

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
NOVEMBER 15, 2012

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 *

Justin Mullarkey *

Kevin Faison *

Claye Frank X

Sharon Ferris *

Bill Fleming *

Thomas Taft, Jr. X

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

VOTING MEMBERS: Shook, Ewen, Faison, Rich, Ferris, Mullarkey

OTHERS PRESENT: Mr. Chris Padgett, Interim Assistant City Manager
Mr. Wayne Harrison, Planner
Chief Ted Sauls, Interim Chief of Police
Mrs. Elizabeth Blount, Secretary
Mr. Bill Little, Assistant City Attorney
Mr. Jonathan Edwards, Communications Technician

MINUTES

Ms Rich stated the minutes showed she seconded the adjournment but she was not present. The minutes should state that everyone seconded the adjournment. Ms Rich made a motion to approve the corrected October 16th minutes as presented, everyone seconded and the motion passed unanimously.

CONTINUED ITEM-REQUEST TO AMEND A SPECIAL USE PERMIT BY CAPITAL FOOD GROUP, LLC-APPROVED

The applicant, Capital Food Group, LLC, desires to amend the special use permit they received to operate restaurant regulated outdoor activities pursuant to Appendix A, Use (10)j of the Greenville City Code. The proposed use is located at 2020 Charles Boulevard. The property is further identified as being tax parcel number 04188.

Chairman Shook stated that the request was continued from last month and the public hearing was closed. The board discussed the items and decided to continue the item.

Mr. Harrison provided staff update and delineated the area on the map. He stated that the property is located in the southern portion of the city’s jurisdiction, close to Greenville Boulevard.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

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

Surrounding Development:

North: Greenville Mall Parking Lot, Pirates Pointe Shopping Center
South: Vacant (Undeveloped Mall Property)
East: Single Family Residences
West: Greenville Mall

Description of Property:

The restaurant is located on a portion of the larger Greenville Mall parcel. The restaurant's site has approximately 250 feet of frontage along Charles Boulevard with a total lot area of 0.78 acres. The restaurant is 4,838 square feet in size and has 2,809 square feet of patio area. With the expanded area requested by the applicant the site would have 640 feet of frontage along Charles Boulevard and be approximately 2.0 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.

Actions Since the October 25, 2012 BOA Meeting:

Staff met with the operators of the Mellow Mushroom on October 31, 2012 to discuss their request and the Board's desire to get a more concise plan and description of the proposed expanded outdoor activity area.

The operators of Mellow Mushroom provided staff with an additional description of the proposed use for the yellow area on November 5, 2012.

The updated plan showed a change from two areas of expansion to three areas of expansion (no overall increase in size). The original requested pink area was divided into two parts and became the green area and red area. The yellow area remained the same.

Staff distributed the new site plan and revised description of the proposed use to the four area residents that spoke in opposition to the request for their review. Staff also distributed the new site plan and description of use to other city departments for review.

Staff held a meeting between the area residents and the operators of the Mellow Mushroom on November 12, 2012.

Special Use Permit Violation Corrections:

Since the October 25, 2012 Board of Adjustment meeting the operators of the Mellow Mushroom addressed two of the violations of the current special use permit. The vegetative screen was planted along the existing outdoor activity area and the seating (picnic tables) outside of the approved outdoor activity area was removed.

Staff Recommendation:

Based upon meetings with the neighborhood, the Community Development Department finds that the conditions and specifications for activities proposed by the applicant for the area in yellow cannot be met. The allowance of activities without live or amplified music that are limited in scope to gatherings 5 times per year would not be objectionable. As a result the Community Development Department recommends denial of the request for the areas in yellow.

Staff found that the proposed expansion areas of the request indicated in Red and Green on the applicants' map can meet the required specifications with the following additional conditions:

1. Any bell ringing activities associated with the Salvation Army as proposed by the applicant must be located at the front entrance (facing the mall parking lot) of the Mellow Mushroom and should be limited to occur between the hours of 11:00 am through 5:00 pm.
2. The proposed activity area in the applicants' map in the color green should be fenced in a manner consistent with the current fencing of the patio area and screened in accordance with Sec. 9-4-266(A)(c) Bufferyard E: six large evergreen trees, eight small evergreen trees and 26 evergreen shrubs per each 100 linear feet of buffer or fraction thereof. The area also should be limited to 6 tables or picnic tables and will not be illuminated by any means.
3. The amended special use permit shall be granted for a period of 12 months. Prior to the expiration of the permit period, a public hearing will be held before the Board of Adjustment concerning compliance or noncompliance and whether or not to renew the special use permit including any modifications to the conditions.
4. All conditions of the initial special use permit issued, not in conflict with these conditions, shall remain in effect.

Chairman Shook asked for clarity concerning the neighbor's concern with the yellow area.

Mr. Harrison stated that the amplified music, live entertainment and the use of alcohol in the area was the concern.

Chairman Shook asked for clarity concerning the green area.

Mr. Harrison stated the proposed green area will be fenced with an evergreen hedge in accordance to Bufferyard E criteria, the amended special use permit to be granted for 12 months and not be illuminated by any means.

Chairman Shook asked if any improvements to the ground area were required.

Mr. Harrison stated no.

Chairman Shook asked for clarity concerning the red area.

Mr. Harrison stated that the red area will only allow the Salvation Army to ring the bell. Corn hole can be played in the green area.

Mr. Ewen asked if the barrier for the green area would match existing vegetation.

Mr. Harrison stated that it could be different.

Chairman Shook asked if the requirements were consistent with existing.

Mr. Harrison stated probably not. The City did not specify the type of bufferyard for the first special use permit.

Mr. Faison asked if the outside sound violation was resolved.

Mr. Harrison stated that the applicants did reduce the noise level of the outside sound and removed one speaker. The applicant has corrected all the previous violations and is in compliance with the existing special use permit.

Chairman Shook stated that the board would have to reopen the public hearing if the board had any questions or needed information from the parties involved.

Mr. Ewen asked if the board could approve a portion of the request or the entire application.

Attorney Little stated the request was to amend the current permit for three areas. Because the request included three distinct segments, partial approval is allowed.

Mr. Mullarkey asked for the comments from the neighborhood and a synopsis from the board members since he was not present at the last meeting.

Chairman Shook stated that the neighborhood was concerned with the noise, outdoor patio noise with the existing permit, bottles being emptied late at night, and noncompliance with vegetation.

Mr. Mullarkey asked the reasons for the vegetation noncompliance.

Mr. Ewen stated the project went over budget and when they were able to plant, the time of the year was not good for the survival of the plants. The applicant also had live music on the outdoor patio.

Mr. Ewen asked about the results from the meeting on November 13, 2012 with the neighborhood and the applicant.

Mr. Harrison stated the following:

1. If a bell is used in connection with Salvation Army activities in the "Red" area on the map, it must be at the front entrance of the Mellow Mushroom and between the hours of 11:00 AM through 5:00 PM, ceasing at that time.
2. For the additional activity area in the "Green" section there will be a limit of 6 tables and the area will not be lighted. In addition the area should be screened with vegetation and a fence.
3. In the "Yellow" area on the applicants' map the events should end at 8:00 pm and will be

limited to 2 events in the Spring, 1 in the Summer and 2 in the Fall of the year.

Attorney Little stated that there was not a consensus on the number of tables in the green area.

Mr. Mullarkey asked if planting the bufferyard would be a problem again.

Attorney Little stated the bufferyard would be a condition of the permit and the applicant must comply with the terms of the permit.

Chairman Shook asked if the applicant would be adding to the previous violations if they did not comply.

Attorney Little stated they would start over with the amended permit.

Ms Ferris asked if the main purpose for the green area is to accommodate large groups.

Attorney Little stated yes or for overflow.

Mr. Ewen asked if the neighbors agreed to the events in the yellow area.

Mr. Harrison stated yes.

Attorney Little stated the agreement was the event could not have live music or amplified sound. The neighborhood and applicant did not agree upon a set time that the event would end. The City was opposed to serving alcohol in the yellow area due to the inability to control the area.

Chairman Shook asked if the city was opposed to the start and ending time of the outdoor events.

Attorney Little stated the city had no opposition as long as no amplified sound or live music was played along with no serving of alcohol. There was no consensus to the exact day.

Chairman Shook asked if the applicant could use a temporary fence and apply for a special use permit in order to serve alcohol.

Attorney Little stated if the proposal for the yellow area was accepted, the applicant could apply for a onetime special use permit to serve alcohol and construct a temporary fence.

Chairman Shook stated the options for voting concerning the request.

Mr. Faison asked if the shrubs and trees were already in place in the green area.

Mr. Harrison stated that will be planted in the future.

Mr. Ewen asked if the proposed vegetation will be denser than existing vegetation.

Mr. Harrison stated correct.

Chairman Shook asked if the applicant can meet the City's recommendations in the green and red areas but not in the yellow because of nuisance, hazards and determinant to welfare.

Mr. Harrison stated correct.

Mr. Ewen asked if the City would approve the yellow area if the condition was added for no amplified music or alcohol to be served in the area.

Mr. Harrison stated yes.

Motion made by Mr. Ewen, seconded by Ms Rich, to vote on each area separately. Motion passed.

Chairman Shook read the criteria for the red area. No objections.

Attorney Little stated the conditions for the red area are two permanent tables and the Salvation Army from 11 am-5 pm in the red area.

Mr. Ewen 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 red area of the petition, Mr. Mullarkey seconded and the motion passed unanimously.

Ms Ferris asked for clarity concerning the number of tables in the green area.

Mr. Faison stated that the applicant asked for 6-9 tables but the neighbors proposed no more than 6.

Mr. Ewen made a motion to set limit to six tables.

Attorney Little stated that the board would recommend the six tables and bufferyard E as part of the findings of facts.

Mr. Faison asked if the finding of facts should include prior to usage.

Attorney Little stated that it could be added.

Mr. Mullarkey stated that the condition concerning the green area being professionally manicured be added to the finding of facts.

Ms Ferris stated that the applicant did plan for the area to be appealing by planting grass or adding stone or bark.

Mr. Reid Fogleman, managing partner of Mellow Mushroom, stated that the areas were misrepresented and wanted to provide clarity concerning the red area.

Attorney Little stated in order for the applicant to be heard the board would have to reopen the public hearing.

Chairman Shook clarified that the red area of the permit was approved with the stated conditions.

Mr. Mullarkey asked if the board could open up the public hearing with a limited amount of time.

Attorney Little stated that the public hearing could be opened for a specific issue or general purpose.

Mr. Mullarkey stated the public hearing should be opened to the red area where the applicant felt misrepresented.

Mr. Mullarkey made a motion to reopen the public hearing with one representative from each side to speak, Mr. Fleming seconded and the motion passed.

Mr. Reid Fogleman, managing partner of Mellow Mushrooms, spoke in favor of the request. He stated the recycling process has been delayed and unhooked the speaker in the outdoor patio area. He stated that the Salvation Army was just an example for activities in the red area but it was not restricted to that organization. Any activity in the red area would be in front of the building. The applicant wanted two picnic tables and two corn hole boards in the red area.

Mr. Faison asked was the misrepresentation of the red area due to the statement of the Salvation Army versus volunteerism in general.

Mr. Fogleman stated yes and general activities in the red area.

Chairman Shook asked if the general activities were covered in the approved red area.

Attorney Little stated the agreement covered the two picnic tables and only the Salvation Army was discussed in the meeting. The red area was designated as a waiting area and the spot for Salvation Army. The motion made for the red area will cover any general activities.

Chairman Shook stated that the corn hole activity and tossing the football is approved in the aforementioned motion for the red area. Any civic group activity can be in the area with no live music.

Mr. Fogleman stated that six tables would accommodate large groups but did not want to be in violation if they added two more tables to make a buffet line.

Ms Ferris stated that the condition could state six tables for seating.

Mr. Mullarkey stated that the area should be aesthetically appealing.

Mr. Fogleman stated that the design will be consistent to the building plan but do not want to be restricted to a specific paver. The area will not be used from November to February.

Mr. Faison asked if the applicant had an issue with being restricted to only six tables in the green area.

Mr. Fogleman stated yes.

Chairman Shook asked if the applicant would agree to the proposed staff's recommendation of the fencing and vegetation conditions along with seating for 50 people.

Mr. Fogleman stated that they would object to the fence. They did not want to be restricted to adding another metal fence due to the cost.

Mr. Ewen asked for a recommendation.

Mr. Fogleman stated he did not have the recommendation and would meet with the City to discuss options. They had talked about some wooden or roped fencing.

Chairman Shook asked if staff could give some fencing suggestions.

Mr. Harrison stated the type of fencing would be the decision of the board.

Ms Ferris asked if the fence consistent with the existing mean it has to be the same fence.

Mr. Christ Padgett, Interim City Assistant Manager, stated it would include containment requirements of the existing fence and the same style; not necessarily the same brand.

Mr. Fleming asked if the existing fence was wrought iron or aluminum.

Mr. Fogleman stated wrought iron.

Mr. Faison asked if the fence would have to be approved by the City before installation.

Mr. Padgett stated that approval from the City prior to installation is the preferred method.

Mr. Fogleman asked is the approval prior to installation required.

Mr. Faison stated that would be in your best interest.

Mr. Mullarkey stated that the financial margin for the applicant and the clearly defined, aesthetic outside appearance of the building are the main issues.

Ms Ferris stated that the main purpose of the board is to protect the neighborhood and not necessarily the aesthetics of the building.

Mr. Mullarkey stated that the applicant has made a great effort to appease the neighborhood and did not know what else could be done.

Chairman Shook asked the applicant was he satisfied with the clarification concerning the fence.

Mr. Fogleman stated yes.

Mr. Fogleman stated the five events in the yellow area would end by 8 pm and be held only on the weekend. Greenville Police and security would be hired. Live entertainment will be during the event and end at 8 pm. The applicant would adhere to the city's regulations for live entertainment.

Ms Ferris asked if the applicant would be opposed to a single use permit for each special event.

Mr. Fogleman stated they would like a single event with live music to include no more than 3 musicians, ending at 8 pm, the permission to serve alcohol, ID bracelets for everyone, and clean up by 9 am the next morning.

Chairman Shook stated a single use permit would require the applicant to appear before the board at a later date.

Mr. Fogleman stated he would prefer to get approval now.

Attorney Little stated that the city sound permit is limited to four hours.

Mr. Mullarkey stated that the area is across from the mall and football stadium.

Attorney Little stated that the noise permit is limited to four hours and has to be 75 feet from the neighborhood. The board is responsible to decide whether the request meets the criteria by law.

Ms Katrina Combs, resident, spoke in opposition of the request. She stated that the eleven holly bushes planted did not reduce the noise or lights. The neighbors could still hear the noise and music at 11 pm. She stated that the only way to reduce the noise would be to build an acoustic buffer wall on the Charles Boulevard side of the building. The residents did agree with the city on the red and green areas with no more than 6 tables. The residents would like for the hours of operation in the green area to be from 10 am to 8 pm. The residents are opposed to any live music in the yellow area and would like for the events to be at least 30 days apart with a two week notification to the residents. Mandatory Greenville police presence and taxi service are also requested for events in the yellow area.

Mr. Faison asked for clarity of the neighborhood recommendations for the yellow area.

Ms Combs stated the events should be 30 days apart, a two week notice given to the residents, operating hours between 10 am and 8pm, mandatory police and taxi cab service if serving alcohol.

Mr. Fogleman spoke in rebuttal to the opposition. He agreed to the 30 days apart and two week notice. They will also create an email about the weekly activities at the restaurant to send to the residents. He also agreed to no illumination or amplified music in the green area. He did not agree to the 8 pm time limit on the green area during the summer time. He stated that they would not be able to do the acoustical wall.

No rebuttal from the opposition.

Ms Ferris asked if approval for the red area had to be reopened since a public hearing was held.

Attorney Little stated yes.

Mr. Fleming asked for clarity on the disagreement of the yellow area.

Ms Ferris stated she is hesitant to approve the yellow area because of the previous violations.

Mr. Fleming stated that the board could approve the red and green area and let the applicant come back for a special use permit in the spring for the events in the yellow area.

Mr. Faison suggested that the board approve all the areas in accordance to the neighborhood recommendations.

Mr. Fleming asked if the restriction was on live or amplified music.

Ms Ferris stated both.

Attorney Little asked if the board is permitting only five events in the yellow area or an event every 30 days.

Mr. Faison stated the five events cannot be within 30 days of each other.

Attorney Little stated that the police department cannot guarantee officers would be available for the events. The applicant could hire a licensed private security or licensed law enforcement.

Mr. Faison asked if security had to be approved by the City.

Attorney Little stated that approval process only applies to the bars.

Chairman Shook asked if the event outside of the establishment had to be fenced.

Attorney Little stated that the board could put that staff must approve the temporary fence as a condition of the permit. The board could also approve the five events with no alcohol or live music permitted.

Mr. Fleming asked who would enforce all the rules.

Attorney Little stated the rules are written and the criteria must have specifics.

Chairman Shook stated the conditions of the green area to state the seating capacity versus the number of tables and the requirement for the applicant to come back to the board in 12 months.

Chairman Shook read the criteria for the red and green area. No objections.

Ms Ferris made a motion to adopt the finding of facts to include the following conditions: 50 people seating capacity in the green area, no illumination, fenced with a manner consistent with existing fencing, vegetation bufferyard E criteria, no music, and special use permit must be reviewed after 12 months, Mr. Fleming seconded and the motion passed unanimously.

Mr. Fleming made a motion to approve the red and green area of the petition, Ms Rich seconded and the motion passed unanimously.

The board discussed the conditions for the yellow area.

Chairman Shook stated the conditions for the yellow area would include no music, no alcohol, operating hours from 10-8, five events at least 30 days apart, and a 2 week notification to the neighbors. If the applicant wanted to have amplified music or serve alcohol, they would have to apply for a special use permit.

Attorney Little stated that the applicant also agreed to the five events to only occur on the weekends, Friday through

Sunday.

Chairman Shook read the criteria for the yellow area. No objections.

Mr. Ewen made a motion to adopt the finding of facts to include the following conditions: no music, no alcohol, operating hours from 10-8, five events at least 30 days apart only on the weekends, and a 2 week notification to the neighbors, Ms Ferris seconded and the motion passed unanimously.

Mr. Ewen made a motion to approve the yellow area of the petition, Mr. Fleming seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST TO FOR A SPECIAL USE PERMIT BY PATHWAYS TO LIFE - CONTINUED

The applicant, Pathways to Life, desires a special use permit to operate a mental health, emotional or physical rehabilitation day program facility pursuant to Appendix A, Use (8)ff(1). of the Greenville City Code. The proposed use is located at 1029 W.H. Smith Boulevard. The property is further identified as being tax parcel number 80651.

Chairman Shook stated that the applicant had a family emergency and had to be out of town and wished the item to be continued.

Mr. Fleming made a motion to continue the agenda item to the December meeting, Mr. Ewen seconded and the motion passed unanimously.

Ms Ferris asked to be dismissed from the meeting due to a prior engagement.

Chairman Shook stated the voting criteria with six board members and asked the applicant if he would like to proceed. The applicant agreed to continue.

Chairman Shook made a motion to excuse Ms Ferris, Mr. Ewen seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST TO FOR A SPECIAL USE PERMIT BY SHARIF ELSAYED-DENIED

The applicant, Sharif Elsayed, desires a special use permit to operate a tattoo and body piercing shop pursuant to Appendix A, Use (15)a of the Greenville City Code. The proposed use is located at 690 E. Arlington Boulevard. The property is further identified as being tax parcel number 45656.

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: BW3's
South: Arlington Village (Various Retail Shops)
East: The Spa at Merle Norman, PIP, Steinbeck's
West: Plum Tree Bistro, Jenni K, Staples, Japan Inn

Description of Property:

The property is located within a multiple unit commercial building interior to Arlington Village. The applicants unit contains 2,610 square feet.

A special use permit was issued by the Board on May 27, 2010 for the application/tattooing of permanent cosmetics. There was a condition placed on the permit to not allow tattooing of any other nature.

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 November 1, 2012. Notice of the public hearing was published in the Daily Reflector on November 5, 2012 and November 12, 2012.

Staff Recommend 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 loitering permitted outside of business.

Other Comments:

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

Chairman Shook asked for the difference between the existing permit and the new request.

Mr. Harrison stated the existing permit expired and it included only cosmetic tattooing.

Mr. Sharif Elsayed, applicant, spoke in favor of the request. He stated that the business would be a plus to the plaza and the businesses could benefit one another.

Chairman Shook asked for the amount of traffic in the business.

Mr. Elsayed stated there would be one booth for tattooing and one booth for piercing. 80% of the piercing would be from the head up.

Mr. Faison asked if the applicant had designated parking spaces.

Mr. Elsayed stated no.

Mr. Faison asked if there will only be two chairs in the business.

Mr. Elsayed stated there will be a third chair but the tattoo will probably be by appointment only.

Ms Shirley Barnes, business and property owner in Arlington, spoke in opposition of the request. She passed out pictures of various piercings. She stated that she spoke to the board in May 2010 and spoke against having any tattooing in the Arlington village. She was assured that tattooing would not be allowed except for cosmetics for eyebrows and lips. She stated she is outraged that a tattoo business was allowed to rent in the Village and that the nature of the business does not fit the unique, upscale shopping and dining atmosphere in the Village.

Mr. Faison asked if the pictures of the piercings were done by the applicant.

Ms. Barnes stated the pictures came from the Internet. She also stated that the business owners were never told about the business and did not understand how they were allowed to rent in the area.

Mr. Fleming asked how long the applicant had been in the Arlington Village.

Ms Barnes stated they were in operation for less than one month.

Mr. Fleming asked if the salon business had been negatively affected.

Ms Barnes stated definitely. She has been in business for 30 years and the Village is not a place for a tattoo parlor.

Mr. Faison asked if the buildings are owned separately.

Mr. Harrison stated they are owned by different property owners.

Dr. Ronald McArnold, business owner, spoke in opposition of the request. He passed out pictures of various body piercings. He read the definition and the history of body piercing.

Chairman Shook explained the board's responsibility to make a decision based on specific criteria.

Dr. McArnold stated that body piercing is extremely hazardous and passed the body piercings around for the board to view.

Chairman Shook stated that the objection needs to be relative to the specific location and not to the business in

general.

Dr. McArnold stated that the proposed location is not good for the area.

Ms Jean Wilkerson, business owner, spoke in opposition of the request. Each store owner encourages customers to shop from store to store. The atmosphere is family friendly. The clientele for the proposed business may not want to intermingle with other customers and will affect the existing business. Tattoo and body piercing does not fit the image of the other businesses.

Mr. Faison asked if Arlington Village had a covenant on who can lease properties.

Ms Wilkerson stated that the property owner that leased the space does not own a business in Arlington Village and several of the business owners agreed among themselves to not do anything that may hurt another business.

Mr. Faison asked if the owner of the leased property was not in agreement with the other business owners.

Ms Wilkerson stated that the property owner stated that she needed to rent the building due to economic times.

Mr. Faison asked was there a contract stating the rules that binds the business owners together.

Ms Wilkerson stated a covenant was written approximately 30 years ago.

Mr. Faison asked if staff had a copy of the covenant.

Mr. Harrison stated that the City does not get involved with restricted covenants.

Mr. Wes Nicholson, representative for Extra Special business owner, spoke in opposition of the request. He stated that customers have called into the store to ask if someone could escort them into the store due to the clients from the tattoo and body piercing parlor. The business owner feels the proposed request will adversely affect her business.

Mr. John Day, commercial real estate broker, spoke in opposition of the request. Two shopping centers in Greenville restrict renting to tattoo and body piercing facilities. The proposed use will have an adverse impact on the Arlington Village businesses. He compared the rental rates in a tattoo parlor occupied shopping center to a non-occupied tattoo parlor shopping center and noticed a 24% difference. The proposed use will adversely impact rental property.

Chairman Shook asked if the tattoo parlor located there because of the condition or the condition changed because of the tattoo parlor.

Mr. Day stated that he personally believed the parlor had an impact on surrounding properties.

Mr. Jim Hopf, representative of Arlington Village property owner, spoke in opposition of the request. The proposed use will change the character of the area and be determinant to the development of adjacent properties. The proposal will also injure adjacent properties. He also noted the special use permit approved in May 2010.

Chairman Shook stated that the permit was for a different applicant.

Mr. Ewen asked if the property was the same even though the applicant was different.

Mr. Hopf stated yes. He also addressed the covenant not addressing the issue of full body piercing or tattooing and that the board can deny the application based on the proposed business not being in harmony with the existing purpose of the area.

Mr. Sharif Elsayed, applicant, spoke in rebuttal of the request. He stated that the proposed business will add value to the area. The business will not do implants or scare piercings. The business is unique by offering certified metals and services that no other business offers. The business is very clean and will help build up the clientele in the area. He stated that the business should be given a chance and is willing to comply with the ordinances.

Ms Shirley Barnes, business owner, spoke in opposition of the rebuttal. She stated that once an approval is granted that things could change. She also stated that the applicant did not use safety precautions in disposing their equipment and material used for the piercings.

Attorney Little explained the difference between a lay witness and a professional witness and how the value of the information provided would play on the board's decision.

Chairman Shook asked if a special use permit was needed to do regular piercing.

Attorney Little stated no.

Mr. Faison asked the necessity of the special use permit.

Attorney Little stated the piercings go beyond the standard ear and nose and the full body tattooing requires a special use.

Mr. Fleming asked if the applicant could still do standard piercing if the request was not approved.

Attorney Little stated they could pierce from the neck up. Also the applicant stated they will not do implants.

Mr. Elsayed stated that they use biodegradable containers and the state of North Carolina does not have any laws concerning body piercing besides you must be 18 years old or older or 14 years old with parental consent.

Attorney Little stated the special use permit included permission for piercing from the neck down without implants and tattooing.

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

Mr. Fleming stated the proposed business will definitely affect property value and do not think the business is compatible with the other businesses

Ms Rich agreed.

Mr. Ewen stated that the permit should remain with permanent cosmetic tattooing only.

Mr. Harrison stated staff's recommended that the applicant could meet the criteria.

Chairman Shook read the required findings criteria. A vote was called for detriment to public welfare, existing uses detrimental, and injury to properties. The vote is as follows:

Detriment to Public Welfare

Mr. Fleming: No, testimony from business owner stating people afraid and the development of adjacent properties

Mr. Mullarkey: No, the testimony of business owners noting the decrease of business since the opening of the proposed business

Mr. Ewen: No, development of the adjacent properties would be adversely affected

Mr. Shook: Yes

Ms Rich: No, detrimental to the development of adjacent properties based on Mr. Day's testimony

Mr. Faison: No, not harmonious with existing businesses

Existing Uses Detrimental

Mr. Fleming: No, expert testimony from John Day

Mr. Mullarkey: No, expert testimony from John Day noting 24% decrease in property value

Mr. Ewen: Yes

Mr. Shook: Yes

Ms Rich: No, based on Mr. Day's testimony

Mr. Faison: Yes

Injury to Properties or Improvements

Mr. Fleming: No, expert testimony for John Day

Mr. Mullarkey: No, the same reason

Mr. Ewen: No, the same reason

Mr. Shook: No, the same reason

Ms Rich: No, the same reason

Mr. Faison: No, the same reason

Ms Rich made a motion to adopt the finding of facts, Mr. Ewen seconded and the motion passed unanimously.

Attorney Little explained that the petition only pertains to the neck down body piercing, implants neck up and tattooing.

Mr. Fleming made a motion to deny the petition, Mr. Mullarkey seconded and the motion passed unanimously.

PUBLIC HEARING ON THE SPECIAL USE PERMIT ISSUED TO PYRAMID REHEARSAL STUDIO, INC.-RESCINDED

The Board of Adjustment will rehear the special use permit issued to Pyramid Rehearsal Studio, Inc. The special use permit was issued to operate a music rehearsal studio pursuant to Appendix A, Use (15)c. of the Greenville City Code. The use is located at 320 W. Tenth Street. The property is further identified as being tax parcel number 80036.

Attorney Little explained the procedure for the rehearing.

Zoning of Property: IU (Unoffensive Industry)

Surrounding Zoning:

North: IU (Unoffensive Industry)

South: IU (Unoffensive Industry)

East: IU (Unoffensive Industry)

West: CDF (Downtown Commercial Fringe) & IU (Unoffensive Industry)

Surrounding Development:

North: Building Hope Community Center

South: Commercial Building (ECU Property)

East: Trade Mart

West: Nationwide Insurance, Quik Fill Ink, Pollard & Son HVAC

Description of Property:

The property contains a 7,128 square foot commercial building and has approximately 175 feet of frontage along W. Tenth Street with a total lot area of 0.68 acres.

Comprehensive Plan:

The property is located within Vision Area "G" as designated by the Comprehensive Plan. The approved 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 November 1, 2012. Notice of the public hearing was published in the Daily Reflector on November 5, 2012 and November 12, 2012.

The Police, Inspections, Fire and Rescue and Planning Departments provided comments in which the property was in code violations.

Special Use Permit Criteria

Staff has determined that the residential use of the property resulted in noncompliance with several of the criteria established for special use permit approval. Specifically:

Conditions and Specifications	Residential uses are not allowed in the IU zoning district and the property did not meet site plan requirements for a residential facility.
Health and Safety	The building did not meet the North Carolina Building Code regulations for residential occupancy resulting in life/safety issues for the residents of the building.
Detriment to Public Welfare	<p>The building did not meet the North Carolina Building Code regulations for residential occupancy resulting in life/safety issues for the residents of the building.</p> <p>Criminal activity inside and around the building and associated loitering outside of the building posed a threat to people that resided in the building and people who worked in the area.</p>
Nuisance or Hazard	The residential use of the building posed a fire hazard. Criminal activity inside and around the building and associated loitering outside of the building posed a threat to people that people who worked in the area.

Mr. Fleming asked where the people were now that were living there.

Mr. Harrison stated they have found other places to live.

Mr. Fleming asked were the tenants homeless.

Mr. Harrison stated they were paying rent.

Mr. Mullarkey asked the owner was he collecting rent.

The owner stated that tenants from three of the six rooms were paying rent.

Mr. Fleming asked if the owner was given a special use permit to operate a music studio but was operating it as an apartment building.

Mr. Harrison stated yes according to staff's opinion.

Attorney Little explained the history of the special use permit and the inspection findings of the property. The board would have to decide whether the permit should continue as is, with modifications or rescind it.

Mr. Ewen asked how the City discovered people living in the building.

Attorney Little stated the City received complaints.

Chairman Shook asked for the police report.

Interim Chief Ted Sauls stated that the space was not setup for living.

Chairman Shook asked if the police were aware of any criminal activity inside or around the building.

Interim Chief Sauls stated the police noted drug activity only because of drug paraphernalia on site.

Mr. Faison asked did the tenants state that they thought they were paying rent for living accommodations.

Interim Chief Sauls stated that he did not speak to any of them but the officers did indicate that the people were under the impression that they were living there and were given that right.

Mr. Ewen asked was any music recording being done in the building.

Interim Chief Sauls stated that some items were in the building that could be construed as recording equipment but not professional equipment. The police were under the impression that each room was setup as recording studios but the police did not observe such activity.

Mr. David Edwards, owner, spoke in favor of the request. He stated that the building was setup to protect the musician and not promote any other activity. No one was ever authorized to reside in the building. He stated he found the problem in the building and eliminated it. He installed a security system in the building but it was stolen. He hired a full time supervisor to oversee the building and prohibited Hip Hop music recording. He stated the new responsibilities of the supervisor and promised to have all applications given to the Sherriff for background checks. He stated he will personally check each room every week and the violations will never occur again.

Chairman Shook asked the applicant was it his contention that he did not know people were living in the building.

Mr. Edwards stated correct.

Mr. Ewen asked if the studio was run without supervision while the applicant was out of town.

Mr. Edwards stated yes.

Chairman Shook asked were people living in the building.

Mr. Edwards stated he never saw the people but saw six rooms that suggested that people were living there.

Chairman Shook asked when the last time the applicant was in the building.

Mr. Edwards stated about two weeks prior to the City's investigation.

Chairman Shook asked how the rent was collected.

Mr. Edwards stated a steel drop box was available.

Chairman Shook asked how often the rent was picked up.

Mr. Edwards stated once every 2-3 weeks.

Chairman Shook asked if the applicant didn't know approximately 20 people were living in the building if he went in the building every 2-3 weeks.

Mr. Edwards stated he did not know because he did not go into every room.

Chairman Shook asked how many people were paying rent.

Mr. Edwards stated approximately 20-22 people were paying rent.

Chairman Shook asked did the applicant know that 20-22 people were paying rent and 20-22 people were living in the building.

Mr. Edwards stated no.

Chairman Shook asked if the applicant realized he was in violation of his special use permit.

Mr. Edwards stated yes and they paid the fine. He also stated that he was informed by a renter that some of the leases were signed for other people.

Mr. Faison stated that he and his brother went to the studio to record and was told by the manager that the studio did not allow Hip Hop or R&B artists to record. The studio was only for country and rock musicians.

Mr. Edwards stated that 75% of the renters were Hip Hop.

Mr. Faison asked if the property manager would be on site 24 hours.

Mr. Edwards stated yes and he would hire two.

Mr. Mullarkey asked the need for a property manager on site for 24 hours.

Mr. Edwards stated he wanted to make certain the living incident did not occur again and would check rooms once every week along with changing the lease agreement.

Ms Rich asked were background checks and criminal checks done before renting.

Mr. Edwards stated no because the lease was only for two months and he did not think it was necessary.

Mr. Harrison stated that by allowing residential occupancy of the building the owner violated the City of Greenville Zoning Ordinance, the North Carolina Building code, the issued special use permit and several of the specific criteria established for the issuance of a special use permit. Based on the above reported facts, staff

recommended the special use permit issued on July 22, 2010, by the Board of Adjustment be revoked.

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

Mr. Fleming stated that the City was very lucky that something serious did not happen.

Attorney Little reiterated the three voting options for the permit and noted that the suggested property managers could not live on site unless he modified the building. He stated that the criteria for voting were reversed due to the rehearing.

Chairman Shook read the required findings criteria. A vote was called for conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, and nuisance or hazard. The vote is as follows:

Conditions and Specifications

Mr. Shook: Yes, was not in compliance because residential use was not allowed

Mr. Fleming: Yes, same reason

Mr. Mullarkey: Yes, same reason

Mr. Ewen: Yes, same reason

Ms Rich: Yes, same reason

Mr. Faison: Yes, same reason

Health and Safety

Mr. Shook: Yes, was not in compliance because building did not meet building codes

Mr. Fleming: Yes, was not in compliance because the building was not residential and no proper management on site

Mr. Mullarkey: Yes, same reason

Mr. Ewen: Yes, same reason

Ms Rich: Yes, same reason

Mr. Faison: Yes, same reason

Detriment to Public Welfare

Mr. Fleming: Yes, a haven for drugs and criminal activity

Mr. Mullarkey: Yes, same reason

Mr. Ewen: Yes, same reason

Mr. Shook: Yes, building did not meet NC building codes regulations

Ms Rich: Yes, same reason

Mr. Faison: Yes, same reason

Existing Uses Detrimental

Mr. Fleming: Yes

Mr. Mullarkey: Yes

Mr. Ewen: Yes, hard to use as a recording studio with people living there

Mr. Shook: No

Ms Rich: Yes

Mr. Faison: Yes, not a safe environment

Nuisance or Hazard

Mr. Fleming: Yes, unsafe living conditions

Mr. Mullarkey: Yes, method of operations of proposed use

Mr. Ewen: Yes, fire hazard and criminal activity in the building

Mr. Shook: Yes, fire hazard and criminal activity noted in the report

Ms Rich: Yes, same reason

Mr. Faison: Yes, same reason

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

Mr. Fleming made a motion to rescind the permit, Mr. Ewen seconded and the motion passed unanimously.

With no further business, Mr. Mullarkey made a motion to adjourn, Ms Rich seconded, and it passed unanimously. Meeting adjourned at 10:21 p.m.

Respectfully Submitted

Michael R. Dail, II
Planner