

DRAFT OF MINUTES PROPOSED FOR ADOPTION BY THE GREENVILLE BOARD OF ADJUSTMENT
January 22, 2009

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

Dr. Mulatu Wubneh *, Chairman

Ann Bellis *	Charles Ewen*
Wanda Harrington *	John Hutchens *
Scott Shook *	Charles Ward*
Renee Safford-White X	Linda Rich *
Louis Treole X	

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

VOTING MEMBERS: Wubneh, Bellis, Harrington, Hutchens, Shook, Ward, Rich

OTHERS PRESENT:

- Mr. Mike Dail, Planner
- Mr. Wayne Harrison, Planner
- Mr. Seth Laughlin, Planner
- Mrs. Sarah Radcliff, Secretary
- Mr. Dave Holec, City Attorney
- Mr. Bill Little, Assistant City Attorney
- Mr. Chris Kelly, Engineering Assistant
- Major Kevin Smeltzer
- Jonathan Edwards, Communications Technician
- Thom Moton, Assistant City Manager

Dr. Wubneh stated item number 4 on the agenda is being tabled until the February meeting in order for staff to receive more information on the matter.

MINUTES

Motion was made by Mr. Shook, seconded by Ms. Bellis to accept the December 18, 2008 minutes as presented. Motion carried unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY JASON BARNETT

The applicant, Jason Barnett, desires a special use permit to operate a personal service not otherwise listed (Day Treatment Facility) pursuant to Section 9-4-78(f)(15)a. of the Greenville City Code. The proposed use is located at 2820 E. Tenth Street. The property is further identified as being Tax Parcel Number 07550.

Dr. Wubneh asked all who wished to speak for or against the case to come forward and be sworn in.

Mr. Dail delineated the area on the map. He stated the property is located along East Tenth Street and is zoned CG, General Commercial. Mr. Dail said the surrounding properties to the north, south, east and west are also zoned CG. The property is located along a major thoroughfare, being East Tenth Street and is close to a minor thoroughfare,

being Fifth Street.

Surrounding Development:

North: Coastal Pawn, Former Gilligan's Restaurant, Andy's

South: Single Family Residences

East: Hamilton Street Shoppes (Various Commercial Uses), Bills Service Center

West: Excel Fitness, Video Extreme, My Sisters Closet

Description of Property:

The property contains a 5,460 square foot commercial building with 3 units and has approximately 155 feet of frontage along E. Tenth Street and 165 feet of frontage along Hamilton Street with a total lot area of 0.55 acres. The applicants unit contains approximately 3,304 square feet of floor area.

Comprehensive Plan:

The property is located within Vision Area "T" 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 January 8, 2009. Notice of the public hearing was published in the Daily Reflector on January 12, 2009 and January 19, 2009.

Staff Recommended Conditions:

The facility must comply with all requirements, licensing, rules, health certifications, background checks and other requirements imposed or directed by the NC Division of Health, Human Services; the Commission or Council on MR/Developmental Disabilities; and Community Alternative Programs for DD/MR adults and/or juveniles.

At no time will clients of the training center be permitted to wait or be outside without being accompanied by a staff member of the training center to supervise and ensure proper behavior of the clients including but not limited to aggressive actions, littering, fighting, yelling, loitering or other unacceptable behavior.

Other Comments:

Shall be classified by DHHS and shall meet all related NC State building codes for such classification.

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.

Jason and Jeannette Barnett spoke on behalf of their request. Mr. Barnett stated he and his wife currently own and operate Paradigm Inc., a community mental health agency. Mr. Barnett said he would like to open a day treatment

facility for children and adolescents between the ages of 5 and 18 who have special needs. He said the children are referred to them by teachers or case managers who are currently working with the children. The goal of their facility is to have the children learn how to interact with each other, follow directions and how to handle difficult situations. He said their hours of operation would be the same as school hours.

Ms. Bellis asked if there would be any academic program associated with the facility.

Mr. Barnett said they would use educational activities as well as individual therapy.

Ms. Barnett stated their goal was to get the children back into the school system. She said in August 2008 the school systems combined all students together in the same classroom, instead of separating the special needs children from the others. She said the children were having a hard time adjusting to the new environment and as a result she was receiving a lot of calls from the school staff for assistance.

Mr. Barnett said they would not accept more than 18 children. He said they had qualified for case managers, which would be assigned 6 children each, and would also have professional assistants paired with the case managers. Mr. Barnett stated he had a Bachelor's degree in Nursing and had 10 years of mental health experience including 5 years at the hospital in the Behavioral Health Unit. He stated his wife had also worked there for several years.

Ms. Bellis asked if there was an agency that oversees their organization.

Ms. Barnett said the State and the Mental Health Center monitors their activities.

Mr. Shook asked how the children would get to and from the facility.

Ms. Barnett said they would provide transportation to and from the facility.

Mr. Ward asked what the working hours would be.

Mr. Barnett said they would be the same as school hours, about 8:30 to 2:30.

Mr. Ward asked if there would be any outside activity.

Ms. Barnett stated if the children went outside they would be supervised at all times. Mr. Barnett stated the only outside activities would be something like a field trip, where they actually left the site.

Dr. Wubneh asked the ages of the children.

Ms. Barnett said they would be from 5 or 6 years up to 18 years.

Dr. Wubneh stated a concern for the children wandering around without an enclosure outside.

Ms. Barnett said the classrooms were in the back of the building and there would be a receptionist as well as Jason and/or herself at the front of the building so the students would not be able to exit without someone seeing them.

Ms. Harrington asked how many staff members they planned to have.

Ms. Barnett said the ratio was 1:3, so there would be 2 staff members for 6 students, 4 for 12, etc. She said those were the state requirements.

Mr. Ward asked if they were currently operating the center.

Ms. Barnett said they were operating other group homes, but not the day treatment center.

Mr. Ward asked if the group homes were in the City.

Ms. Barnett said the group home was on Old Pactolus Road, but their corporate office was located next to Ming Dynasty.

Alicia Hawk spoke in opposition to the request on behalf of Speight Properties. The following is a copy of the statement she submitted and read to the Board.

Dear Members of the Board of Adjustment:

I am writing in regards to the proposed Special Use Permit to operate a "Day Treatment Facility" at the above referenced address. I am representing two adjacent properties owned by Maxine Speight (see attached map):

- Eastgate Shopping Center at 2800 and 2810 E. 10th Street comprising twelve (12) commercial tenants (located within 50 feet of the subject building).
- Single Family Residential at 2815 Edwards Street with one residential rental tenant (located within 100 feet of the subject building).

I understand that Jason Barnette has applied for this permit to operate a facility for "troubled juveniles" that offers a gathering place to get them off the street and in a controlled environment. I understand Mr. Barnette also runs another separate "group home" for troubled teens. In fact, in the spirit of full disclosure, Mr. Barnette is currently a tenant of ours, leasing office space to operate a separate business for mental health administration. He has an excellent reputation as a Tenant with Speight Properties, and I personally applaud his efforts to take an active role in helping our young people get back on track.

However, I am writing today, because I have to wear another hat. I am writing on behalf of the property owner and over 13 tenants who would be directly affected by the location of the proposed Day Treatment Facility.

1. I understand the proposed location at 2820 E. Tenth Street is approximately 5400 square feet of shared offices with other co-tenant(s) including the Highway Patrol Station. There will be excessive traffic on this parking lot. There is not adequate parking to handle the employees and customers at this location. Due to the demands of our adjacent shopping center -- especially the fitness club which is located right next to the subject property -- spillover parking to our center is not an option and would become an ongoing challenge to manage and enforce.
2. With this facility being a place for troubled teens to "hang out," we are concerned about the loitering in the parking lot and the likely spillover onto our shopping center. We have had tenants in the past who leased property for a similar use, and from experience, the loitering is an ongoing challenge and difficult to manage. As you know, loitering in any neighborhood or commercial center is a perceived safety concern and results in a loss of business, tenants, employees, and customers.

According to the Board of Adjustment voting criteria for granting a Special Use Permit, I see a potential conflict with the following applicable criteria (*written verbatim*):

- **VOTE NO (c) Health and Safety.** *That the proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of proposed use... (5) The reasonably anticipated increase in vehicular traffic generated by the proposed use. (6) The anticipated, existing and designed vehicular and pedestrian movements both on-site and off-site.*
- **VOTE NO (d) Detriment to Public Welfare.** *The proposed use will not be detrimental to the public welfare or to the use or development of adjacent properties or other neighborhood uses.*
- **VOTE NO (f) Injury to Properties or Improvements.** *That the proposed use will not injure, by value or otherwise, adjoining or abutting property or public improvements in the neighborhood.*
- **VOTE NO (g) Nuisance or Hazard.** *That the proposed use will not constitute a nuisance or hazard. Such nuisance or hazard considerations include but are not limited to the following: 1. The number of persons who can reasonably be expected to frequent or attend the establishment at any one time. 2. The intensity of the proposed use in relation to the intensity of adjoining and area uses.*

I respectfully request that the Board of Adjustment DENY the Special Use Permit to operate a "Day Treatment Facility" at the above referenced location due to the health and safety concerns, detriment to public welfare, injury to property or improvements, and nuisance or hazard criteria that can not reasonably be satisfied. Most importantly, this use is not compatible with the surrounding and existing residential, office, and commercial land uses.

Respectfully submitted,

Alicia Hawk, General Manager
Speight Properties
Greenville, NC

Mr. Hutchens asked Ms. Hawk if she had any evidence supporting the issues she presented.

Ms. Hawk stated she currently had a day treatment facility as a tenant at another location. She said there was a lot of traffic generated with the students, case workers, staff and parents picking up and dropping off children. She stated the location had limited parking and would not allow for that type of flexibility. She stated she would get complaints and it would be very difficult to manage the parking with a gym being one of the areas sharing the parking lot. Ms. Hawk said the parking was the primary concern but she was also concerned with loitering.

Mr. Ward said there were 23 parking spaces and with the hours of operation being between 8:30 and 2:30, he did not see the gym parking being an issue.

Ms. Hawk said her understanding was that 11 parking spaces would be allocated to the day treatment facility and it would be a challenge.

Mr. Shook asked if they had ever had any spillover parking from the gym into their parking lot.

Ms. Hawk said they had not.

Ms. Bellis asked if the other tenant she was referring to was the same type of facility as this one.

Ms. Hawk stated it was.

Mr. Shook asked if the other one was located in the City limits.

Ms. Hawk stated it was in Winterville.

Ms. Harrington stated the parents would not be taking and dropping of the children, that they would be transported by the facility.

Ms. Hawk said this was the first time she had heard that and that would be different from her other tenant.

Ms. Harrington asked if children were allowed outside at the other facility without supervision.

Ms. Hawk said they were not. She stated a commercial area was not appropriate for children to be outside.

Mr. Ewen said the Barnett's had already stated their children would not be outside unless they were taking a field trip. He asked Ms. Hawk if they excluded outside activity if that removed a lot of the issues.

Ms. Hawk said she didn't know if 6, 7 and 8 year olds could be kept inside all day. She stated she supported what they were doing; just not in the location they were doing it.

Dr. Wubneh asked the applicant to come forward.

Ms. Bellis asked what type of outdoor activity they would foresee happening.

Mr. Barnett said if there was an outdoor activity, it would be a field trip to somewhere appropriate for children.

Mr. Ewen asked if it was okay with them if the Board stated no activities could be held on site.

The applicants stated that would be fine with them.

Mr. Ewen asked if there was adequate parking for the staff.

Ms. Barnett said there was.

Ms. Bellis asked how many vehicles they anticipated would be there at any given time.

Ms. Barnett said it would depend on how many children they had.

Mr. Ewen said they should go with the maximum.

Mr. Barnett said probably 6 to 8 vehicles.

Dr. Wubneh asked if the parking met the City's guidelines.

Mr. Dail stated the property was considered an office building and parking was based on the square footage of the non-storage area in the building. Mr. Dail said he would be using the total square footage, which is approximately 5,460 square feet. When you divide that by 300 you get 18.2, which is 18 required spaces. He said the site had 23 spaces. The applicant's unit has 3300 square feet, which means 11 spaces are required for their unit. Mr. Dail stated that based on this information, the site has more parking than what is required by ordinance.

Dr. Wubneh told the applicants if the Board added the condition that no outside activities could be held on the premises, that meant it would inhibit them from going outside even for sit-down activities.

Ms. Barnett stated they understood and would not want to take them outside due to the risk of someone getting injured.

Chairman Wubneh asked Mr. Dail for the staff's recommendation.

Mr. Dail stated staff had no objections to the request.

Dr. Wubneh closed the public hearing and called for Board discussion.

Mr. Ward asked if the standard review procedure was 1 year.

Dr. Wubneh said there was no review for this type of special use permit unless the Board specifically stated it as a condition of approval.

Mr. Dail confirmed.

Chairman Wubneh read the criteria for granting/denying a special use permit. He asked for a motion to approve the findings of fact including the fact that the applicant has stated there will be no outside activities on the premises. Motion was made by Mr. Hutchens, seconded by Mr. Ward. Motion carried unanimously.

Chairman Wubneh then asked for a motion to approve the petition including the staff recommended conditions and the condition that there shall be no outside activities on the premises. Motion was made by Mr. Ward, seconded by Ms. Harrington. Motion carried unanimously.

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

PUBLIC HEARING ON A REQUEST FOR AN ADMINISTRATIVE APPEAL BY MICHAEL GOGOEL

The applicant, Michael Gogoel, desires to appeal a decision made by the Historic Preservation Commission on October 28, 2008 concerning the addition of windows and sashes at the property located at 400 S. Summit Street. The property is further identified as being Tax Parcel Number 17970.

Mr. Holec: This is a little different from what you all are used to, so I'll take it up from here Mr. Chairman. I'm Dave Holec. I'm City Attorney and I will be advising the Board on this matter. Mr. Little, on this matter, will be defending the decision of the Historic Preservation Commission, which is what is being appealed. This is an appeal. Since it is an appeal, there is no evidence which is presented to you, so you are not going to be swearing in persons and taking additional evidence. What you are going to be doing is looking at what was before the Historic Preservation Commission when it made its decision and determines whether or not its decision was in compliance with the law. So that's what you'll be looking at. Additionally, it's not a public hearing. What the process will be is I'll set the stage for you and then we'll let the appellant's attorney, Mr. Fred Mattox, make his argument on behalf of the appellant. Then Mr. Little will make an argument on behalf of the Historic Preservation Commission. There will be the opportunity for rebuttal from both sides and then it will be up to the Board to make its decision. So what I'll do is just go forward with this and set the stage for you on this appeal.

The applicant is Michael Gogoel and he has appealed the decision by the Historic Preservation Commission. Historic Preservation Commission denied a request for a Certificate of Appropriateness to install artificial muntins, which are basically dividers in windows, in the existing vinyl replacement windows at 400 South Summit Street. 400 South Summit Street is located within the College View Historic District. The College View Historic District includes the area north of East Fifth Street and East Carolina University bounded approximately by Holly Street on the west, Eastern Street on the east and variously Johnston, East First, East Second and East Third Streets on the north, the area north of East Carolina University Campus. This area was designated as a historic district by City Council in 1994. The architectural styles that exist in the College View Historic District reflect the design trends of the times and the region. The majority of houses in the District consist of one-story weatherboarded Craftsman Bungalows, which had become the most popular house style in North Carolina from the mid-1910s into the 1930s. Small, one-story modest houses were built in the District, as well as larger more elaborate versions. A large number of the two-story houses in the District are of the Colonial Revival style, a traditional style popular in the region, and American Foursquare, a substyle of the Prairie style houses that were developed in the Midwest around this time. This is the reason why this has the historic district designation.

The Historic Preservation Commission consists of 10 citizens appointed by City Council, the majority of whom are to have demonstrated a special interest, experience, or education in history, architecture, and/or archaeology. The responsibility of the Historic Preservation Commission is to protect the architectural integrity of the historic district and landmarks. To meet that responsibility, the Commission reviews applications from property owners and residents for Certificates of Appropriateness to make certain types of changes within the historic district and the landmarks. Applications are reviewed to determine if the proposed changes are consistent with the Design Guidelines established by the Commission.

Within the historic district, property owners are required to obtain a Certificate of Appropriateness before beginning any type of exterior construction, alteration, or demolition. The historic district overlay zoning is in addition to all other laws and codes and does not exempt a property from, or diminish other requirements of those laws or codes. The Certificate of Appropriateness is required to be obtained whether or not the work being accomplished required a building permit. A Certificate of Appropriateness certifies that the proposed changes are consistent with the Design Guidelines and are appropriate within the historic district context. Neither interior nor most normal maintenance work requires a Certificate of Appropriateness.

Applications for Certificates of Appropriateness must be completed before the Historic Preservation Commission

may consider them. An application must include all of the facts necessary for a full understanding of the applicant's intentions. The application must provide specific information regarding the work so that the Commission can determine if there will be any damage or detrimental change to the historic or architectural character of the District. The Commission takes action on each application for the purpose of preventing demolition, construction, reconstruction, alterations, restorations, or movement of a building, structure, appurtenant fixtures, or outdoor advertising signs in the historic district that would be incongruous with the Design Guidelines established by the Commission. The Commission is very parallel to the Board of Adjustment. It hears applications, then hears evidence and makes a determination based upon that information.

That gives you the background on the Historic Preservation Commission and what their function is. Now here's the history of this particular case. The property is located in the College View Historic District. This district was established as a zoning overlay district by City Ordinance 94-23, so in 1994. The zoning overlay district is a statutory creation. In this case the area encompassed is zoned as residential and the historical designation is an overlay or additional requirement imposed by the ordinance. In the fall of 2007 the applicant removed the original Craftsman style 4 over 1 wood sash windows at the house and replaced them with vinyl replacement windows. City staff became aware of that action and advised the owner that a Certificate of Appropriateness was necessary to determine if those windows as replaced could remain. On November 27, 2007 the hearing was held and the findings of fact established by the Historic Preservation Commission and it was determined that the replacement windows did not comply with the Design Guidelines that govern window replacement within the historic district. The Historic Preservation Commission denied the application to permit the replacement windows to remain but granted the applicant a year period to come back with an alternative that would be compliant with the requirements. On July 22nd the applicant presented an alternative to submit 3 over 1 windows as opposed to 4 over 1. At that time the Board continued the matter so that the applicant could look at other options. On August 28, 2008 the applicant submitted a revised COA that provided for the installation of compliant windows. The applicant presented two options for the Historic Preservation Commission to consider and the Commission approved both options and determined that they were compliant. You actually heard an appeal of this, even though what the Board did was approve what the request was of the applicant, and then there was an appeal to you and you affirmed the decision of the Historic Preservation Commission. So that's the history to the request which is actually being appealed. On October 28, 2008, prior to the expiration of the 1 year time frame, the applicant submitted another COA application concerning the windows. The applicant proposed to install artificial muntins to the existing vinyl windows. The Historic Preservation Commission denied this COA as noncompliant with the Design Guidelines. So that's the decision that is before you to look at; the decision made at the October 28, 2008 meeting of the Historic Preservation Commission. Let me remind you what your role is in this review. In accordance with the provisions of the general statutes and the Greenville City Code, an appeal to the Board of Adjustments on the decision of a Certificate of Appropriateness by the Historic Preservation Commission is in the nature of certiorari. This means that the Board sits in a posture of an appellate court. It is not your role to re-decide the application. You are not to replace your decision for the decision of the Historic Preservation Commission. The general statutes and the city code place this responsibility on the Historic Preservation Commission and you are reviewing their decision in the role of an appellate court. The Board is not to take any additional evidence but is to base its decision on the basis of the record submitted. The Board's review should be focused upon whether appropriate procedures were followed, whether the decision was supported by competent, material, and substantial evidence, and whether the decision was in conformance with the applicable provisions of City ordinances, the Design Guidelines, and other matters of law. After the Board completes its review, it may either affirm the decision of the Historic Preservation Commission or reverse the decision of the Historic Preservation Commission. If you decide to reverse it, you will have to state the reason and what the violation of the law was in

the deliberations by the Historic Preservation Commission. The vote requirement in order to reverse is the same as the vote requirement that you would have for a variance or special use permit. It would require a 4/5ths vote. You all have in front of you a packet of information which is submitted as the record on appeal. Please make sure that the actual exhibit number is written on each one in the bottom right hand corner of the document. First is the application by Michael Gogoel. This is what was before the paperwork that was in front of the Historic Preservation Commission at the time that they considered the request. You also have the Historic Preservation Commission's minutes and decision at that meeting, October 28, 2008. Exhibit 3 is a copy of the appeal by Michael Gogoel, which is the appeal which is brought to you at this hearing. Exhibit 4 is the minutes of the November 27, 2007 HPC meeting. Exhibit 5 is the July 22, 2008 meeting minutes. Exhibit 6 is the minutes of the August 26, 2008 meeting. Those three were the meetings which I kind of gave you the history of the actions which occurred up to that point. Exhibit 7 is a copy of the College View Historic District ordinance which establishes this area as an overlay district. Exhibit 8 is the Design Guidelines, basically the excerpts of the Design Guidelines which apply to this particular request. Exhibit 9 is a map, which is referred to as City Zoning Map, which refers to where this property is located and what the zoning classification is for the property.

If there are any questions I will be glad to respond to them. If not we can go forward, but I'm ready to respond.

Dr. Wubneh: There are some questions. Yes, Ms. Bellis.

Ms. Bellis: The first thing is it standard procedure at a hearing like this to be presented with these exhibits at the hearing or ahead of time?

Mr. Holec: I think in the past we have given them to you at the hearing, but again, we don't have these very often. I think the last one we actually had was maybe five years ago. It could be either way.

Ms. Bellis: It would have been very helpful to have this ahead of time. I'm not a speed reader and if I were, I wouldn't read a third of an inch of papers in five minutes. So, this is really not helpful.

Mr. Holec: Again, you'll have the ability for those that are making arguments on both sides to point to you portions of the transcripts that they ask you to refer to. But, if the Board wants to have some additional time, that's the Board's decision.

Ms. Bellis: I have another question. There have been several hearings and several decisions and several issues. We've talked about windows that are 1 over 1, 3 over 1, 4 over 1, wood windows, vinyl clad windows, artificial muntins, and the only thing, I understand, the last decision that is being appealed is putting in the muntins. It has nothing to do with the configurations of the panes or what the window frame is.

Mr. Holec: Yes. Basically what you are deciding is whether putting in the artificial, really putting in the whole windows in reality because you are looking at the situation as what it was existing prior to the work that was accomplished without the Certificate of Appropriateness and that is the wood windows. So, what you're really doing is looking at the entire package which is putting in the vinyl windows and having the muntins in there too. You're looking at a Certificate of Appropriateness which approved that configuration from when it existed, from when it was just wood. You cannot look at as what it is now because that was never approved by the Board. That was done without the benefit of a COA.

Mr. Shook: Mr. Holec, can you go over the three avenues that we are actually deciding. One was in conformance. There were three things that we have to determine, the hurdle that the applicant, or the appellant, or the person appealing this has to get over for us to vote one way or the other. What's the legal standard of what we have to do, if you could cover that one more time?

Mr. Holec: Again, what you are doing is sitting as an appellate court. You are looking at the decision of the Historic Preservation Commission. So you are to focus upon whether appropriate procedures were followed, whether the decision was supported by competent, material, and substantial evidence, and whether the decision was in conformance with the applicable provisions of City ordinances, the Design Guidelines, and other matters of law.

Mr. Hutchens: But we are not retrying the case.

Mr. Holec: You are not retrying the case. And that's why you're not considering evidence which was not before the Historic Preservation Commission because it's not a brand new hearing. In fairness to them, that's what their charge is and the applicant in order to get the permit that he wants to get should present the evidence to them and let them make the decision.

Mr. Ewen: So what happens if we reverse the decision?

Mr. Holec: If you reverse the decision on a procedural matter, I would suggest that you remand it to the Historic Preservation Commission if there's a procedural manner. If you reverse it on a determination that they were wrong in applying the Design Guidelines, it's your option to go ahead and reverse it and decide that the permit is issued. You can do that. You also have the option to remand it to them, but if you are actually making a determination that it is compliant with the Design Guidelines, you have the ability to do that. The same as any other decision you have here, is anybody who disagrees with the decision of the Board also has the ability to appeal that to Superior Court and it would be as any other decision of this Board. It would be done in the nature of certiorari. I noticed out of the corner of my eye that Mr. Mattox may have wanted to say something when Ms. Bellis was saying something.

Mr. Mattox: Ms. Bellis made the statement that you got this packet today at the meeting. I got mine after 4 o'clock today. I would have no objection if you want to continue the matter to give you an opportunity to read it before hand.

Ms. Bellis: Does this differ appreciably from the material that we were sent out in addition to minutes from previous meetings. We have the minutes from the September meeting and we have a handout that came that has the regulations for the Historic Preservation Commission and guidelines. Is what you presented here different from that?

Mr. Holec: Let me make sure I understand your question, and I may have to ask Mr. Dail. I believe the answer to that is this includes additional information than what was submitted in your package.

Dr. Wubneh: That was going to be my question, too. What is the reason why we are hearing it now? We heard it about a couple of months ago. Is that because they are saying they have new evidence?

Mr. Holec: No, they are not saying they have new evidence. When you heard something back in November, they were appealing a different decision of the Historic Preservation Commission. After your decision they came back with another application and that application was denied. That's what they're appealing. So this is a different

decision by the Historic Preservation Commission that is being appealed.

Dr. Wubneh: So they submitted another application to the Historic Commission?

Mr. Holec: Yes.

Dr. Wubneh: So the Historic Commission denied that and that's what we are reviewing now. So it's not connected with what we had before.

Mr. Holec: It's connected in the sense that you kind of need the thread or the history in order to be able to follow why we are where we are.

Dr. Wubneh: Is everybody following what's happened? Depending on what the Board wants to do, first of all, does the Board feel comfortable to continue on this discussion? That's one, and the other is we still can hear the matter and then if we feel that we need more time there's always that option.

Mr. Shook: Or, the applicant can ask for an extension, correct?

Dr. Wubneh: Let's continue on with Mr. Holec. Are we done with him or does anyone have any questions?

Mr. Holec: The only thing that was added to what was sent with you in the packet is Exhibit 4, 5 and 6. Is that correct? Which are the minutes. But again, it's your determination as to whether or not you want to proceed tonight or if you feel more comfortable.

Mr. Shook: And those are minutes from prior meetings from prior applications, not necessarily the one that we are hearing this evening, is that correct?

Mr. Holec: Correct.

Ms. Bellis: Mr. Holec, I'm really quite confused about this. There was one decision that the HPC made that was appealed to us. That happened in September and we upheld their decision.

Mr. Holec: Right.

Ms. Bellis: After that, Mr. Gogoel went back to Historic Preservation Commission and that was when he made the other proposal about the 3-over-1 or 4-over-1 and the, no that was prior to that. When did he make the application for the muntins to put in?

Mr. Holec: The 4-over-1 is what you are considering now, the October 27th meeting. It's a new application and denial is what you are considering at this time.

Ms. Bellis: And the 4-over-1, that's where he has these strips glued onto the windows?

Mr. Holec: Correct.

Ms. Bellis: So that's really all we're talking about, are the muntins.

Mr. Holec: You are considering the muntins, but you're also considering in the context what he is doing is saying I want to have the muntins keeping the vinyl as is. What you have to look at is how it existed prior to him making the change approved through a Certificate of Appropriateness. So you're looking at the condition with the wood windows; and now what they're doing is replacing it and you have to look at the entire package which is replacing it with the vinyl, with the muntins. You cannot rely on the fact that he's had something else approved, which was fine because he hasn't followed through on that. Now, if they follow through on that, that's acceptable and that's in compliance with the Design Guidelines. But what he is saying in the application is not to do that. It's to have the vinyl windows with the muntins.

Ms. Bellis: But the Historic Preservation Commission already said that he couldn't have the vinyl windows anyway, didn't they?

Mr. Holec: They've denied this request and they denied the initial request which was for the vinyl windows as is and then they came back and gave two alternatives which they said were appropriate and if they did that, that would have been in compliance with the Design Guidelines; and they'd be able to that, and he still can do that, what those two requirements are. But now what he wants to do is to do the vinyl windows with the artificial muntins.

Dr. Wubneh: Does anyone have any more questions? Do we want to hear Mr. Mattox? Do we have to hear Mr. Mattox?

Mr. Holec: Now, if you are comfortable with proceeding, now what you can do is you go into the hearing and Mr. Mattox will make an argument as to why there should be a decision to reverse and Mr. Little will make an argument on behalf of supporting the decision of the Historic Preservation Commission, rebuttal from both and then back to you all for a decision.

Dr. Wubneh: I have a few questions maybe you could answer. There seems to be a consistent history. In August 2008, Appropriateness Certificate was approved for two options by the Historic Preservation Commission, and yet he didn't follow through that part. Instead he came up with another one on October 2008; if my notes are right, October 27, 2008, another one which we did not approve. The Historic Preservation Commission did not approve. And we also upheld that decision.

Mr. Holec: No, that's the one that's being appealed.

Dr. Wubneh: Okay. I'm just wondering why the changes are being made when the individual knows that there has to be a certificate ahead of time before they spend their money.

Mr. Holec: And you can ask them that. The initial change was done without benefit of a Certificate of Appropriateness and nothing else has really occurred beyond that. Beyond trying to get approval for what the initial change was, that being denied, coming up with possible other options, and let's wait and see if you can come up with something else. Then coming up with something that was approved but determining after that was approved that that was the course not wanting to be taken so they came up with a third alternative and the third alternative is

what was denied by the Historic Preservation Commission.

Dr. Wubneh: They had not received the certificate ahead of time, on the third alternative; they just made an alternative on their own.

Mr. Holec: No, but they have not done anything. After they made the initial changes without the Certificate of Appropriateness what they are attempting to do now is to find a way to, originally to get what was already done approved, and that did not work; and then looking at different options as far as what could be done which would still comply with the Design Guidelines. What they're trying to do is to find a solution so that they can have close to what they have with maybe modifications. They are trying to get solutions so that they are complying with the provisions.

Dr. Wubneh: Does the Board feel comfortable to proceed?

Mr. Ward: I move that we proceed.

Dr. Wubneh: Okay, so we will proceed. Mr. Mattox.

Mr. Mattox: Thank you Mr. Chairman, members of the Board. As Mr. Holec said, you are sitting in a different capacity tonight than you normally sit. Normally you sit as a jury to hear facts and make a decision based on the facts that you believe. Tonight you are sitting as a judge to see if the Historical Commission properly made the determination of October 28, 2008, and I believe that's your Exhibit 2. That's what we're up here about tonight. Incidentally, I said earlier I received this package after 4 o'clock today and I've not read it all myself. If I inadvertently misstate a fact, please excuse my age and my inexperience. The package is what you should rely on, not what I say. I think I can argue to you as judges the testimony that is in your package. Earlier, someone wanted to know why we are up here again. I think you will find in your package that the estimate to put in the windows that have already been approved ranges from \$18,000 to approximately \$40,000 and my client is simply trying to see if there is a different avenue that is not as expensive on him that would comply with the City. There's also in there, some of you may not know the history of this. Typically when I come in here with someone who has already done it and comes up and asks for permission, I know I'm going to get a very cool reception, and rightfully so. I think you'll find in the package that he did in fact go to the City, did ask if permits were needed and did obtain permit to put a furnace in but was told he didn't need one for windows. So in one sense of the word he's here with innocent hands. He tried to do what was right; he got the wrong information from the city. Based on that information, he took out the windows and he replaced them with a window very similar to this without the dividers. Now, having given you the brief outline, I would ask that the Board also take judicial notice, since you are now judges, to section 9-10-19 of the Greenville City Code, which is a review criterion. It is the intent of these criteria to ensure in so far as possible, so far as possible, that changes to a designated landmark in a Historic District be in harmony with the reasons for designation. When granting a Certificate of Appropriateness the Commission shall take into account the historic or architectural significance of a structure under consideration and the exterior form or appearance of any proposed addition or modifications to that structure, as well as the effects of such change or additions upon other structures in the vicinity. In a historic district, it is not the intention of these guidelines to require the reconstruction or restoration of individual or original buildings or prohibit the demolition or removal of the same or to impose architectural styles from particular historic periods. In considering new construction in a historic district, the Commission may encourage contemporary design which is harmonious with the character of the district, and that's our point. Times

have changed since these buildings were built. I personally, and it's in the record so I'm not saying anything new, I personally replaced the windows in my house this past fall and I'm satisfied that I'm saving from \$100 to \$200 on my heat bill right now because of that. I can't poll you, but if I could I suspect some of you have vinyl windows in your house and the reason you put them in was they're more efficient now than the old windows. The second point that I would like to bring to the court's attention is that in Exhibit 2 on page 3 in the center of the page, there are several things that the City contends that my client has violated. One is to retain and preserve original windows and doors. Well, unfortunately through a series of miscommunication, the original windows no longer exist. That's an impossibility. Two, retain and preserve opening and details of windows and doors, such as trim, sash, glass, lintels, seals, thresholds, shutters and hardware. I challenge you to read the record on appeal and see if you can find in there where any items such as trim, sash, glass, lintels, seals, thresholds, shutters and hardware, the City says they have been changed or modified. Item four is repair the original windows, no can do, they're not in existence. Now, here's a curious one. Item 5, if replacements of a window, so the City obviously recognized there was going to be a point and time that a window might have to be replaced, if replacements of a window or door element is necessary, replace only the deteriorated elements to match the originals in size, scale, proportion, pane or panel division materials and details. I challenge you to find anything in the record of appeal that he has violated any of those except in material. It is true that the windows that came out were wood and the windows that went back in are vinyl. That is a change in material. If that one thing is what we are going to make this good man pay an additional twenty to forty thousand dollars over, then it's a tough life. That's all I can say. There's nothing in here that indicates that vinyl is not appropriate. In fact, the City Code says the Commission may encourage contemporary design. Vinyl is a new contemporary material that did not exist when this house was built. Item 11, it is not appropriate to replace windows and doors with stock items. If you had a period right there, I'd be up the creek; but it says stock items that do not fill the original openings or duplicate the unit in size, material and design. Snap-in muntins are not appropriate replacements for true divided light window panes. We didn't ask for snap-in muntins, we asked for a muntin that was permanently affixed to the outside of the window. I think if you read the Historical Commission documents, there's language in there that it has nothing to do with the inside of the building. They are only concerned with the exterior appearance. I challenge anybody to look at that window and tell me whether those muntins are made of wood, vinyl or what. It can't be done. You are about as from the street as that window is if it were in the house. Okay, number 14; it's not appropriate to fill existing windows or door openings if it would diminish the historical character of the building. It is not appropriate to replace or cover glazing with plywood. We didn't do that, but I again challenge you to find in the record evidence of testimony that putting these windows in diminished the historic character of the building. And number 15, it is not appropriate to introduce new windows or doors if they would diminish the original design of the building or damage historic material and features. Keep new windows and doors compatible with existing units in proportion, shape, position, location, pattern, size, materials and details. You will not find anything in the record that these windows are any different except for the material, than the windows that came out. They fill the same space and serve the same purpose, and that is for people on the inside to look out. That's what a window is for. Now, in staff's recommendation on the last page they find that artificial muntins are inappropriate replacements for true divided light window panes. That, I don't think, is exactly what the guidelines say. The guidelines said snap-in muntins are not appropriate replacements for true divided light window panes, not artificial ones. So they used the wrong law to turn this down. But based on that and based on some language because they had not shown it to staff before we got to Historical Committee, they simply denied the request. It simply says the applicant did not meet with the Design Review Committee regarding the proposed work. And, that's simply our argument. Is this Board going to find that under no conditions can you substitute vinyl for wood in the Historic District because that's what this Board is finding? I'll be glad to answer any questions.

Mr. Little: Thank you members of the Board. I always enjoy listening to Mr. Mattox because it's very eloquent and he speaks very well from the heart and he represents his clients well. I would note a couple of little things that I would take issue with in Mr. Mattox's presentation. He read to you and asked you to take judicial notice of some things in the ordinance. He asked you to take judicial notice of section 9-10-19(a) and what he talked about he said when considering new construction in a historic district the Commission may encourage contemporary design which is harmonious with the character of the listing. This is not new construction, point number one. This is a repair. Now, you are wondering why some of the documents were in here. The documents were in here and the facts were in here because there are some important factors that need to be considered. When this particular case first came to the Historic Preservation Commission's attention in November of 2007 you had noncompliant windows installed. There was a full hearing on that. The HPC found that the windows that were installed were not in compliant, were non-congruent with the Design Guidelines and it stated the reasons why they were not compliant. And in looking at your exhibits, Exhibit number 4, is that particular hearing, that's the record that night in which they found that it was not compliant. And it stated that the windows, the materials used, were not compliant with the Design Guidelines, the materials. Wood and vinyl, different materials. Day and night. It's not a issue of energy efficiency, because you can make wood windows energy efficient. There are wood windows out there. Also it says stock items. These were stock windows that were put in. Anybody who has observed these older Craftsman Bungalow houses knows that the windows are not the same. They're not the same size. You cannot put a stock window into that hole without having to either cut it, the hole itself, or add wood trim or sashing or some type, or vinyl trim around that to fill in the hole. So it found that those were not compliant. There was never an appeal of that decision. They had 30 days to appeal that decision, it was never appealed. So it became a fact that those windows with that material were not compliant with the Design Guidelines, end of that story. But they said wait a minute, we are going to give you an opportunity to look at maybe alternatives. An alternative was presented in August, that's your Exhibit 6 minutes, with using 3 over 1. Now it talks about true divided light and artificial snap-in and glue sticks that are being proposed tonight, or what was proposed in October. A true divided light window is exactly that. They are individual panes of glass with the muntins and the glazing and the points holding the individual panes of glass in, four at the top, one large pane at the bottom. The August proposal was to use 3 divided light windows over 1. The Commission said no but meet with us so that we can help you to come up with another alternative that would be congruent. So then, the next thing that was done was in that next presentation the applicant presented two options, which would be, I'm sorry, Exhibit 5 was the July 22 was the 3 over 1. August minutes, Exhibit 6, they produced two options for compliant windows and the HPC said we'll approve either one of those that you want to put in. Both of those are in compliant in material, in design and in all aspects. Now, the important thing to note was that in the July hearing no appeal was taken and the 3 over 1 became a final decision. He appealed the decision to approve what he asked for. That was what this Board heard in September. I want to appeal what I asked for. I want to put in compliant design, of compliant shape, of compliant materials. The Board says, okay you got what you asked for. The decision is affirmed. There was never an appeal of that decision. In October, we get the latest. A new application that was submitted and on this one, Mr. Mattox says there's a difference between artificial and glued on sticks, or snap-in. They are not real muntins. They are not true divided light. Its glue sticks. The pictures are there in your file and there in Exhibit 2, it shows how he drew in sticks. Well, you see the sticks have been glued on now. They are not true divided light windows. The materials are not compliant, the same stock items that have already become a final decision as not acceptable are still there. Now, what's really, really interesting in the hearing, in the testimony that was taken, Mr. Mattox represented the agent or was the agent representing the applicant, and he was asked specifically, and its on page 4 of Exhibit 2, Mr. Smiley said "Did you meet with the Design Review Committee about this project?" Mr. Mattox said, "Not that I know of." Mr. Smiley said, "Is there any argument that you would like to make that the project is compliant with the Design Guidelines?" Mr. Mattox said, "I am deliberately presenting to this Board a request to be considered outside

of the Design Guidelines.” Ms. Pearce said, “I have one question, this doesn’t give us a lot to go on.” Mr. Mattox says, “No, it doesn’t. The muntins that are in place could be conditionally approved as appropriately designed for this era that this house was constructed.” So what was proposed was a deliberate noncompliant item. Now Mr. Mattox has told you tonight, look in the record and find something that says where the Board found that none of this was appropriate, that what he was suggesting was not appropriate, was that the glue sticks was okay and that the vinyl windows were okay. Well, you have it from the agent’s mouth, we are not in compliance. We’re going outside of the Design Guidelines and the Board said you’ve done nothing. You’re telling us you’re not in compliance, you don’t want to be in compliance and you never want to be in compliance. They left the Board no alternative but to deny the application. So, when we look at this case that we have before us, we have an applicant who hasn’t appealed something and a decision that’s final. That the vinyl windows are not compliant, not congruent, not acceptable, period. That’s a done deal. We now have the issue of are the glued on sticks compliant with the designed guidelines. Mr. Mattox own words were we want to go outside the Design Guidelines. Again, they’re not in compliance. So the question is where did the Historic Preservation Commission fail to follow the ordinance? They followed all the ordinances. They gave them an opportunity. This isn’t new construction. This is a repair. And his statement saying that he called the city and asked for permits. The record said he called Inspections. Inspections said they issue permits. You say do I need a permit for windows? Is there any testimony in there that he ever gave an address to say where it’s located? No. Somebody called. Did they call the secretary at the front desk? Did they call an actual inspector? There’s nothing in there. You have this statement that’s made out of never-never-land, “I asked them about a permit”. Not that I live at this location which would then have the folks look at the zoning map which you have a record of. It just says I need a permit. You don’t identify who that person was, was it the inspections department, was it the secretary, was it somebody that was just answering the phone? So sitting there trying to assert that as some kind of error, you have to remember that argument was made back in November of 2007 and was never appealed. That’s a done deal. It wasn’t found to be a viable factor. So right now you have before you, the decision is they said we’re not in compliance. We want to go outside the Design Guidelines. The HPC said we’re following the Design Guidelines. You’re not in compliance and denied the application. Where didn’t they follow the Design Guidelines? Because, they asked did your folks meet with us to help you get through this item? No. Can you tell us how it’s compliant? No. The Historic Preservation Commission followed their rules through the guidelines. They gave the applicant every opportunity to become compliant, to suggest alternatives that were compliant within the Design Guidelines. They’ve complied with the ordinance, the full ordinance, not the bits and pieces that Mr. Mattox just wanted to read to you. When it’s all said and done the Historic Preservation Commission complied with their job, complied with the law, and the applicant’s appeal should fail. Thank you.

Dr. Wubneh: Thank you, Mr. Little. Any questions for Mr. Little? When somebody calls and requests for a permit, doesn’t the City have a procedure that someone has to come in and fill a form? Or, if I pick up a form and say “give me a permit”, does the city give me a permit?

Mr. Little: All we have to go on is that statement that Mr. Mattox said and that’s all that’s there.

Dr. Wubneh: You don’t have any kind of record?

Mr. Little: There’s no record of anything in there. There’s no record that he put on that says who he talked with, which department, and remember he used the term permit. And there’s nothing in there that said he ever identified a location. So, you go with what was on its face, and on its face it was vague, who knows what was ever said? But that decision was done and it was a final decision a year ago; and really is not relevant at this point in time.

Dr. Wubneh: Other questions?

Ms. Bellis: I've probably asked this before, but I'm not sure how someone from out of town would know that these hurdles had to be jumped. In other words, I understand that there is a sign in front of his house that says Historic District. I've lived in Greenville over forty years and I now know quite well, but if I just saw a sign out there I think the majority of people would look at that and not realize that that carried more meaning with it than just saying this is a Historic District and there's certain things that you have to do and I wouldn't know that, and I think its conceivable that a person from outside of town wouldn't know that.

Mr. Little: The statutes require for a historic district exactly what was done. The ordinance that was passed noted it was an overlay district and was recorded in the courthouse in the Register of Deeds. So it became a matter of public record. If a title search was done, it would have been determined on the public record. The zoning map reflects that it's a historic district. The fact that you have a sign that you see that says historic district, then a reasonable person would make a further inquiry if they're going to do something – what does historic district mean? Just simply, okay I live in a historic district, just ignoring that, you cannot blindly go into doing something if you have some initial knowledge, which is in plain view. And initial knowledge, which is in plain view that the street signs right there at the corner of his house that says College View Historic District. That sign gave him notice that he had to ask some questions, that he had to go one step further than what he did. I believe one of the questions that were asked of him about the windows, we've got this cost thing, and the only reason that he did not want to do the windows, and his testimony was that when he got ready to sell the property he didn't think he'd get a reasonable return.

Ms. Bellis: Is that because he'd already invested \$18,000 in putting the new windows in?

Mr. Little: I don't know. That was part of it. And maybe some of the other work that he did, but he didn't think he could get a reasonable return. That's not the issue. The issue is he had notice and he failed to comply. The thing about it that is really interesting is that this procedure might have been acceptable, there might have been another way to have placed these glue sticks if he had used somebody who was historical contract repair, renovation, knew how to do renovations and repairs to comply with, or that would make it acceptable or within the design guidelines. But you look, and you talk about I dare you and defy you to sit where you are and to see the difference. Well if you look at the sticks you can see that not only are they rough, there's edges all over them, there's paint globs all over them, it looked like a four year old did it. I take that back. My granddaughter would do a better job. That is not the point. The point is that he had notice and he didn't take the steps further.

Mr. Shook: So you can't go in blindly and just do things to the property, is that what you're saying?

Mr. Little: That is correct.

Mr. Shook: I mean I guess part of her point was you can't just blindly go in and make improvements to a house that you've bought and own yourself. I mean that's part of my issue with this. I mean, the guy owns the property and you want to improve the property that you buy and own yourself and the worst thing that he did in the world was try to improve the place that he paid his hard earned money for.

Mr. Little: You can improve property within the criteria, within the guidelines. You know, for example, you can say

I'm going to improve my property. I'm going to build an addition onto my house. I'm going to add an additional 2000 square feet to my house and its going to be a game room. That way I can have a pool table and a wet bar and a 42" plasma screen television in there and that's going to be a great improvement to my property. I'm going to do it. I'll go to Lowe's and I'll get some wire and I'll run the wire and I'll put some bricks up and I'll put some sheetrock up and I'll hang some light bulbs in there. Well there's a code. There's a building code. You can't just improve your property without complying with the building code. If you live in a historic district, not only do you have the residential building code, but you have the overlay building code, so that when you go to do an addition to the property, new construction, that what you're proposing is harmonious not only with the building that's there, but the other structures. So you can repair it, you can renovate it, you can improve it, but you have two codes. One, the standard building code for residential structures and two, the overlay code. So that's not an issue. That's not a problem. We're not saying you can't renovate. We're not saying you can't do various things to your property to improve it so you can get a good rate of return; you just have to do it within the guidelines. You can't just go up and slap some stuff up and say, "Okay, I've now improved my property".

Mr. Ewen: It seems like this is a zoning issue, rather than saying, gosh, why can't I do what I want to with my property. I mean people tell us what to do with our property all the time. I can't build a McDonald's on my property right now because of the way it's zoned. And that's one of the issues we take into. So that's another issue, I think, you know it seems like I should be able to do whatever I want with my house. The things that really kind of trouble me most is the fact that it does appear to be a legitimate issue that, taking the plaintiff at his word that he tried to ask about permits or what he needed to do and maybe got some misinformation. Then he went to the, if I'm following this right, he went to the Historic Preservation Commission and said how about these two alternatives and they said those were okay and then he looked at it and said, oh my gosh, those are really expensive. I didn't realize it was going to be that much; let me come up with a third one.

Mr. Hutchens: He came up with those alternatives himself.

Mr. Ewen: Right, he did. But he didn't apparently look at how much it was going to cost him.

Mr. Shook: No, he knew. He prepared those with a sole purpose of getting something that he could appeal and bring back in front of this Board.

Mr. Ewen: Well, in that case, that's not a good thing. So, what we're looking at is the third alternative appropriate for the historic cultural zoning and the Historic Preservation Commission says no. So I guess that's what we're deciding right now, do we go with what they think or return?

Dr. Wubneh: Mr. Little, I know you said the materials are the same. When the Historic Commission approved the two options, we know the original windows were gone, so what kinds of material are approved in those two options?

Mr. Little: I believe the windows that were approved, the options, were wood windows that were energy efficient with the divided lights.

Mr. Shook: Is that the only material approved to be used for replacement windows is wood? Or is that up to them to determine?

Mr. Little: The guidelines say replace like kind with like kind. If you look in Exhibit 8 it has the Design Guidelines in it and it talks about the use of aluminum storm windows. At the time the district was established there were houses that had aluminum storm windows on them and it talked about using those as an option and that was the initial energy efficiency and how to install appropriate storm windows to be compliant with the Design Guidelines because those were acceptable with the United States Secretary of Interiors Design Guidelines, which is where all the Design Guidelines are based on. As the packet in Exhibit 8 notes that the Design Guidelines are created from the information from the US Secretary of Interiors Guidelines to Historic Properties. So those matters which were there are one that come from higher up the level as acceptable.

Ms. Bellis: And vinyl was not?

Mr. Little: Vinyl was not. It was not considered a historically congruent material. There were not many vinyl windows in 1924.

Ms. Bellis: Were there aluminum windows in 1924?

Mr. Little: I don't know the answer to that one. We do know that at the time this district was established, some of the properties had changes done to them, some of the surrounding properties within the district. Somebody may have put aluminum siding on a house. Somebody may have put hardy plank on a house. Those particular properties were grandfathered; however when they make a change, if they decide they want to remove that aluminum siding they have to go back to a historically compliant materials. So somebody who might have had something there where you look at it and say that looks like a vinyl window, well that window may have existed prior to 1994. So the issue is on this particular property and if you go back and look at that initial hearing, November 27, there were pictures on the record that original windows were still on site at the time that staff went out and inspected.

Dr. Wubneh: How do you characterize what Mr. Mattox said with respect to contemporary design and materials? Is that new construction only?

Mr. Little: New construction. What I read to you was the exact verbatim out of that section.

Dr. Wubneh: Any other questions?

Ms. Bellis: We keep hearing about these muntins and I'm not sure they're even necessary. Could I read from the handout that we were given about them?

Mr. Little: Sure.

Ms. Bellis: This is the HPC Guidelines and it's talking about the particular house at 400 South Summit Street. It says the 4 over 1 sash windows, eyebrow vent on the windows, are all elements of the Craftsman Bungalow style. So there they identify that as the Craftsman Bungalow. That's on page 18. On page 25, second paragraph, it says Craftsman Bungalows have windows with double hung sashes, a single top and bottom light. So putting those things together it seems to me the division in the light is not necessary. You can have the single top and bottom lights. So I don't think he'd even need to think about putting those in or not, the muntins.

Mr. Little: It says most of the Craftsman Bungalows have windows with double hung sashes with the single top and bottom light and some windows have a row of several small lights across the top, which is what this one had. It was one of the some of, and that's on page 25 in Exhibit 1.

Ms. Bellis: But the sentence above that, it said Craftsman Bungalow. It's not talking about Colonial Revival Style. And on page 18 with their guidelines it says they identified that house as a Craftsman Bungalow house.

Mr. Little: Right.

Ms. Bellis: So, if it's a Craftsman Bungalow he doesn't need division in the top and bottom windows.

Mr. Little: If the original windows that were in the house were divided they should be replaced accordingly. And as it noted in there, it said most of them were single top and bottom, but some of them had the divided lights. This is one of those that had a divided light window across the top and a single on the bottom. Some of the windows that were in this house were plain, single window at the top and single window at the bottom. Others had four small ones at the top and one single at the bottom. So there was a mixture of those windows in this particular house before they were removed.

Ms. Bellis: So when it's replaced does it have to be replaced exactly as it was when it was built or does it just have to be historically accurate?

Mr. Little: Historically accurate is the first. Now if they were historically accurate and they had proposed a historically accurate replacement to the Commission, which one was never done, that would have been one thing. But this is not a historically accurate window that was approved, that was requested. The vinyl window is not historically accurate. Now, as far as the muntins go, they have offered to put that in and leave the inaccurate window as is. So you're adding insult to injury at that point. You're trying to legitimize something that's already been determined as not legitimate. So if they had used a historic accurate window that was not a 4 over 1, it would have been acceptable, but that was never done. If the windows that had been submitted met the design, the shape and the materials were not stock and otherwise historically compliant, I think that would have been approved. That's a guess because we don't know what they would have submitted because they never did. That's only a guess. But if they submitted a compliant window it would have been approved. They did submit a compliant window and it was approved.

Dr. Wubneh: Alright, any other questions for Mr. Little. Okay I guess we will here from Mr. Mattox if he wants to rebut.

Mr. Mattox: I had a logical rebuttal going for a while but we were not supposed to introduce new testimony but I've heard a whole railroad car of it including how the guidelines were adopted, which is certainly not in here. First, I would say to you that the original motion at the very first hearing, the motion was made by Rick Smiley and seconded by Greg James to deny 07-12 and to grant the applicant a one year time frame to install the original windows back in the house. An impossibility at that time. Secondly, what I am trying to present to this Board as best as I know how to do it, is in the record, I could not find it, but in the record there are statements by the Historical Commission that vinyl is not an appropriate substitute. And you have guidelines to go by and I challenge you to find in these guidelines anything that says vinyl is not an appropriate substitute. And in fact in a different section, under

section 6, which we're dealing with a different area, but it says if the proposed shutters are made of a material other than wood, the applicant shall submit details. Section 6 contemplates that you can use material other than wood, but the Commission says vinyl is not an appropriate substitute. That's the point I'm trying to get across. Not whether my man was good or bad, not whether he went down to get the permit or called somebody over the phone, although there's testimony in here that he did go down and he got a permit for the furnace from the same folks he asked about the windows. He must have given them an address, but that's irrelevant. The question I'm asking you to decide, is this Board going to make a finding as a matter of law, because you're the judge, that vinyl is not an appropriate substitute?

Mr. Shook: Mr. Mattox, I have a question. I believe that I'm hearing it right. It is the contention of the City that that issue had been determined and now has to be accepted as fact because the applicant did not appeal the first decision within a 30 day time horizon and now we have to accept that as the accepted case in present. Is that right?

Mr. Mattox: I know he made that suggestion to the Board and I do not agree with him. I think the findings of the Board were what was appealable, not what was discussed during the hearing. There are two earlier alternatives that have been approved, or somewhat approved. Nobody really knows what those windows look like but they said they'd approve them. We've come back with a third alternative simply because of the cost factor which is some twenty to forty-thousand dollars, which is not an insignificant fund. And they turned this one down because A, vinyl is not an appropriate substitute and B, these muntins, which are permanently affixed to the glass on the outside, are not appropriate because you need to go in there and cut that window into four separate panes, and then put them in. Now, that's ridiculous. That is absolutely ridiculous. We're dealing with what the public sees in a historic area, and the public cannot tell whether that window or one similar to it, has got one large pane behind it or four separate ones. And to cost somebody, take the low end, twenty thousand dollars because that window is not cut into four slats, and the workmanship to put it back is absolutely ridiculous. If that's what the Board finds, that's what the Board finds. And I'm not under oath, am I? But I don't think that's what you should be finding. I think you are trying to determine did they follow their own rules and can you find in the rules where it says vinyl is not appropriate? Can you find in these rules where it says it's got to be wood? Can you find in these rules where it says if you stick it on rather than cutting it into four squares, not squares, rectangles, that that's appropriate? And I don't think you can. Can I answer any more questions, and I'm sorry my wife tells me when I get excited I tend to lecture and I don't mean it that way.

Mr. Hutchens: A couple of comments. I don't think that the issue, quite honestly, is vinyl or not vinyl. Vinyl can be made these days to look like anything you want it to look like, from a distance or even close up. That's not the issue. The issue is does it preserve the historic design of the house? That, frankly, I have no idea. I can't tell, I don't know what it looked like before, don't know what it looks like now. That issue would be between the applicant and the Historic Commission. It is appalling to me that these two parties have never sat down and had a conversation, what would it take me to make these artificially engrossed windows design compliant. I don't think that meeting has ever taken place with a designer. It seems to me that vinyl windows could be designed and be complaint but that meeting, apparently, has never taken place, or has it Mr. Mattox?

Mr. Mattox: Not in the concept that you are talking about. There have been photographs sent back and forth but the stone wall we bump into is vinyl an acceptable substitute. There's nothing you can do to put vinyl windows in here that would be acceptable.

Mr. Hutchens: Nevertheless, it seems to me that we have two stubborn groups here, neither of which is willing to sit down and discuss these issues and that's appalling to me. And it seems a compromise is addressable.

Mr. Mattox: This Board has the authority to make us go back and meet.

Mr. Hutchens: Well aren't you a sweetheart? Thank you.

Dr. Wubneh: Any questions.

Mr. Little: In reference to what Mr. Mattox said, he challenged you to find, if you look in Exhibit 1 on page 16, item number 5, if the replacement of a window or door element is necessary, replace only the material that matches in size, scale, proportion, pane or panel division, materials and detail. That answered the question did it have to be a 4 over 1 window. Yes. It's not appropriate to replace windows and doors with stock items. I mean he's got it out here in your view. It says thermal matter by Peel. That's a stock window, go to Lowe's go to Home Depot. It's a stock window. It's not appropriate to introduce new windows if they would diminish the original design of the building or damage historical materials and features. Vinyl is not the original, it's not the same materials and if you go back, Mr. Mattox doesn't want you to remember this point, when they asked him how is this compliant with the Design Guidelines and his only answer is we want you to go outside of the Design Guidelines. Now tonight he wants to argue show us where the Commission found all these things. They asked him. He couldn't provide it. Now he says they committed error. They asked him, prior hearings, when his son was there as his agent in the July hearing to meet with the Design Review Committee. Meet with these people. The Historic Preservation Commission offered. That was never done. The Historic Preservation Commission bent over backwards to help this homeowner. The homeowner stands there and defies and says I don't care. I want to go outside the Design Guidelines. I don't want to be compliant. I don't want to go by the rules. That's the point that you have to remember. They gave him an opportunity to show how it was compliant; he said we don't want to go there. Now, he's arguing that was an error. We would submit to you that the error was made by the applicant and the applicant has to pay for that error. Thank you.

Dr. Wubneh: Yes, Mr. Holec. I think its time for intervention. Go ahead.

Mr. Holec: Well you have heard from both sides and if you have any questions I can respond to. Again, your decision is whether to affirm or reverse and they both have set out the arguments on that. You also have your time frame for making this decision and I will give you that because you may want to consider it. You have thirty-six days in order to make a decision from here. That means you don't have to make a decision tonight if you don't want to make a decision tonight. The main thing you are looking at is whether the Historic Preservation Commission followed their guidelines and made an appropriate decision based upon the record that you have in front of you. And you have the minutes from the meeting to reflect what was given to them at that meeting to support the request in the application and what their determination was and what they cited as far as the guidelines that they were going by and what their findings were as far as compliance with those guidelines. So you have that in front of you and that is what you are to review. When they make a determination, they do go by their guidelines. They have the authority to make the guidelines and they are the ones who approve it, not City Council, they are actually given that authority. So when they are making their decision they review what the guidelines are and if it's not congruent with the guidelines then it's appropriate for them to deny the application. The burden is on the applicant who is making the application to show what they propose to do is consistent with the Design Guidelines in order to get the Certificate of

Appropriateness. So, just to remind you, it's not up to you to rewrite the Design Guidelines or to rehear the case again, what you are to do is to look at what the Historic Preservation Commission did, based upon the information they had before them when they made the decision, if they made the appropriate decision.

Mr. Shook: And you said that we have 36 days?

Mr. Holec: Your rules say you have 36 days, which is designed so that you have to decide before your next meeting.

Dr. Wubneh: If we affirm we need a simple majority. Is that correct?

Mr. Holec: Simple majority would be the appropriate thing, but the way the rules are, in order to find in favor of the applicant to reverse, you would have to have a 4/5ths vote.

Dr. Wubneh: And we have to give the reason.

Mr. Holec: Yes, site exactly what the failure was.

Ms. Bellis: If we were to deny the request, then he has the opportunity to take it to Superior Court.

Mr. Holec: Correct.

Ms. Bellis: If we grant his application then he has to go back to the Historic Preservation Commission and start all over?

Mr. Holec: No, if you end up saying we are going to reverse the decision based upon an error, then you've granted the permit. You've determined it. So it doesn't go back to the Board. If you say there's a procedural error, which again there's no assertion that there's any procedural error in here, but if you said there was a procedural error – they didn't give notice; they didn't give him an opportunity to make his case that would be more appropriate to send it back. But the HPC has made its determination based upon its Design Guidelines. It's really not fruitful for you to reverse that and send it back to do something consistent with your decision.

Dr. Wubneh: So it's really procedural matters that we are looking at and all this discussion about whether the material is appropriate or not appropriate is not essential?

Mr. Holec: What you're looking at is their application of the Design Guidelines and they made their determination that is not and it's based upon what the approved guidelines are and they refer to it and what their findings of fact are.

Mr. Shook: Can I ask the applicant one more question, is that appropriate?

Dr. Wubneh: You may.

Mr. Shook: Mr. Mattox, what you are asking us as a Board to find in your favor would be to find competent material, repeat that part for me.

Mr. Holec: Basically you would find that there was an error in the decision by the Historic Preservation Commission which would be that...

Mr. Shook: He's either not in conformance...

Mr. Holec: Whether the decision was supported by competent, material, and substantial evidence, and whether the decision was in conformance with the applicable provisions of City ordinances, the Design Guidelines, and other matters and whether appropriate procedures have been followed.

Mr. Shook: That's your beef. Is that right?

Mr. Mattox: Basically, that's correct. My beef is that the Historical Commission turned it down on the grounds that vinyl is not an acceptable material and I do not think that's in their guidelines.

Mr. Holec: And what I would suggest to you all is to look at their minutes as to what their actual decision was.

Mr. Mattox: And their guidelines.

Mr. Holec: The guidelines that they based their decision on are included in the minutes, but yes, look at the guidelines and their minutes.

Mr. Ewen: Mr. Holec, I have a question. If he can pursue appeal above ours if we find for the Historic Preservation Commission, if we reverse the decision does the Historic Preservation Commission have that same option?

Mr. Holec: Yes they do. And even if you affirm the decision, another avenue for the applicant is that he can come up with another option, but its got to be substantially different than this option, but he does have the ability to come and try to find something that would be in compliance and the Design Review Committee may be helpful for something like that. I don't know if they're at a stalemate or not. Again, what your thing is to do is to look at what their decision was based upon what information they had before them.

Dr. Wubneh: Okay. I believe our option is to either affirm or reverse or if we need more time, then we just say we need more time to look at the minutes and the guidelines. It's up to the Board.

Mr. Shook: I guess operationally if we sit with more Board members than are here if we come back...

Dr. Wubneh: The same group would have to hear it.

Mr. Holec: Yes, we would want you all that were voting members to be here.

Mr. Ward: I say we vote.

Dr. Wubneh: Okay, we're ready to vote. I think I need a motion first.

Mr. Hutchens: Move to affirm.

Dr. Wubneh: There's a motion to affirm the decision of the Historic Preservation Commission. Do I have a second?

Mr. Ward: Second.

Dr. Wubneh: Second by Mr. Ward. All those in favor of affirming the decision of the Historic Preservation Commission, please indicate by saying I.

Hutchens, Ward, Shook, Harrington, Bellis and Wubneh: I.

Dr. Wubneh: Do I need a roll call? Those opposed? If there are opposed could I see a show of hands? The I's, from what I'm hearing, it wasn't...

Mr. Holec: You may ask them to raise their hands if you want Chair, it's your call.

Dr. Wubneh: Okay, let me see a show of hands, I to affirm.

Harrington, Ward, Bellis, Wubneh, Hutchens, Shook all raised their hands.

Dr. Wubneh: Do you have a count? Opposed? Abstentions, I think we must have one.

Ms. Rich raised her hand.

Dr. Wubneh: That, I believe would be 4/5ths.

Mr. Holec: Yes, the 6 votes to affirm carries the motion. Thank you.

Dr. Wubneh: The Board confirms the decision of the Historic Preservation Commission.

Mr. Mattox: I thank you.

Dr. Wubneh: Thank you Mr. Holec and thank you Mr. Little, too.

REVIEW OF THE SPECIAL USE PERMIT ISSUED TO KEVIN FAISON FOR A PUBLIC OR PRIVATE CLUB

The applicant, Kevin Faison, was issued a special use permit to operate a public or private club pursuant to Sections 9-4-78(f)(6)m. and 9-4-86(f) of the Greenville City Code. As a condition of approval the Board requested a twelve month review of the application. The use is located at 2713 E. Tenth Street. The property is further identified as being Tax Parcel Numbers 16501 & 16472.

Dr. Wubneh asked all who wished to speak for or against the case to come forward and be sworn.

Mr. Dail delineated the area on the map. He stated the property is located at the corner of Monroe and East Tenth Street and backs up to Green Springs Drive. The property is zoned CG, general commercial. The property to the

north is zoned office residential, to the south and west is general commercial and to the east is general commercial and office residential. The property is located on a major thoroughfare being, East Tenth Street.

Surrounding Development:

- North: Green Springs Park
- South: Glass Masters Services
- East: Forrest Lock & Key
- West: Shaw University Extension Campus

Description of Property:

The property fronts along 10th Street and is bounded on the west by Monroe Street and on the north by Green Springs Road. The total lot area is 0.72 acres and the total heated square feet of the building is 4,906.

Notice:

Notice of the special use permit review was mailed to the adjoining property owners on January 8, 2009. Notice of the special use permit review was published in the Daily Reflector on January 12, 2009 and January 19, 2009.

Specific Criteria for Public or Private Clubs (9-4-86(f)):

- (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 planning or his 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 planning or his 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 planning or his 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 non-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 special use permit holder as specified under subsection (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.

An order for a rehearing shall be based upon a determination by the Board of Adjustment that either (i) the use of the property is inconsistent with the approved application, (ii) the use is not in full compliance with all specific requirements set out in Title 9, Chapter 4 of the Greenville City Code, (iii) 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 (iv) the use is not compliant with any additional conditions of approval established by the Board and set out in the order granting the permit. 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)(11) 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 AM 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 right-of-ways 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 (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 planning an acknowledgement of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgement 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 said permit. All subsequent special use permit approvals for said location shall be subject to the specific criteria set forth under this subsection (f).

Original Conditions placed on the Special Use Permit by the Board:

- (1) During hours of operation outside security is mandatory.
- (2) Relocate the southeast door and make it a handicap entrance/emergency exit.
- (3) The hours of operation are limited to 7:00 pm to 2:00 am nightly.
- (4) Review of compliance will be made at 6 month intervals for 1 year.
- (5) No outdoor activities permitted.
- (6) No vehicular entrance from Monroe Street.
- (7) Dilapidated accessory structure must be removed.
- (8) No live music outside.

Police Comments:

This location has experienced a number of calls for police service. A large number of those are directed patrols conducted by officers in response to citizen complaints. The CAD log also revealed the following complaints:

26 disturbing the peace
1 unknown disturbance
2 fight
1 dispute with weapons
2 hit and run
1 traffic accident
2 trespassing
6 crowd control
1 damage to personal property
1 suspicious vehicle

Summary of Police Actions:

Five citations issued for noise ordinance violations

Proposed Additional Staff Recommended Conditions:

The special use permit will be conditionally granted for another six months. The special use permit will be reviewed again at the end of this conditional six month period.

The owner must hire uniformed private protective security officers as defined by NCGS §74C or off duty law enforcement officers and provide proof of employment within 10 calendar days of the decision of the Board of Adjustment.

The owner must have one uniformed security officer or off duty law enforcement officer in the parking lot area during all hours that the business is open and a second uniformed security officer or off duty law enforcement officer must be in the parking lot at all times during the hours of 11:00 pm to 3:00 am.

The owner must instruct and direct the required uniformed security officers or off duty officers to eliminate music or amplified sound from the motor vehicles in the lot and have the lot cleared of all vehicles and persons not later than 2:30 am each day the business is opened.

No amplified sound from the inside of the business may be audible more than 25 feet from the end of the property line.

No amplified sound from cars in the parking lot is permitted.

Staff also requested an interpretation of an original condition that was put on the permit which limited the hours of operation from 7pm to 2am.

Mr. Shook asked what original conditions were put in regarding security.

Mr. Dail read those conditions from page 5 of the revised findings of fact.

Mr. Shook asked if there had been any outside security during the hours of operation or if he knew of any violations of any of the previous conditions.

Mr. Dail stated it would depend on the interpretation of the hours of operation. He stated he did not know if outside security had been present and said the police officer may be able to answer that.

Mr. Kevin Faison, applicant, addressed the Board. He stated he did have outside security guards in place from 11 until closing. He stated he had met all the stipulations the Board had set for him. He said he felt he was being harassed by the neighborhood and that was where his calls were coming from. He said there was another apartment complex approximately the same distance from the club that has had no complaints. He said many of the calls have been unfounded. He said there were two other violations, one that occurred outside the club and one that occurred inside the club. Mr. Faison said police were called and no other serious violations have occurred in the past 9 months.

Mr. Shook asked how long the off-duty police officers had been with them.

Mr. Faison said it had been since the second week of September.

Mr. Ward asked how the additional requirements requested by the City would affect his business.

Mr. Faison said it would have an economic impact on them and he did not think they were fair. He said he already had a full security staff that he had hired on his own.

Dr. Wubneh asked if they were uniformed.

Mr. Faison said their uniform is black pants with black button-up shirts tucked in. He stated he would also like clarity on his hours of operation. He said most clubs have to stop letting people in at 2:00 and all alcoholic beverages have to be consumed by 2:30 am, per NC law. He said he would have to close the bar by 1:30 am in order to get people out by 2:00 am.

Mr. Ewen said one of the recommended changes was to have the lot clear of all vehicles and persons by 2:30 and asked if that would be a hardship.

Mr. Faison said it wasn't unrealistic, but 3:00 was definitely fair and it all depended on their interpretation of his hours of operation.

Mr. Ward asked if that was in compliance with other City bars.

Mr. Dail said most other bars do not have to be out of the building by 2.

Major Smeltzer stated the state law required them to stop selling alcohol at 2 and for it to be consumed by 2:30.

Mr. Faison said there were no other clubs that had to be closed by 2 am.

Mr. Dail stated he believed that the reason the Board put that as a requirement was because of the opposition from the surrounding neighborhood.

Mr. Faison stated he had recently been closing the bar down around 1:45 to keep people from feeling like they had been cheated and rushing them out by 2.

Dr. Wubneh asked if the statistics were excessive as compared to other public clubs.

Major Smeltzer said the ones listed below the 26 disturbing the peace were not excessive and somewhat lower than other clubs. He said the 26 disturbing the peace calls was an extremely large number of calls for service for any location. He said those calls were citizen generated and some were confirmed and some were not. He said the noise could have been gone by the time the officer got to the scene.

Mr. Shook stated there were 5 copies of violations in the package and 3 of them came from one night.

Major Smeltzer said Mr. Faison started hiring off-duty police officers shortly after the night of the 3 violations.

Mr. Ewen asked Major Smeltzer if this club seemed more troublesome than others.

Major Smeltzer said for the number of disturbing the peace calls they get and the complaints from the neighborhood it was but for the instances of fighting and violence, it's not any more trouble than any other club and less than several others.

Mr. Ewen asked if the calls had tapered off any since the off-duty police officers were hired.

Major Smeltzer said they were fairly consistent.

Mr. Faison said they had been very consistent since the last hearing. He said there were very few noise complaints prior to the first 6 month review. He stated nothing about the operation had changed during that time.

Christie McLawhorn, president of the Colonial Heights Neighborhood Association spoke in opposition to the request. She stated she lived on the opposite end of Monroe from Faces. She said many of the neighbors had come to

her complaining about the noise and she had issues with the noise herself. She said the noise was consistent nearly every Thursday, Friday and Saturday night. She said she lived 350 feet away from the club and she could hear the music over her television at night. She said according to Greenville law if you can hear music out of a car over 30 feet away, they can receive a citation for that.

Mr. Ewen asked if the music was from the club or from cars in the parking lot.

Ms. McLawhorn said she didn't go over and see but from what she heard it was both. She said there had been problems with the police not showing up until after they closed.

Mr. Shook asked if she had ever called the police and how they responded.

Ms. McLawhorn stated she had sometimes they asked who she was and asked for an address, sometimes they didn't. She said she had a neighbor that called at 2:30 in the morning when the music was bad and the police officer didn't get there until 3:30 and the music was gone at that point. She said they hear the noise from around 12 to 2 or 2:30. She said she didn't have an issue with the hours of operation if she didn't have to listen to the music.

Mr. Shook asked if she had ever called him and asked him about the situation directly.

Ms. McLawhorn said she had not.

Mr. Little stated if the Board wanted to ask additional questions of the applicant they could do that.

Dr. Wubneh asked if there was a way to deal with the noise.

Mr. Faison stated he had amp controls to help control the sound. He said he usually walks over to the neighborhood to see if he can hear the music and calls his sound tech to tell them to turn it down. He said he had made every effort to make sure the noise levels weren't too high. He said he had been to the police department on two occasions and asked them to make arrangements for him to meet with the neighborhood association and had gotten no response. He said he had made his self available to meet with them and gotten no response.

Mr. Ward asked for the City's opinion.

Mr. Dail stated the City had proposed conditions to be placed to try to make the bar more compatible with the neighborhood.

Mr. Faison stated he wanted to be treated like all of the other clubs in the area.

Dr. Wubneh stated it was a question of how much could be done without hurting the business or disturbing the peace.

Mr. Hutchens stated they knew the neighborhood had concerns from the beginning and they still do. He said they don't know that the club is the issue, but that noise is the issue. He suggested they should have a noise hotline in order to get a quicker response than calling the police.

Dr. Wubneh asked for staff's recommendation.

Mr. Dail stated staff recommended the following conditions. The special use permit will be conditionally granted for another six months. The special use permit will be reviewed again at the end of this conditional six month period. The owner must hire uniformed private protective security officers as defined by NCGS §74C or off duty law enforcement officers and provide proof of employment within 10 calendar days of the decision of the Board of Adjustment. The owner must have one uniformed security officer or off duty law enforcement officer in the parking lot area during all hours that the business is open and a second uniformed security officer or off duty law enforcement officer must be in the parking lot at all times during the hours of 11:00 pm to 3:00 am. The owner must instruct and direct the required uniformed security officers or off duty officers to eliminate music or amplified sound from the motor vehicles in the lot and have the lot cleared of all vehicles and persons not later than 2:30 am each day the business is opened. No amplified sound from the inside of the business may be audible more than 25 feet from the end of the property line. No amplified sound from cars in the parking lot is permitted. Staff also requested an interpretation of the original condition that was put on the permit which limited the hours of operation from 7pm to 2am.

Mr. Little gave further explanation as to the hours of operation.

Mr. Hutchens stated he would like for them to follow up at the next hearing on the noise hotline.

Motion was made by Mr. Hutchens, seconded by Mr. Ward, to continue the original permit with the new conditions with the modification that there would be one off-duty officer at all times and two during the hours of 11-3, only on Friday and Saturday nights.

With no further discussion, the meeting adjourned at 10:37p.m.

Respectfully Submitted

Michael R. Dail, II
Planner