborhood), Multi-family (Lynndale Townes)
- East: Mixed Office Uses, LaPromenade Shopping Center, Lynndale Shoppes
- West: BB&T, Single Family Residences (Lynndale Neighborhood)

**Description of Property:**

The subject property contains a 5,898 commercial building (Tripps Restaurant), has 235 feet of frontage along Red Banks Road and is 2.172 acres in size.

**Comprehensive Plan:**

The property is located within Vision Area "D" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends office/institutional/multi-family development for the subject property.



**Notice:**

Notice was mailed to the adjoining property owners on May 8, 2014. Notice of the public hearing was published in the Daily Reflector on May 12, 2014 and May 19, 2014

**Description of Request:**

The applicant wishes to amend their special use permit as follows:

Make expansions to the current restaurant totaling 2,470 square foot as shown on attached site plan (Exhibit B).

Change the operating hours to allow guest to be seated up to 2:00 am rather than the 12:00 am limit as required by condition placed on the special use permit by the Board.

Create a 695 square foot outdoor dining area subject to conditions proposed by the applicant as listed on Exhibit A. Outdoor activities were prohibited by condition of the Board.

**History:**

The original special use permit request to operate a restaurant at the subject sites was heard and denied by the Board of Adjustment on August 28, 2003.

The applicant requested a rehearing of the request by the Board on January 27, 2005. The Board granted a rehearing of the request.

The rehearing was held at the February 24, 2005 BOA meeting. The Board voted in favor of the request.

A special meeting, called by the Chair of the Board, was conducted on March 9, 2005, in order to clarify the vote taken on February 24, 2005.

The Board of Adjustment voted to rescind the vote taken on February 24, 2005, and take a new vote for clarification of the intent of the Board.

The applicant appealed the decision of the Board to the Superior Court of Pitt County,

The Pitt County Superior Court on May 8, 2005, reversed the decision of the Board of Adjustment and directed the Board to act consistent with the court's order, including any conditions appearing in the record or other conditions upon which the parties might agree.

On May 26, 2005 the Board of Adjustment, consistent with the orders of the Superior Court, approved a special use permit with twelve conditions to allow for the operation of a restaurant on the subject property.

**Original Special Use Permit Conditions:**

1. The Special Use Permit shall be contingent upon the closing of the undeveloped portion of Claredon Drive as shown on the attached Exhibit C, which is adopted and incorporated herein by reference.

2. This Special Use Permit is being granted to allow a conventional restaurant as the use on the property.
3. The Special Use Permit shall restrict that portion of Tax Parcel Number 14406 as shown and dimensioned on the attached Exhibit B within the hatched area (bordering the adjoining residential properties and located within the southern and eastern portions of the property) and labeled as the "Restricted Area". No buildings, signs, balloons, parking areas, or trash disposal areas are to be located within the Restricted Area. Thus, creating a non-disturbance area, unless to necessitate storm water drainage. The applicant must make every effort to maintain the restricted area in its natural state.
4. Prior to the issuance of a Certificate of Occupancy for the Restaurant, an evergreen tree hedge (such as a Leyland Cypress) shall be planted at a minimum height of eight (8) feet and anticipated to exceed a height of twenty (20) feet upon their full growth so as to create a meaningful buffer. The hedge shall be planted in close proximity to the hedge line as shown on Exhibit B and at the expense of the restaurant owner. The evergreen trees in the hedge shall be planted not more than seven (7) feet on center. This does not change any of the city landscaping and buffer requirements.
5. Prior to the issuance of a Certificate of Occupancy for the Restaurant, a screening fence shall be constructed at a height of six (6) feet in close proximity to the fence line and placed on the opposite side of the hedge line as shown on Exhibit B and constructed in a manner to that as shown on the attached Exhibit D, which is adopted and incorporated herein by reference.
6. The Restaurant shall incorporate an enclosed and gated trash disposal area appurtenant to the building and designed to shield view of that area. The Dumpster enclosure shall be positioned on the westerly side of the Restaurant building.
7. All heating and air conditioning equipment and cooking exhaust fans shall be located on the roof of the restaurant and shall be substantially screened from view by a parapet wall.
8. No outside sound system shall be used at the restaurant that can be heard from the properties that adjoin the property to the south and east.
- 9. No outside dining shall be allowed.**
10. No drive-thru restaurant service shall be allowed.
- 11. Guests shall not be seated in the restaurant later than 12:00 midnight.**
12. Upon the closure of Claredon Drive extension, new curb and gutter will be installed at the expense of the applicant at the intersection of where the Claredon Drive extension meets Granville Drive.

**Related Zoning Ordinance Regulations:**

Definitions:

*Restaurant and/or dining and entertainment establishment; regulated outdoor activities.* Any restaurant and/or dining and entertainment establishment; outdoor activity, as defined herein, which is located within 300 feet, as measured to the closest point, of any residential district, excepting CDF, which allows

single-family dwellings as a permitted use.

*Restaurant and/or dining and entertainment establishment; outdoor activities.*

(1) A principal and/or accessory use associated with or utilized in conjunction with a conventional or fast food restaurant or a dining and entertainment establishment which is intended for the temporary or permanent conduct of activities relative to the sale, transfer or enjoyment of products and/or services to persons located on the business premises and which is open and unenclosed on one or more sides or which is without a complete roof structure. For purposes of this section, all areas not constituting mechanically conditioned area@ as determined by the Building Inspector shall be considered open and unenclosed. Additionally, fences and/or wire or plastic mesh screens shall be considered open and unenclosed for purposes of this section.

(2) Use of any amplified outdoor audio sound system including loud speakers, audio speakers or other electronic or mechanical sound transmission devices shall be considered as an outdoor activity for purposes of this definition.

**Other Comments:**

The proposed project must meet all related NC State fire and building codes prior to occupancy.

**Staff Recommendation:**

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

Mr. Ewen asked that they want to stay open until 2am and will that include the outdoor seating area.

Mr. Dail stated no and the applicant proposed a condition of no seating after 12 midnight in outdoor seating area.

Chairman Shook asked who put on the listed conditions.

Attorney Little stated part of the conditions were consented to and proposed by the applicant and some by the Board. The art of compromise was reached. They now want to amend the outdoor area and the amplified sound conditions. The original conditions will remain in place and the proposed amended conditions will be added.

Mr. Faison stated that they are adding #9 (no outside dining allowed) and #11 (guest not seated later than midnight).

Mr. Dail stated yes and to also make the additional square footage to the restaurant.

Attorney Little stated if approved, those 3 items would come off the original permit. Then any of the amended conditions approved plus any other condition the Board would like to add.

Mr. Taft asked if the vote was individually.

Attorney Little stated they could be voted on collectively unless there is an issue.

Chairman Shook opened the public hearing.

Mr. Thomas Mincher Jr., applicant, spoke in favor of the request. He is a representative of Battleground Restaurant Group that owns and operates T Properties of Greenville. Tripp's has been operating for 7 years with the same manager and no issues. They have operated under the specified conditions diligently. He stated that placed significant screening and buffering to the residential area and he is not aware of any issues, concerns or complaints. The company has been in business since 1981 and have a good track record and look forward to continuing here in Greenville. He stated they have reached out to adjoining neighbors via phone and letters and there are no outstanding issues with them. He stated they want to make an addition and modify the bar area to be more trendy and casual and lower prices to increase customer base during the economic struggle.

Chairman Shook asked if the business would continue under the Tripp's name.

Mr. Mincher stated it has not been decided yet.

Mr. Fleming asked how many restaurants they operate.

Mr. Mincher stated nineteen in North Carolina and Virginia to include Tripp's, Kickback Jack's, and Casual Jack's.

Mr. Taft asked why stay open to 2am.

Mr. Mincher stated by expanding the bar atmosphere, on Friday and Saturday nights, patrons want to stay later. Also they are considering having sporting events and installing televisions and don't want patrons hanging around after hours of operation. They will close at 2pm or earlier during the week. He stated they wanted to have the flexibility.

Mr. Mullarkey asked how the reception with the adjoining residential property owners was.

Mr. Mincher stated it was a good favorable response and no issues.

Mr. Ewen asked if they anticipated adding more vegetation screening.

Mr. Mincher stated they have substantial screening and will continue to maintain it.

Chairman Shook asked if there will be vegetation around the new outdoor dining area.

Mr. Mincher stated yes as needed and it will be enclosed.

Chairman Shook asked if it would have a covered top.

Mr. Mincher stated he did not know but maybe umbrellas.

Mr. Robert William McConnell spoke in favor of the request. He lives in Lynndale Townes and his property backs up to Tripp's. Since the beginning, he stated everyone has been courteous including the builders and the owners. He stated that he was reassured that noise and crowds was not going to be a problem. This is a nice, courteous upscale restaurant and he has no objection to the restaurant.

Ms. Diane Kulik, president of the Lynndale Neighborhood, spoke in favor of the request. She stated that Tripp's is consistently excellent and has a positive relationship with the neighborhood. She stated there are no City complaints and the Lynndale Neighborhood Board met and they have no objection.

Mr. John Dean, operates Tripp's restaurant, spoke in favor of the request. He stated they have not had any complaints and is excited to continue the business.

No one spoke in opposition of the request.

Chairman Shook asked for City Staff Recommendation.

Mr. Dail stated City Staff has no objection.

Chairman Shook closed the public hearing and opened for board discussion.

Mr. Mullarkey stated that he cannot remember having an application for outdoor seating and the adjacent neighbors coming to speak in favor. It speaks volumes to what the applicant is doing on the site.

Chairman Shook read the required findings criteria. No objections.

**Mr. Fleming made a motion to adopt the finding of facts with the stated conditions, Mr. Ewen seconded and the motion passed unanimously.**

Attorney Little stated he wanted the motion to be clear for the record. He stated they are moving to approve the amended application which removes the 3 conditions and further including in the motion to approve the additional applications that have been proposed in which there was no opposition.

**Mr. Fleming made a motion to approve the petition with the stated conditions, Mr. Mullarkey seconded and the motion passed unanimously.**

**With no further business, Mr. Fleming made a motion to adjourn, Mr. Ewen seconded, and it passed unanimously. Meeting adjourned at 8:24 p.m.**

Respectfully Submitted

Michael R. Dail, II  
Planner