

August 27, 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 X
Renee Safford-White X	Linda Rich *
Susan Bailey *	

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

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

OTHERS PRESENT: Mr. Mike Dail, Planner
Mr. Wayne Harrison, Planner
Mrs. Sarah Radcliff, Secretary
Mr. Bill Little, Assistant City Attorney
Mr. Chris Kelly, Engineering Assistant
Merrill Flood, Director of Community Development
Major Kevin Smeltzer, Greenville Police Department

MINUTES

Motion was made by Mr. Hutchens, seconded by Ms. Harrington to accept July 23, 2009 minutes as presented. Motion carried unanimously.

PUBLIC HEARING ON THE SPECIAL USE PERMIT ISSUED TO KEVIN FAISON FOR A PUBLIC OR PRIVATE CLUB (verbatim transcript)

Dr. Wubneh: Okay, I will move on to the first item on the agenda. The first item on the agenda is a public hearing on a 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. The Board of Adjustment at their July 23, 2009 meeting requested a rehearing of this special use permit. The use is located at 2713 E. Tenth Street. The property is further identified as being tax parcel numbers 16501 & 16472. I now open the public hearing on this case. All those wishing to speak for or against this case, please come forward and get sworn.

Ms. Radcliff swears in everyone wishing to speak on the case.

Dr. Wubneh: Thank you very much. Mr. Dail, would you please tell us about this application?

Mr. Dail: Sure. Good evening. Again, this is a rehearing for a special use permit that was issued to Kevin Faison for a public and private club located along Tenth Street at 2713 East Tenth Street. The red star indicates the general

location within the city's jurisdiction. The aerial photo shows a more specific location along East Tenth Street at the corner of Monroe Street. The property is zoned CG, General Commercial. It consists of two parcels. The zoning to the north is OR, Office Residential, zoning to the south, east and west is also CG, General Commercial and there's some OR to the west, also. Surrounding development includes to the north Greensprings Park. To the south is Glass Masters Services across Tenth Street. To the east is Forest Lock and Key in the same shopping center and to the west is Shaw University Extension Campus. 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, and that's according to the Pitt County Tax Assessor's Office. The Land Use Plan calls for commercial development at this location and it's in compliance with the land use plan map. I've included in your packet the specific criteria for public and private clubs. There's also numerous items, conditions, placed on the special use permit on December 7, 2007. I'm going to go over those more in just a second. Then it goes on to discuss the additional conditions in January 2009. Summary of police actions from May 9th to January 14th and we also have police comments, another summary of police actions from January 17th, 2009 to July 17th, 2009 and also a comment from the Pitt County and North Carolina ABC Commission. These were all collected as part of the club review. Since the last meeting we have created an addendum to the findings of fact and I'd like to go over that at this time. That was passed out to you tonight prior to the meeting. I'm just going to read straight from that addendum.

1. Kevin Faison received a special use permit to operate a public or private club at 2713 E. 10th Street pursuant to City Code provisions §9-4-78(f)(6)m and §9-4-86(f) on December 20, 2007.
2. The tax parcel number is 16501 and 16472. The property is zoned CG (General Commercial).
3. The applicant originally received a special use permit under the general conditions provided in the ordinance and the following special conditions that were attached to it at that time and they were as follows:
 - a. During hours of operation outside security is mandatory.
 - b. Relocate the southeast door and make it a handicap entrance/emergency exit.
 - c. The hours of operation are limited to 7:00 pm to 2:00 am nightly.
 - d. Review of compliance will be made at 6 months intervals for 1 year.
 - e. No outdoor activities permitted.
 - f. No vehicular entrance from Monroe Street.
 - g. Dilapidated accessory structure must be removed.
 - h. No live music outside.
4. The Board of Adjustment reviewed the special use permit the first time on July 24, 2008. No action was taken at that time. It was just a review.
5. During the period May 9, 2008 through January 14, 2009, the following police actions were initiated involving the applicant's place of business and you can see those listed.
6. The Board reviewed the special use permit again on January 22, 2009. During this review additional conditions were imposed on the special use permit and they included:
 - a. The special use permit will be conditionally granted for another 6 months. The special use permit will be reviewed again at the end of this conditional 6 month period and that was at the last meeting that that occurred.

- b. 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.
 - c. 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 times during the hours of 11:00 pm and 3:00 am.
 - d. 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.
 - e. No amplified sound from the inside of the business may be audible more than 25 feet from the end of the property line.
 - f. No amplified sound from cars in the parking lot is permitted.
7. During the period January 17, 2009 to July 17, 2009, we've listed the following police actions that occurred and there for your review.
 8. The Board of Adjustment held the third 6 month conditional review on July 23, 2009. The applicant failed to appear at that review. By motion and order of the Board of Adjustment, a hearing on whether the special use permit should be continued or revoked was scheduled for the regular meeting of the Board of Adjustment on August 27, 2009.
 9. Notice of the special use permit review was sent to adjoining property owners on July 9, 2009 and notice of the special use permit hearing was sent to adjoining property owners on August 13, 2009. Notice of the review was published in *The Daily Reflector* on July 13, 2009 and July 20, 2009. Notice of the hearing was published in *The Daily Reflector* on August 17, 2009 and August 24, 2009. The applicant was sent notification of his special use permit review on July 9, 2009 and notification of his hearing was sent by certified mail on August 13, 2009. We sent two letters to the two addresses that we had and one of the certified copies came back and had been signed, not by the applicant but by somebody else at the residence.
 10. During the period May 9, 2008 to July 17, 2009, 9 noise ordinance violations have been issued involving nuisance noise in and around the applicant's place of business. The applicant was issued noise citations on March 15, 2009, July 17, 2009, and July 20, 2009. Each violation resulted in a \$100.00 civil citation being issued to the applicant. The applicant was also issued a noise citation on July 8, 2006 at another location. The applicant has failed to pay the violations which were \$400.00 in total. I have an update that the applicant did pay the violations today.
 11. On July 10, 2009, the applicant received a citation for a fire code violation. The citation issued was in the amount of \$150.00, and that was paid also today.
 12. The applicant applied for use of off duty law enforcement officers from the Greenville Police Department to satisfy the conditions imposed by the Board of Adjustment. The Greenville Police Department discontinued such services in May of this year, as a result of applicant's nonpayment for services in the amount of \$5,280.00, which remains unpaid.

13. The Greenville Police Department has made a check of the premises at various times and no uniformed private protective service officer or other uniformed law enforcement officers have been present in the parking lot as required by the conditions on the special use permit.
14. The applicant has failed to comply with the general conditions of the ordinance and the following special conditions imposed by the board of adjustment:
 - a. During the hours of operation outside security is mandatory.
 - b. 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.
 - c. 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 times during the hours of 11:00 pm and 3:00 am.
 - d. 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.
 - e. No amplified sound from the inside of the business may be audible more than 25 feet from the end of the property line.

Major Smeltzer with the City of Greenville Police Department is here to elaborate on the police portion of this review and rehearing; and if you have any questions for me, I'll be happy to answer them at this time.

Dr. Wubneh: Any questions for Mr. Dail from the board? Okay. Alright, will the applicant come...

Mr. Hutchens: Major Smeltzer had some comments.

Dr. Wubneh: Oh okay, let's hear the Major's comments.

Major Smeltzer: Additionally you've been passed out an updated police report that includes calls for service since our last meeting. Most of them are directed patrols which I've indicated in the memo to you that our directive patrols are those times the officer checked by the business on routine patrols directed by their supervisor. That's the majority of them. At no time was it ever reported to me, they reported back to me everyday, there was no uniformed security as required by the special use permit. There have been five additional citations issued, if you noticed, either to the business or to cars in the parking lot since last month, since July 15th is when this report is from. Additionally, Mr. Faison has been to the Police Department at least once this week in order to hire off duty officers; however, he's been told that they will not provide officers until his bill is paid.

Dr. Wubneh: Thank you. Any questions from the board?

Mr. Shook: Do you know how much that bill is?

Major Smeltzer: \$5,000, same amount.

Mr. Shook: Same amount. Okay.

Major Smeltzer: Yes sir.

Ms. Bellis: It's not been paid?

Dr. Wubneh: It has not been paid, that's correct. Any other questions the board has for the Major? Thank you. Okay, we can move on now to the applicant. Will the applicant please come forward and tell us about your case?

Mr. Faison: Hello. First I'd like to apologize for missing the last meeting. I was in a meeting with the state as far as Medicaid goes with mental health and I didn't receive the correspondence of my hearing. I apologize for that. Okay, the first issue I would like to address, I gave Mike today a letter from Ray Harrell. He works for Impact Security. They're a licensed, insured, protective agency. They've done events at the Convention Center, Minges Coliseum, Kinston Drag Strip, Club Gas, Club Phoenix, World Entertainment. I provided that to Mr. Mike Dail and he was supposed to give you guys a copy of it. So they are, they do fall in suit with the statutes and they've been working with me since I opened in June; well, I opened May 17th. They've been working with me since June. The reason that I hired the off-duty police officers was to appease the neighborhood, not for the safety of my guests or the safety of myself because we haven't had any incidents still. When I opened until today we haven't had any serious incidents like other things that go on at night clubs in the City of Greenville. I understand that's the largest portion of this hearing, so the stipulations that was placed on me have been followed. Even when I had the Greenville Police Department there, there were nights when they also didn't come. Like someone may not have signed up to be there that night. Like there's nothing I can do if someone signs up and they don't show up; but as far as the reason they were hired was to mitigate for the noise. That was the number one issue. There's three neighborhoods around me. One neighborhood complains constantly, but the reason I hired the police is so the calls could be directed to the police instead of to myself cause at the last meeting I offered my phone number and they declined to take it. And I did it at the first meeting. I offered my phone number, they declined to take it. So, I hired the off-duty police officers so they could be communicated with. Instead of communicating with those police officers, the people in the neighborhood decided to call 911 and placed 911 calls to the police and other police would have to come that were not on duty at my facility and I have, you guys have the police records. I have some of the police records that have all the different things that showed up: loud music, the calls from Jefferson, no loud music, like it's a series of the same thing. There's over a hundred phone calls. Nine citations have been issued for them. Four of them they did give to me specifically. Two of them came in the same weekend and it was after, I assume there was some kind of big meeting at the Police Department that the Neighborhood Association had brought up, and the meetings that have been brought up with the Neighborhood Association and Greenville Police Department, I have not been contacted

for any of them and I know it's not the City of Greenville's responsibility. If they can walk over to my business and harass my staff and harass my guest, they can simply leave a note or mail me something with common courtesy to let me know that they're going to have a meeting and I would gladly show up. There's been an incident where one lady showed up at my facility, which it is a private facility for members and their guests, and she said she wasn't going to leave until she saw me. I was actually sick that night. She was telling my guests that they didn't need to be coming to my club and that she was going to have my club closed down. My staff asked her to leave, she did not leave and eventually, they said about 30-45, minutes she left. So the main point I'm trying to make is I've done what I'm supposed to. I do owe the city money. I talked to the city attorney today. That bill is going to be taken care of. He's already told me what the payment options are and I will be able to exercise those payment options. Business has been up and down, kind-of slow, but. If you guys have any questions that you'd like to ask me that would be easier because everything is on paper. The Police Department has done their job. I appreciate them coming out. They have been stopping by and there aren't any issues. When they stop by for sound, there aren't any sounds. They gave five tickets to people and the last ticket that I received as a business owner, the police officer (he didn't give me his name) but he was very frank with me. He said, "Look, I'm tired of getting these phone calls. I can't hear the music right now, but if those people keep calling somebody's got to get a ticket. They can't get a ticket for calling, so you've gotta get a ticket". And he told myself and the security guard that at the time he wrote the citation he could not hear the music and he was standing right outside my facility. On at least two occasions, the police have been called to my facility and we were not open or the music wasn't on. Once they were called at 10 o'clock, I had not even opened my doors yet and the police stopped. The music wasn't even on. Once, I believe I have it in this one, there was a call at 2:13. We were closed already. The music was off and the parking lot was almost clear so I really don't have anything else to present aside the fact they people from the neighborhood have threatened to shoot me if I don't turn the music down. I filed a police report on that. I didn't have her arrested but it was a realistic threat and it was a week after the two young men had got shot downtown. All I did was file a complaint and while I was on the phone with her we gave her a phone number to contact and she would call it and complain even when we weren't there. So, if I was breaking those rules and if I was being loud I would understand, but this neighborhood is the only neighborhood out of at least three neighborhoods in the area that have formed any kind of complaints at all in over a year. And all I'm asking from the board is to, one, is to raise these stipulations because I've been doing it anyway and my budget, its killing my budget as far as making money. I'm not making any money. All I'm doing is paying bills and paying staff and paying security because the security bills are higher than the population. I only have 150-200 people on my busiest night. It's very manageable; the parking lot is very manageable. We're usually out of there, usually the parking lot is clear by about 2:15 and when the police, the police reports are there, the police officers that work for me and the police officers that stop by will all have basically the same story. Their guests are fine, the staff is fine, they do their job and get people out of there. Anything else, these people can say what they want. Whatever evidence they're gonna produce, let it be; but I know I've done everything I can as a small business owner to stay in business and follow the rules of the city.

Dr. Wubneh: Thank you Mr. Faison. Hold on we may have a question. Any questions for the applicant from the board?

Ms. Bellis: I have one comment. Mr. Faison, you said it was to appease the neighbors that you'd hired the security people. Actually, that was a special condition imposed by the board. It says that the owner must hire uniformed private protective security officers as defined, and it gives a number, or off-duty law enforcement officers.

Mr. Faison: Yes ma'am. I hired, I already had the off-duty protective officers in place prior to. I hired the City of Greenville Police Department to appease them because I had already, I already had the other agency that worked with me anyway. So I figured that if I hired the Greenville Police Department it would make the neighbors, it would satisfy the neighbors more; but it was a either or and I already had one of them hired. Now it may be my, I assume responsibility. Maybe I did not turn in the appropriate paperwork because I wasn't, I'm not sure what I was supposed to turn in, but to have it says that the other agency worked with me, I'm not sure exactly what you need. I spoke with the owner. He said at his other hearings a letter is suffice. He couldn't be here tonight because he's at work and his staff that works with me is at work. He does go inside and outside the building. If there's nobody in the parking lot then there's nothing to police. Then you know, sometimes it's been hot so sometimes he's inside, sometimes he's outside. The police officers that were working on duty up until, I think I, and that's another thing I'd like to address. I stopped the police prior to them stopping. I stopped the police I believe it was like March 31st or April 1st, somewhere in that area because I realized that I was accumulating a debt that I may not be able to pay and because I wasn't that busy. They did whatever by May said that they could no longer work, but I had already asked them to stop so it's not like they just snatched the services away from me. It's something that I knew I was accumulating.

Dr. Wubneh: Any other questions?

Mr. Shook: Yeah, Mr. Harrell, I mean...

Dr. Wubneh: Mr. Faison.

Mr. Shook: Yeah, Mr. Faison.

Mr. Faison: Yes, sir.

Mr. Shook: Yeah, obviously Raymond Harrell, this is who the letter is from, correct?

Mr. Faison: Yes.

Mr. Shook: Okay, have you been paying him for security?

Mr. Faison: Yes, sir.

Mr. Shook: Okay, so you're paying him, but you still have a bill of \$5,200 with the police department.

Mr. Faison: Yes, sir. He's substantially less and he gets paid nightly. He gets paid nightly. The police was billing me and honestly by the time they were billing me at the end of the month I didn't have any money left after paying the rent, the light bill and my staff and operating cost.

Mr. Shook: As far as a condition for the permit, during hours of operation outside security is mandatory. That's part of the permit. What are your hours of operation?

Mr. Faison: My hours of operation, I believe they're 7pm to 2am, but we don't open until, some nights we open at 10, some nights we open at 11.

Mr. Shook: Okay. Here it says, this gentleman says that his typical hours are from 12-2:30.

Mr. Faison: Yes, sir.

Mr. Shook: and, there's also issues, I mean I don't know if you've seen this and obviously the police officer has given the report that during all these time periods they go by your business and there is no outside security that is there.

Mr. Faison: I actually had not seen that. That's new to me. And, like I said, he's not always outside, but he is on duty. There have been nights that he hasn't shown up, but I understand the requirements of the stipulations.

Mr. Shook: Again, I'll read it. "During hours of operation outside security is mandatory".

Ms. Harrington: Between 11pm and 3am.

Mr. Shook: And obviously they don't have to be there at 3am if the parking lot is empty and everybody's gone, but during hours of operation, it's mandatory.

Mr. Faison: Yes, sir. Now, you just said if the parking lot is empty they don't have to be there. No one comes to my establishment before midnight. The earliest, like if there's a special event, a birthday party of something, and I'm a hundred percent sure people are going to be there early, I make sure he's there early, but honestly I have my staff, I have my lawyer who's also one of my patrons, people don't show up to my facility until around 12, 12:30 so he'd be policing an empty parking lot. The police officers that work there, I wish at least one of them was here, they would tell you the same thing. From the time they would get there at 10:00 until 12:30, sometimes 1:00, they would do absolutely nothing. And then until beyond that point they would still do nothing because my facility doesn't encounter those kind of issues. They were, I had them there for the sound, to monitor the noise and to me that's crazy that I had to pay, I know I haven't paid the bill, but still it was \$240 a weekend for them to tell me if my music was too loud.

Mr. Shook: How much do you charge your, or how much does your DJ, how much do you pay him during a weekend on average?

Mr. Faison: Anywhere from \$60 to \$150, and my DJ's are aware that if I get a sound, or if I get a fine for being too loud, after they've been warned once, that fee goes to them. Like if I get a fine, I send it straight to my DJ and they'll, they will pay me for it, so like the sound, the sound is the problem.

Mr. Shook: I gotcha. How much revenue do you think you'd generate over a weekend if you didn't have a DJ?

Mr. Faison: Om...

Mr. Shook: Not much.

Mr. Faison: Yeah, that's one of those...

Mr. Shook: If you didn't have any music, you wouldn't have a club, right?

Mr. Faison: That's one of those iffy questions cause I have a sound system that I don't need, necessarily always have to have a DJ to play, I have, it's called a house system and we have mixed CDs cause there are nights that we operate without a DJ and we were open last night and we didn't operate with a DJ. The revenue was low but it does happen. There have been like 200 and 300 people nights when we didn't have a DJ where just house music played through the CD and amplifier system so like that's one of those things. My security guard here...

Mr. Shook: My point in asking you that question, if you didn't have the entertainment value of it, you wouldn't generate much revenue. Okay. But what we have to go on, and we've been here before, I was here and the folks that weren't here when we approved it the first time, this had a special use permit that never opened, okay. You obtained the special use permit after that. Okay, because the neighborhood had concerns, we put you on a six month review. After last meeting you said, in this room, you said "I just want to be treated like everybody else" and you were right, okay.

Mr. Faison: Yes, sir.

Mr. Shook: But the problem is when we have, you know what we go on is testimony, what we go on is evidence, and we have evidence and testimony that you're not upholding your side of the bargain when it comes to the permit, that can be an issue. You're paying a new security personnel, detail, that's not here. The City of Greenville, for whatever reason, they're not, they won't send anybody out your way because you owe them fifty-two hundred dollars and change but yet you're paying another security detail.

Mr. Faison: Yes, sir.

Mr. Shook: I mean that's not giving us a whole lot to hang on to up here. That's what I'm trying to tell you, okay. I mean if you owe the police department fifty-two hundred bucks, I mean it'd seem like you'd want to owe anybody except them.

Mr. Faison: I completely understand.

Dr. Wubneh: Just to make sure, Mr. Harrell is not here is he?

Mr. Faison: No he's not. He's at work.

Dr. Wubneh: There might be questions that the board would like to ask him, is that correct? If he's not here we would not be able to accept this letter?

Mr. Little: As the board well knows, it is a quasi-judicial and it takes testimony as a quasi-judicial board and each person that comes before the board is entitled to make a direct statement and then be cross examined on those statements. If a person is not here and provides a statement, even in an affidavit form, it is considered hearsay and not admissible for the board's consideration as to the truth of the matters that are asserted.

Dr. Wubneh: Thank you. I just wanted to make sure. Just a second, let's finish.

Mr. Gray: I'm Kevin's attorney. I'd like to be heard with respect to what he just said.

Dr. Wubneh: We'll give you an opportunity.

Mr. Gray: Okay.

Dr. Wubneh: Including his and you can make, let's finish with Mr. Faison. Any other questions?

Mr. Hutchens: I have a quick question Mr. Chairman. Just to make sure I'm not confused on a certain point, the city's report specifically says that the officers checked the business on Friday and Saturday nights for the past two weeks and there's no security in the parking lots. Did I understand you to suggest that they were checking when there was nobody in the parking lot?

Mr. Faison: That has, repeat one more time.

Mr. Hutchens: The city's report says that officers have checked the business on Friday and Saturday nights for the past two weeks. There is no security in the parking lot. Are you suggesting that they were checking at times when there was nobody in the parking lots?

Mr. Faison: That is quite possible.

Mr. Hutchens: Thank you.

Dr. Wubneh: Okay, any other questions?

Ms. Rich: Mr. Faison, is Mr. Harrell the only security guard that you have hired?

Mr. Faison: No ma'am. It's a, Impact Security is a agency. Mr. Harrell is the one that works with me the most the majority of the time. There's another agency I use when he's not available and that's Complete Lockdown. They're also licensed, secured and bonded but he was not able to make it here either. But it's a...

Ms. Rich: Do you only have one at the time?

Mr. Faison: Yes ma'am.

Ms. Rich: Because in January we added some additional conditions on your permit that states 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 to 3pm, 3am, excuse me. Those conditions were in January of this year.

Dr. Wubneh: Any other questions? Thank you, Mr. Faison. Yes, please.

Mr. Gray: I just wanted to make a comment with respect to...

Dr. Wubneh: Would you tell us your name? I know we have...

Mr. Gray: My name is attorney Clifton Gray, III., and I've practiced law in the state of North Carolina for the last five years. I maintain an office in Beaufort County in Washington, Williamston and just opened an office here in Greenville. The, I believe it was the attorney, I don't know who it was, but he said something about hearsay and everything that the board is considering from this side I would argue is hearsay as well talking about police officers went by and no one's in the parking lot and something that happened in 2006. In all fairness, hearsay, if he's not going to be able to use hearsay then they shouldn't be able to use hearsay as well if we're really gonna use the rules of evidence here. Now, I've known Mr. Faison and these members of his staff for about two years now and I've found Mr. Faison to be a very bright and very successful young person and he's got a business, he's trying to make a living doing it on the side of his regular job. He's college educated and he's trying to do something with his life. That says a lot about a young person in his twenties. Now, there are conditions that this board has placed on Mr. Faison. He has tried to comply with those things; but just as the economy has impacted even the state of California they can't make their obligations. They're sending out IOU's. Well, regular citizens are going through the same thing, too and that's the situation Mr. Faison finds himself in. So the state of California has bad credit, Ford Motor Company has bad credit and GM. If all of these people have bad credit, what do we expect of our regular citizens who are trying to, in these economic times, continue in business and continue in being productive citizens? You know, he, Mr. Faison is in his early twenties. He could be like a lot of my clients who come to see me in their twenties because they sold some drugs to get by, but this man isn't doing that. He's trying to do an honest living. Now the rules require there to be security in the parking lot. I've been to the club on several occasions. I've rented the club privately for some of my friends to have a private get together and every time that I've been there I've seen officers there.

Mr. Little: Excuse me just a minute sir. Dr. Wubneh, we need to find out if the gentleman, Mr. Gray, is presenting matters as an attorney or as a witness for Mr. Faison because what he is presenting to you at this point is considered

testimony based on his personal appearance.

Mr. Gray: This is as a witness at this point.

Mr. Little: Then he would not be able to participate as counsel if he's going to participate as a witness.

Mr. Gray: I'm not trying to participate as counsel. I'm participating as a...

Dr. Wubneh: I thought you said you were his attorney.

Mr. Gray: I am an attorney.

Dr. Wubneh: But not his attorney?

Mr. Gray: I am generally his attorney but I'm here as a witness for him tonight. I am here as a witness for him tonight. But I was just making a remark bearing on the rules of evidence. If we're going to use the rules of evidence, well why doesn't it apply to this side? That's the question so I'm just making that as a layperson but I am here as a witness tonight. As I was saying, when I go to this establishment, they've got security there and I know that they had the police there on several occasions and I know that they've had this young man from the security firm there. They're trying to comply with what you've prescribed. Now, we've got Kevin's business is one business and we've got other businesses in the City of Greenville and they do the same type of service and you've got people, I remember a case that's been all on the news everywhere. They had their officers there and still two kids got shot outside of their club. How do you prevent it? You really can't prevent considerable violence by having one person in the parking lot or one person in the inside. If somebody's gonna do something criminal, it's going to happen inevitably. It's just gonna happen, so what are we preventing. Now, Kevin's club, I've not heard too much about anything serious going on out there and I've reviewed, I've looked at some of the things that he had tonight as I was coming in and in reviewing those things most of those police reports said "no violation", "no violation", "no violation". Now, there are a couple of options here. Either you can try to help this young man out and his business and what he's trying to do and give him the opportunity to comply with what you're prescribing for him to do or you cannot try to help him, but in the way of helping him he has done things to try to comply with what you've asked him to do. He has had security there. He did have police there, and he said he had police there to appease the neighborhood, even in addition to the security firm that he had so he's bringing on even more obligations upon himself to try to comply with what the board has asked him to do. I'm just here to ask you to give him an opportunity.

Dr. Wubneh: Just, if I may interrupt you Mr. Gray. The difference, the reason why we raised Mr. Harrell's case is we have a report from Major Smeltzer, the police report and he is here. The board can ask him questions, cross examine what he is saying. On the other hand, Mr. Harrell is not here and our procedure, our guidelines states that if the individual who has written the letter is not here and the board cannot cross examine him, then that evidence cannot be admitted and that's the reason I believe why Mr. Little said what he said. It's not just a question of accepting one side and not accepting the other side, the procedure requires that we have to have the person. If the board wants to cross examine Major Smeltzer they can do it, and if you saw me I asked the question, "Does anybody have any questions?", so I just want you to understand that's why, it's not a question of saying this is credible and yours is not

credible. The procedure requires that we have to be able to cross examine him. Board members have to be able to cross examine him. Mr. Harrell is not here for us to cross examine him; therefore regardless of what he says we cannot and that's the reason. With regards to the second argument that you are saying, you know anything can happen. We are not trying to say we can stop with the unknown. This board's responsibility is to minimize, to the extent possible, so that any kind of risk would not happen. So the question of saying that the economic hardship is making it difficult for him to have a security guard is not going to be defensible because this is a responsibility to the board that there has to be. That's why it puts those conditions and those conditions have to be followed. When he feels that doesn't have the funds to recruit someone, to hire someone, then because the board requires him I think he can do a couple of things. Number 1, maybe come back to this board and request and say please do something; modify the conditions; I cannot operate under this kind of conditions, and not just ignore it. He can just say well ignoring the condition is bad and therefore I'm, because it's not acceptable, and we cannot allow that because that would be a violation as far as this board is concerned. I just want you to understand where the position of the board is. It's not really a question of trying to make it very difficult for him. The third thing and I would ask that question to him, the police officer came, there was no violation, they wrote a note and when he gave him he said somebody else called and I'm going to give you a ticket. If the police officer has done that, he had the right to pursue that matter. In other words what he is saying is the police officer came and just gave him a ticket and left. He should not be accepting that kind of thing. He has a responsibility to say such and such, he has a witness as he has said, at such and such time officer "xy" came here and he wrote, when nothing has happened and he told me this, he should pursue that and the appropriate, I'm sure, sanction would be taken on the police officer who has done that. So, I'm just a little confused in terms of his defense. Now we can talk about this forever, and I'm not trying to discourage you, but I think what is going to be of vital importance to this board is that there are conditions that are said. We wanted to understand why, what is the reason why he didn't comply with those conditions. So your testimony would help us if you can help us in terms of understanding why he cannot comply with those conditions because those conditions are legal requirements once the board has put them. I hope I am making myself clear.

Mr. Gray: Yes, certainly.

Dr. Wubneh: You know, if you can help us along that line, and I think any one of the others who are...he's a young man, I understand, a college graduate, great, he's trying hard, we understand all of that and I'm sure the board members, we understand.

Mr. Gray: Right, I was just trying to introduce the board to him from my view and my analysis of him but even though, even if you don't want to take the letter from the young man, a person who has knowledge under the rules of evidence in North Carolina, that person is allowed to testify about what he or she knows. And what Mr. Faison has testified to, I believe should be considered by this board that he has hired this firm. What I have testified to, as an officer, I'm an officer of the court, and not only a witness here, but as an officer of the court I will represent to you that I have seen this private security firm at this establishment and that I have been there on several occasions and I've seen this private security firm at this establishment in addition to the police being there when they were there. So that's what I'm offering the board as an officer of the court and also as the regular citizen who maintains a residence here in Cedar Ridge in Winterville in Pitt County, so that's what I have to offer tonight.

Dr. Wubneh: Any questions for Mr. Gray? Yes, Ms. Bellis?

Ms. Bellis: I think one of the conditions was that he had to have to security people at any time and Mr. Faison just said himself a few minutes ago that he frequently, or at least he has had only one. So that is not in compliance with the conditions.

Mr. Gray: I think what that is Ms. Bellis is Mr. Faison trying to be frank and honest with this board.

Ms. Bellis: Well we hope so because he's sworn.

Mr. Gray: Right. On all occasions he might not have had two people on all occasions but that he has tried to comply. He also said to you that there have been instances where he had the police there and they were scheduled to be there and they didn't show up. Well, is that a violation? Technically it is. But is he trying to keep in with the spirit of what you asked him to do? I think that's the bigger question and I think that he is trying to keep in the spirit of what you asked him to do. I think that if he's given the opportunity he'll definitely try to make sure that he has at least two people there at all times that he's open.

Dr. Wubneh: Alright, any other question for Mr. Gray? Yes, Mr. Faison?

Mr. Faison: Ms. Bellis just posed a question about the two security guards. Even when the Greenville Police Department, when I signed up for the police officers to have off-duty police officers, they were still only sending one police officer and I had my off-duty person working alongside them which made two. And I'll be completely honest, when I left our last meeting, I was under the impression that it was one off-duty police officer or one person hired cause I've had issues at my office where I receive my mail. I never actually read the conditions of the ordinance. I'm not even gonna try to hide it. I didn't read the conditions. I took what was said here that I needed an off-duty police officer. I went, I got one. They sent a off-duty police officer during those times from January to March or April. They sent one off-duty officer and that one off-duty officer managed. I understand that the board says one and two and our maxi's just now becoming aware of that and that's my fault because I didn't receive that paperwork. The internal office issues I've had at that facility are being taken care of but there is lots of mail that I did not receive from the city but that's not the city's problem, that's my personal problem.

Mr. Shook: Mr. Faison, how much did the Greenville Police Department charge you per hour?

Mr. Faison: \$30 per hour and a minimum of four hours per night.

Mr. Shook: Okay.

Mr. Faison: And you know that's about \$240 a weekend and like I said, in fairness if just one of the officers was there, there were plenty of nights where business was slow and I closed down at 12:00 and the officer still gets paid their whole time because they can't work partial shifts.

Mr. Ewen: Excuse me, you said you closed down at 12:00 but I thought your clientele doesn't get there until 12 or 12:30.

Mr. Faison: Exactly. Nights we were not busy. We had a very large slump like between January and mid-March, early April where we were closing around 12, 12:30, sometimes 1:00. The police officers that were on duty during

those times, they'd be more than happy to tell you they went home early those nights because we weren't in business. My staff was, it was myself operating as a bartender and my security staff operating with one person and the Greenville Police Department sitting outside in an empty parking lot. And with Greenville PD, I've never questioned their integrity. The reason I didn't fight the ticket that you talked about, I don't question Greenville PD. They protect me just like they protect everyone else. When I do have an issue, there's been two issues where I did have to call Greenville PD. They responded immediately. One when I was threatened and two, I had an incident where I didn't think my security and the off-duty's were going to be able to move the crowd out because it was just uncontrollable. The police came, they separated and in a matter of minutes it was over. I trust the police department to do their duty but the neighborhood association on several times has questioned the integrity of the police department which has forced their hand to be stricter on me. Rules are in place and they should be followed but the neighborhood association was questioning the integrity of the officers, questioning the integrity of the department telling them he's just turned the music down because you guys are telling him to turn the music down before he ever gets back. They come up with all kinds of crazy excuses as to why I'm not getting in trouble for the sound and as the point of safety, the conditions were placed for the security, they weren't placed as a point of safety. Safety has never been an issue since May 17th of 2008 when Faces opened up. Safety has never been an issue. The conditions were put in place to satisfy the neighborhood association. They weren't for the protection of my clients, they weren't for the protection of myself as a private business owner of a nightclub, they were put in place for the people behind me and they don't attend my facility. Like the things that they were scared of, people driving through the neighborhood, drinking and driving, that hasn't happened. People being shot, that hasn't happened. Nothing that they have been afraid of has happened to them. I'm the only person that's been put in a negative situation.

Mr. Shook: Well one of the hurdles that you have to get over to get a special use permit is Nuisance or Hazard and it's the avoidance of nuisance is the reason why security was added okay. But that's 44 nights, by your own admission, that the police department worked and you didn't pay and they cut it off. We have nothing really to go on since then. We can ask the officer to come up and testify about the police reports because you know we have somebody saying we have outside security but then we've got the times when they drive by and there is no outside security...

Mr. Faison: Yes sir.

Mr. Shook: There's just nothing for us, you know you're not giving me a whole lot to hang my hat on.

Mr. Faison: Okay. Within those 44 nights, the police reports are there for those 44 nights, correct? Out of those 44 nights there was, on multiple occasions, calls made that were saying, there were complaint calls made. The calls were put in and the officer on duty would call back and say the noise is not that loud. You must hear a car passing by or on at least two occasions a separate police vehicle was sent that was not the off-duty police officer that was on my staff and they were also in agreeance that there was no noise and no violence or nothing outside.

Mr. Shook: How many days have you been open since the end of May?

Mr. Faison: Since the end of May...

Mr. Shook: I mean, you know, a round-about figure. I mean you haven't been closed for any long periods of time.

Mr. Faison: We're closed two to three nights a week. We are usually open like Wednesday through Sunday or Saturday.

Mr. Shook: That's when they cut services off. So we basically have June, July and most of August.

Mr. Faison: And they were working Friday and Saturday night.

Mr. Shook: And you can feel free to ask them this. This is reports going back from June, July and August where they have directed patrol, which means by testimony they send somebody out there to report back to see what they saw.

Mr. Faison: Yes sir.

Mr. Shook: There's two pages of this directed patrol and officer Smeltzer testified that not once did they come back and say they saw anybody working outside.

Mr. Faison: Okay, are they just driving by on the road, because they're not coming in to my parking lot; that I'm sure of. If they were coming into my parking lot they would speak to me or one of my security guards that is at the threshold of the door. Even when Ray wasn't there, he's at the threshold of the door, where, if you count that out, he's not secured and bonded so that doesn't fall within the stipulations, but he would still be outside. So they were not stopping to them, so I'm not trying to take up your time. I'm stating that the stipulations were placed as an appeasement to a neighborhood association, not for safety.

Mr. Shook: Well, again, whatever they were stated for, they were an agreed condition and we have hurdles that we have to get over.

Mr. Faison: Yes sir.

Mr. Shook: Okay and when the first one is "during hours of operation outside security is mandatory" and you can't show that outside security has been there...

Mr. Faison: Shortly after the conditions were placed, I went to the office and I asked Mike, what can I do about this, this is not realistic. And Mike was like, you have to follow the stipulations. So someone mentioned the appeal process or coming backing and saying financially I can't do this, those options were not placed out there for me. They're not, they weren't there.

Mr. Shook: Well this is one instance that could have played into your benefit, that we weren't treating you like everyone else. In other words, you're the only night club right now under a six month mandatory review and you had the opportunity to tell us that. I mean, if we would have known that, you can tell us that during the review process. You know we've had two of those reviews since then so this is the fourth time you've been in front of this board testifying in this manner.

Mr. Faison: Yes sir. And each time there's stipulations that no one else has to follow, but I do my best. I'll sit down

and let the other side speak.

Mr. Shook: Sure. They all have to follow stipulations in that they all have conditions to their specific permit, okay. That's what we're, one of the stipulations to your specific permit was a six month review.

Ms. Bailey: I have a question. You keep saying about the noise, that the police officers were showing up and there was no noise, this gentleman you had that was doing the security, he even mentions about having to tell people to turn their music down, so...

Mr. Faison: When I say "no noise", I can't mean "absolutely no noise" but we do everything we can to mitigate the noise. The whole reason the police department was hired, outside of what the city has placed on me, the reason I brought the police department in, and along with them and along with myself and my security guards, is to tell the people in the parking lot not to play their music loud because that's where a lot of my troubles come in. The citations, like I said, there was nine. I've been open a year and half and there's been nine citations. Four of them were granted to me, two were on the weekend after they had the meeting, the other two have been sporadic. The other five were all given in one weekend and they were all given to people that were not even always my guest, that had came through the parking lot, being there at the end of the night and I'm telling them to leave. They're playing loud music and the police swoop down. One officer, I forget her last name, Ms. Keisha's what I call her, she came in and she wrote two tickets in one night and she said these cars are the reason why you're getting in trouble and she wrote them tickets and I haven't had any problems since then. Since those five tickets were written to those people, I haven't had any problem with noise. You said the police have been by the last two weeks. They've been looking for outside security.

Mr. Shook: Two months.

Mr. Faison: Okay, they've been looking for outside security. Yes. Now, when they're looking for outside security have they seen any problems? No.

Mr. Gray: Ms. Bailey I would say what you just said actually proves that he's outside doing what he's suppose to do outside and, you know, having him outside would be pointless if he's not telling people "hey, your music is too loud, you need to turn that down, you need to turn that off". He's actually outside doing what he's supposed to be doing outside, so...

Ms. Bailey: But there hasn't been any security lately, for the past two months.

Mr. Gray: That's something I believe one of the officers said, but I can pretty much guarantee that that's not a result of that officer going out there and seeing for himself and there's no other officer before the board to testify that they went out and saw for themselves. That would be hearsay as well.

Mr. Little: I remind the board again, and I hate to interrupt Mr. Gray, but Mr. Gray is not acting in a role of an advisor. He presented his testimony with opportunity to cross examine and at this point he's not been recalled by the board as a witness.

Mr. Gray: I was never called down by the board. I've been standing up here as a witness the whole time and I'm

continuing to speak as a witness.

Mr. Little: Your testimony was through sir.

Mr. Gray: No, it wasn't done.

Mr. Little: You've now allowed Mr. Faison to come and talk again and now you're coming back and talking again.

Mr. Gray: I don't think this is proper. I've never been in any board that functions like this. I'm on the hospital board, I'm on several boards.

Dr. Wubneh: I think we need to first let me finish with Mr. Faison. Does anyone have any questions for Mr. Faison? Alright, now Mr. Gray, let's specifically, what I was trying to impress earlier was that there is a case that says certain conditions are violated. What we would like to do, since your testimony addresses that specific case, because we know Mr. Faison. He has been before this board several times. In fact, I know him as a student, too. We know him, but the problem with the board is that there are these conditions that are violated so do you have any testimony that would help with respect as to why those violations occurred or were they wrong. That's basically what would help us.

Mr. Gray: I've already presented to respect to that.

Dr. Wubneh: Any other question that the board may have? Thank you. Anyone else here to speak in favor of the applicant? Alright, I'll move on then to anyone opposed to this application? I don't know if we want to hear everybody. If it's the same item probably one or two people could speak but let's see. Yes, please state your name for the record.

Ms. Ferris: My name is Sharon Ferris. I'm a representative for the neighborhood association this evening. I have a letter that I would like to present to you if I may.

Mr. Hutchens: Would you step up to the microphone please?

Ms. Ferris: Oh, I have a letter that I would like to present to you if I may.

Mr. Little: Again, as a reminder to all the board, this is simply a notation whether it's a letter or as an unsworn testimony or whatever it may not be considered to address the facts...

Ms. Ferris: I wrote this letter myself.

Mr. Little: ...unless the individual has personal matters that they are going to address. Otherwise it may not be considered by the board.

Ms. Ferris: I also have a little slide show to present to you as well while I am reading this. Greenville City Board of Adjustment, this letter is written on behalf of the membership of the Colonial Heights Neighborhood Association, of

which I am a member, in regards to a special use permit granted with conditions to Mr. Kevin Faison for location at 2713 East Tenth Street. The Colonial Heights neighborhood is located across Tenth Street from Mr. Faison's establishment. We are pleading that something be done about the level of noise emanating from this night club at all hours of the night. Surely this plea is familiar as we have expressed concern to this Board of Adjustment since the inception of this night club over a year ago. Someone from our neighborhood has been present at every six month review Mr. Faison has had and it seems as though our concerns are falling on deaf ears. As a family oriented neighborhood, we did not settle in a location pursuant to heavy traffic and loud music, as may be expected closer to downtown. We settled in a quaint, quiet neighborhood where we could live without the house being shaken by the bass of a club or the vehicles in its parking lot until 2, 3 or even 4 o'clock in the morning Wednesday through Sunday nights. Many of our residents are families or retired individuals. When children and elderly cannot sleep in the residences over 500 feet away from this club, there is a problem. We have called the police and called them again. Major Smeltzer can attest to the fact that as recently as Monday, July 20th, the club was issued a formal citation for loud music for which a letter from this city's attorney was also written to Mr. Faison. The club was also cited on Sunday, July 26th. In addition, litter has also become a consistent problem. Greenville City Ordinances require the proprietor of an establishment to ensure his property and the adjacent public area is to be clear of debris by 7am of each morning following a period of operation. Trash on this property persists throughout the day and can be seen from the road, quite an embarrassment for those of us who work hard to keep up the appearance of our neighborhood. We desire to be neighborly and coexist peacefully, even profitably, with this business as we have been with all businesses in this location prior to Mr. Faison; however, the obvious disregard of this establishment to follow the restrictions put in place by this Board of Adjustment and the City of Greenville cannot be allowed. At your Board of Adjustment meeting on December 20th of 2007 eight restrictions were placed on this establishment and several more have been added on July 24th 2008 and January 22nd 2009; and I'm sure they are in your records. Please indulge me for a moment as to those which this club is in violation. The hours of operation are limited to 7pm to 2am nightly. During hours of operation, outside security is mandatory. The owner must hire uniformed, private protective security officers as defined by North Carolina General Statutes Chapter 74C or off-duty law enforcement officers. 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 11pm to 3am. The lot must be cleared of all vehicles and persons no later than 2:30am each day the business is open. No amplified sound from inside 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. As recently as Friday, July 17th, four noise citations were issued in one night. The establishment was issued a citation for noise and three vehicles in the parking lot were also issued citations for amplified sound. This same night the officers noted that the club did not let out until 2:15am, there was still approximately 50 cars in the lot at 2:20am and that the crowd did not clear until around 2:45am. When members of the neighborhood have walked across the street to address the business, no uniformed security was observed in the parking lot where two are required. Major Smeltzer noted in a memo that this club discontinued hiring security in May and that when officers have checked, no security was in the parking lot and the club has not replaced Greenville Police with security guards in accordance with the provisions of NC General Statues Chapter 74C. These provisions include uniforms and a professional licensure. Those listed here are recent infractions of your restrictions and we have observed them to be consistent. Given the recent violence in our city at other night clubs, we are also very concerned about the blatant disregard of the conditions placed on this location by this board specifically in regards to noise level and lack of security. To summarize, our neighborhood would like to coexist with this establishment, however there is no way that we can do so when the club disregards the requirements placed upon them by this

board and the City of Greenville. Our neighbors are entitled to a good night sleep, a safe and clean neighborhood. That is all we are asking for. Thank you for your kind consideration. On behalf of the Colonial Heights Neighborhood Association, Sharon P. Ferris, Secretary. Enclosures from MySpace, both, well several, Mr. Faison's personal Face's website and several others that he's associated with. The ads that are included in your packets show doors opening at 6pm, which is outside of his 7 to 2, and party until 3am, which is also outside of his 7pm to 2am.

Dr. Wubneh: Alright.

Ms. Ferris: On a personal note, we as a neighborhood do not wish to attack Mr. Faison personally. As I said in our letter, we would like to get along with this business. We don't have an issue with the business itself, just the conditions that they are violating.

Dr. Wubneh: Questions that the board has for Ms. Ferris? Mr. Little, are you saying that this is just an individual's testimony and not on behalf of the neighborhood?

Mr. Little: You can take it, if it's her individual statement that she is reading then you can take it simply as her individual statement. The slide show, it's indicated that that's stuff that she's taken. That becomes part of the record so whatever this loop is on it's part of the record and it stays with the record of the hearing tonight.

Dr. Wubneh: But she's not speaking on behalf of the neighborhood?

Mr. Little: As long as it's not on behalf of the association, she's speaking in behalf of herself, otherwise it cannot be accepted.

Dr. Wubneh: Understand that condition.

Ms. Ferris: Okay.

Dr. Wubneh: There are conditions that are put on us; it's not just on the applicant.

Ms. Ferris: I understand.

Dr. Wubneh: Any questions for Ms. Ferris? Alright, thank you.

Ms. Ferris: Thank you.

Mr. Little: Mr. Faison may have a question.

Dr. Wubneh: Yea, do you have any questions that you'd like...

Mr. Faison: Well, actually, I just want a copy of the letter and then also...

Dr. Wubneh: I want to see you. You need to come to the mic.

Mr. Faison: I'm sorry. Actually, I just want a copy of the letter and the slide show presentation that she presented may be accurate at certain times but like I said my business is open from 7 to 2. We have issues with keeping the parking lot clean because of DCI Biologicals guests. We clean up; I personally clean up every night, the parking lot myself along with this man along with my other staff. We pick up beer bottles, we pick up liquor that people have tried to sneak in, we have to pick up condom wrappers sometimes. So I clean my parking lot personally. Sometimes we may miss some things. If there was a problem with trash, my next door neighbor, Mike, would definitely let you guys know because that's his big issue. So, like the pictures, when I see the parking lot like that, I don't like it either. She showed the whole dug up. We were having an electrical issue and the beer bottle was in the hole and we had to take it out. That's a good presentation, but that presentation's not done during my business hours of operation.

Dr. Wubneh: Were you given any citation for litter?

Mr. Faison: No sir.

Dr. Wubneh: It's just noise.

Mr. Faison: Just noise.

Dr. Wubneh: And the lack of police officer outside and inside the premise. That's the only ones.

Mr. Faison: Yes sir. I haven't received a citation for lack of police officer but that is the issue and the other one was the few noise complaints. As far as the flyers go, some of those flyers have been posted without my approval. The promoters have since been dealt with because they were using the issues as 3:00, people who come will stay 'til 3, but I know that's outside of my realm of operation so those are people being people.

Dr. Wubneh: Thank you Ms. Ferris. Anyone else in favor of this application?

Mr. Hutchens: Opposed.

Dr. Wubneh: I'm sorry?

Mr. Hutchens: You said in favor. It's opposed.

Dr. Wubneh: Oh, opposed now. I'm sorry. I've got to be very careful, opposed to this application. Please come forward.

Ms. Winch: My name is Dana Winch and I live, Glassmasters is directly across from Faces and I live directly behind Glassmasters. Ever since last September, I have, myself and my husband, have had to call the police for noise problems. For myself personally, it started around 9:00. I haven't heard anything or felt any noise particularly before 9pm, but it does last until 2 and many times after 2. I know sometimes, more during the week, their hours are not as long, but once you get to Friday, Saturday and Sunday nights, it's definitely open until 2am. Myself personally I have called numerous times. One of the first times that I spoke to one of the police officers when I called. I've never

called 911. I call the non-emergency police number. I've called and I was told by the police officer to go over to Faces myself and address the issue. I declined to do that because myself personally at 1:00 in the morning in my pajamas, I'm not about to go over to a night club and try to address the issue. That's why I call the police. I called and complained. I am one of those people who have called a hundred times and complained. My husband and I have both called on the same night. I have been laying in bed not able to sleep, because not just the sound, but the thumping, the vibration, the rattling. That neighborhood pretty much was built in the fifties and my house has not been completely updated since that time so I have windows that are vibrating because of that. Now that is not a car. I have called to complain about vehicles that have parked as overflow in the Glassmasters parking lot. I don't know whether or not that is approved but if people are going there and there's no space in that parking lot, they're going to park somewhere, not on the street, so they have parked there because Glassmasters is closed. I have called because that is literally, like, in my backyard. I've walked out on my patio, looked over my fence and seen people congregating there. I have called about that. That was not specifically about the club. That was noise because of them attending the club, but that is not the majority of the reasons that I have called. I know that the complaint has been referred to as the noise is coming from vehicles. A vehicle is not going to be thumping from 9 until 2 in the morning. That would not be allowed. I know that something would be done if that was just the case. I have been in my own driveway and been able to hear from around the corner the songs that were playing. I have been able to identify what the songs were at times, just because I happen to be familiar with the song that was playing. It was an Usher song. I could hear it. I could've danced to it in my driveway. It was that loud. It was not from a vehicle, it was from the club and I am an eye witness. I have called, as I said, numerous times. I know the neighborhood association has asked me many times being that I am the closest resident being directly across from the club, you know if I would come and speak and I wanted to do that and I'm glad that I'm here to do that but I am moving from that location because my husband and I many times have not been able to sleep. I work in an office and I have to get my sleep. I may be young but I cannot be kept awake every single night. You know because it used to be Friday and Saturday. Then it was Friday, Saturday and Sunday. Then they extended to Thursday, Friday, Saturday and Sunday and then occasionally Wednesdays so, unless there was a holiday or something, then there was an additional day. I hear it every single night that they're open. I don't call every single night because, frankly, I get tired of having to call. I mean, if I have to monitor and call every night, it becomes a nuisance to me. But I realize that living in that neighborhood, I have the right to not be accosted by noise pollution every single night and that is what the problem is. Not with what the business is. I've never had a problem with any other business, not because of what they were, but because of noise, I've never had a noise complaint. I've lived there for over six years. I've never had a problem until starting last September. It's not a problem with the business; it's a problem with the noise. If that was to discontinue, they can stay open 24 hours a day. It wouldn't bother me at all. That is not my personal issue. My issue is the sound. And as I said I am moving out into the country because I'm just tired of it. It's been over a year and my husband works out of town so we both have to get up early for a commute and I cannot function on just four hours of sleep or five hours of sleep a night.

Dr. Wubneh: Thank you.

Mr. Hutchens: Mr. Chairman I have a question.

Dr. Wubneh: Yes.

Mr. Hutchens: Are you testifying to an absolute certainty that this noise was coming from this club?

Ms. Winch: I have walked around the corner myself, to the corner, and been able to see that the sound was not coming from a car in the parking lot. I can testify to that. As I said, every single time, I know that sometimes it was vehicles but it is also the responsibility of the off-duty officer who is supposed to be on the lot to make sure that that's not happening. Now, if it was happening because of the car or because of the building, it was still happening and it shouldn't be. And it's not just me. It's my neighbors adjacent to me, across the street. I just felt that certainly as being the one who lives directly across the street I have the closest proximity as far as eye witness. My husband couldn't be here tonight because he was working or he could testify as an eye witness also. But, it's really an issue. It's not something that's only on Saturday night. No. It's three to four nights out of the week and that's not fair to, as she mentioned, to the neighborhood of older people and families with children. I've noticed a lot of people on our road have moved and I have asked people. The neighbors who used to live on the trailer that's on the corner there is also on our property and they complained about it. They complained about the noise and they moved because they were renting. See, my family owns that property. I live there. I mean I'm not gonna live there now but I have been living there. Wasn't renting it. You know, it's my property. Now we're going to sell the property. I don't think that Colonial Heights wants everybody who's been there and been perfectly in that neighborhood to think that because of sound pollution that they don't wanna be there anymore. That's a shame because these are violations that just don't need to be persisting.

Dr. Wubneh: Thank you, any other question from anyone else? Thank you.

Ms. Winch: Thank you.

Dr. Wubneh: Anyone else? Yes, Mr. Faison, thank you. Do you have any more questions?

Mr. Faison: Yes ma'am. I'm sorry. As to the point of 9:00, it's rare that we ever open at 9:00. I usually don't even get there, or my manager, until about 9:45 to 10, 10:15. Like I said, our people, our crowd doesn't even come until around 12 so...

Ms. Winch speaking from audience (inaudible)

Dr. Wubneh: I think you need to come to the mic please.

Mr. Faison: At 9pm there's nobody there to play music and my DJ's, none of my DJ's start playing until 11:00, so whatever she's hearing at 9:00, that's not us.

Ms. Winch: As early as 9:00. I'm not saying everyday at 9:00 I have to call the police. I do not normally call the police until it is after the time that I am trying to sleep because if they stopped making noise that traveled across the road, maybe it's not just the sound, the vibrations. Sound may not travel whereas bass does. Everybody knows that when a car goes by and its thumping from a sound system that you can feel it, even if you can't hear the music. I can feel it laying in my bed with my fingers in my ears, the window unit air conditioner running in my bedroom and an ambient sound machine making wave noises and I can feel the bass. That's not just sound. That is a legitimate offense and it is emanating from that club because it is consistent. And it is a reason that up until they close, whatever the hour is because it may vary, I'm sure in fact it does vary. I do not call every thirty minutes until 2:00

and then stop calling. I have had to call at 3:00 in the morning because of noise and the police officer has told me they're supposed to be closed and I said well, I realize they're supposed to be closed but I can look out my blinds and see the people over there. So, just because they're closed it doesn't mean everybody comes running out the doors.

Dr. Wubneh: Alright, do you have any other questions you'd like to ask?

Mr. Faison: The vicinity of where she lives at is generally where I go to check the sound and I call on my phone back to the club and I'll say, "you know what, it might be a little too loud". I've never once seen anyone in their neighborhood outside. I've gone over there myself. I've sent staff over there and this is at 11:30, 12, 1...

Ms. Winch: I don't stand out in the yard all night long.

Mr. Faison: You just said you do. You said you go outside...

Ms. Winch: No I said I can look out my window and I have walked outside. I'm not going to stand outside from 9 until 2:00 in the morning so that somebody can see me looking and being offended. No. That's silly.

Mr. Faison: So why not take my phone number, like I've offered plenty of times and just call me instead of calling the police department. Once again we're back to common courtesy and respect. I have the common courtesy and respect enough to go over there and try to mitigate my sound. Once again she said nothing about safety, because we're a safe facility.

Ms. Winch: That wasn't the issue. It was the sound violation.

Mr. Faison: And as far as the sound, she can't say where the sound's coming from cause she hasn't been to my facility. She's called the police...

Ms. Winch: I just said that I have been out there and I could tell that it wasn't coming from a vehicle and I did admit that at times it was coming from a vehicle in your parking lot. It varies.

Mr. Faison: Yes, and we have car clubs that have competition cars that we regularly have to ask to calm down. I have one member that if he comes, his sound system is louder than any club in Greenville and it's in his vehicle.

Ms. Winch: I don't call to complain because of a five minute problem...

Mr. Hutchens: Could I interrupt please?

Mr. Faison: Yes sir.

Mr. Hutchens: This lady has specified that she specifically walked around the corner of her house and heard these noises coming specifically from your establishment. Are you saying she's incorrect?

Mr. Faison: I'm saying there's a possibility she's incorrect because if I wasn't there along with her, all I'm, if it was me personally, me and you together could stand and if you can hear it that's fine. I can go over there myself but if I don't have anyone from your neighborhood, if I don't have you there, then there is no way that you can agree on what you feel is loud or not loud enough. If a car drives by and you hear it...

Ms. Winch: If my windows are vibrating for hours consistently, that's not a car.

Mr. Faison: Ma'am, I seriously doubt that your windows are vibrating. I've called Detective Ken Laws who's in charge of their district (inaudible) and what he advised his officers to do is if there are sound problems to go inside of the person's house to see if that is real. That's what he's advised his officers to do. That's Detective Ken Laws. He's in charge of their district.

Ms. Winch: And I have given the police officers my name and my address and no one has come over to say at 2:00 in the morning, "Can I come in?" I have said that that was the case but they have not said in order to validate that we need to come in and feel the vibration for ourselves. That was never stated to me. If that was the case, then yes, I probably would have let the police officer come in and touch my window and feel it vibrating or go into my bedroom and be able to tell that while I am laying there you can feel the vibration.

Mr. Faison: So would it be unfair of me to ask that tonight, tonight we open, to come over and hear what you hear and feel what you feel. Would that be unfair?

Dr. Wubneh: Alright Mr. Faison, I think that's something that the two of you can work out. Right now, with respect to what she's saying, are you saying that what she is saying is wrong? I mean, that her testimony's not...

Mr. Faison: I'm not going to stand here and call this lady a liar, I don't know her. I'm saying it's not happening every night, it may happen...

Ms. Winch: I didn't say it happened every night.

Mr. Faison: Sound levels change, we all know that. So what she has experienced probably has happened on occasion.

Dr. Wubneh: Alright, thank you. Any other question that anyone... I think we're still continuing on this testimony on anyone opposed to this application and I think, yes.

Ms. Nichols: I'm Girty Nichols and I live on Jefferson Drive and for the last month and a half the noise has gotten unbearable. From about 11:30 to 3:00 in the morning, five to six nights a week, the music goes on, boom, boom, boom and the house even vibrates until you feel if you hear it one more time you'll have a screaming fit. And we start calling the police and they would send an officer to quieten it down and as soon as they leave, it's right back up again. We call them again and it's the same thing all over again, night after night because sometimes it never stops all night. I would call the police four or five times in the night and would over the 12:00 midnight, it starts about 12:00 midnight and one night I went over there at 12:00 midnight and my husband said what are you going to do. I said I want to see, this has been about a month and a half ago, I want to see if there's anybody on that lot that's

supposed to be keeping it quiet because he sure isn't doing his job. When I got on the lot, there was nobody out there. I went in. Some gentleman, this lady sitting at the end, it's a breezeway, glass breezeway, she was sitting right there and I said, "Where is the manager?" "He's not here." Well two guys come up, they didn't identify themselves. I said, "Where is the security guard that's supposed to be on this lot keeping it quiet?" And one guy sat up, he didn't have any uniform, any identification, he said "I am". Well, another guy comes up and he says "What's the problem?" and I said "Your music is too loud". So I couldn't even talk to him, they went to the back first and turned it down. And so I went inside, let me see my notes, I went inside and after he turned it down he said "Come on out here. Now is it too loud?" I said, "No it's not too loud now because you just turned it down." I said, "If you keep it like this, it won't be any problem". He said "Here is my card, I'll give you my phone number and if it's too loud you can give me a call." The other guy said, and I don't know who they were, somebody told me later one was the bouncer and the other was the manager. So, what did I do with it, do you see that card...

Mr. Ewen: Is that it?

Ms. Harrington: Is that it?

Dr. Wubneh: It's clipped on the front, is that it?

Ms. Harrington: On the front of your notebook.

Dr. Wubneh: On the cover.

Ms. Nichols: Oh yea. So he, the other said, "Now, here's my card. If it's too loud when you get home, give me a call". And so it went on a night or so and it was down, I never heard nothing until about the third night it was up. Boom-boom, boom-boom, boom-boom because you're not hearing the music, you're just hearing that boom. And I gave him a call; he said "Alright ma'am, I'll turn it down". It went on another night. Here it was up again. It was quiet that next night. Here it was up again. I called him again and he said, "It's not too loud and I'm not going to turn it down", so I proceeded to call the police. And it has kept me up for so many nights and my husband has been on the lot several nights. We're too old for this and just listen, just to see if he did maybe get a security guard. There's nobody on there. And I've been so deprived of my sleep and I've been so stressed out that I was scared I might have a heart attack because I'd go, we used to go to bed after the 11:00 news, and it would start about then and last until 3:00 in the morning. I've called the police four or five times a night for the last month and a half and more than that cause it's been about three months since we were down here before and I was so desperate that I called Pat Dunn, the mayor. I called Mildred Council. I called Larry Spell. I called the police chief but I never could get him. I called anybody that I could that could help me because it was making me sick because when we were down here the last time that we had the meeting and it was postponed, I talked to Major Smeltzer and he promised me it would be quiet. And so the next day, Friday night, that was Thursday night. That Friday night I had Sergeant Bowen, also his cell card and his cell number. It started up again about 12:00 so I called him on his cell phone. I said "Meet me in my driveway. I want you to hear what I am hearing". So he did. I'm standing in the driveway, 1:00 in the morning in my night gown. He stood out there a few minutes and he said "I'll go take care of it". He went over to the club and he took care of it. Well it stayed quiet then for maybe three or four nights. I had to call another officer because Bowen is not on duty every night. He came. I said "Come to my house". He came to my house. He said, "I'll go over there and park in the lot" because Major Smeltzer promised me he would keep it quiet until it closed and I guess that's

what he did. I called him another night, they did the same thing. They come to my house and I talked to him. Another night, same thing. So, I don't know how much more ya'll can be convinced.

Dr. Wubneh: Okay, I don't want to interrupt you, but basically what you are saying is that you tried to call the police and you also tried to call the individual manager.

Ms. Nichols: See I would call the police. Before this Major Smeltzer got in it and they would say, "Well ma'am, we'll send somebody out". They'd send somebody out. Time they got gone good it was right back up again. I couldn't even get to sleep.

Dr. Wubneh: I'm more interested in the fact that he gave you his card and you called the manager but he didn't do anything about it.

Ms. Nichols: Yes, that's the card. But I don't know who it was, I guess it was. But I called him one time and they turned it down. The next time they said they were not going to turn it down.

Dr. Wubneh: Okay, that all I just wanted to know. Any questions that the board may have?

Ms. Nichols: And frankly it shivers me. I just can't imagine having to put up with it the rest of my life.

Dr. Wubneh: They may have a question. Hold on before you sit. Anyone have any questions?

Ms. Rich: Whose name is on that card? (Ms. Nichols takes the card to Ms. Rich)

Dr. Wubneh: We can ask Mr. Faison about it.

Ms. Nichols: See the Faces isn't even on it. The first time I called they answered. The next time they wouldn't answer because they recognized the number so I called from my cell phone and they didn't recognize that.

Dr. Wubneh: Yea, we'll ask the person, whoever this person is.

Ms. Rich: There's no name on there.

Dr. Wubneh: Okay, we can't ask. Okay, anyone who has any questions? Alright, Mr. Faison, she's saying that she called. You were talking about giving your card and what she's basically saying is that somebody give her a card, and there is a card, by the way this card doesn't have a name.

Mr. Faison: I have not seen that card.

Dr. Wubneh: Well, this is the first time I've seen it, too. She tried to call, that person responded, she came and obviously he responded and he turned it down, came up again. So it's just on and off, I mean you heard it. I don't have to tell you.

Mr. Faison: Yes sir, I heard her testimony. I have an idea whose card that is. I'm the only person from my club with

a card that's endorsed by Faces Lounge, so whoever gave her that card, it wasn't permission, I believe that's one of our local resident photographers cards and he was doing it to help but that is not my card and he's an independent person. But that's also the number and that's, the voice that I just heard, I can't be sure, but that's also the same lady that threatened to shoot me.

Ms. Nichols is talking from audience (inaudible).

Dr. Wubneh: Let him finish ma'am. I'll give you a chance. Let him finish.

Mr. Faison: She, I have the police report here that I filed. I don't know why you guys don't have these but I have about ten different reports since July 3rd where police have come because of noise violations from the neighborhood and they all say, "Loud noise reported. Go by club and advise them if they will turn the music down". Then when the officer gets there, this is officer Kelly Mazingo; Narrative: "10-19 with employee. No violation upon arrival. They were advised". That is on 8-7-09. This one is on 7-18. "Will Harrell. 30 cars in the parking lot. While stationary in the parking lot across the street I observed patrons leaving peacefully and could not hear any music. Security personnel were present in the parking lot". This came directly from the police department.

Dr. Wubneh: Yea, what I want you to do is respond to her question cause I know that as much as you are saying that there are two pages that say, you know, exactly the opposite. And what would help us as a board is, I remember you saying that you wanted to be a very good neighbor. You wanted to give them your card, respond. She went. She took that initiative, came there, got the card and basically somebody turned it off and then started all over again.

Mr. Faison: That's the weekend that I was sick. That wasn't my card. Like I said, the person that gave her the card did make me aware of it and we did honor, we respected her request when she called. She had called at times when we hadn't even started playing our DJ yet and like the night that she called and she threatened me, we had just turned the sound system on. The phone almost literally rang at the same time we turned the sound system on so the sound probably hadn't even had enough time to travel and I told her that I was going to turn it down but she didn't give me enough time. I can't turn the music down and talk to her at the same time. On the inside of the club of course it's louder. So that night I told her "I'm sending someone back there to turn the music down" and she's starts talking. I said "Ma'am, they're on their way back there, how's that?" She said, "It's still too loud". "How's that?" "It's still too loud". I said "ma'am, just give him a minute and we'll get it". "Well, you need to hurry it up". Blah, blah, blah and then that's when she made her threat. But, the purpose of this, the phone number, after I left at the last meeting, I tried to give them and Mr. Kevin Osley my card, they didn't take it. Now, the night she goes over there and I'm sick, she didn't talk to me. She talked to someone that's technically not even one of my staff. She talked to a photographer but I still accepted the phone calls and she would call and I would still ask my staff and my DJ to appease her so I can't be any better a neighbor. I already modified my sound system and took two speakers out that were there before to reduce the sound. There's nothing else I can do as far as the sound goes.

Dr. Wubneh: Okay, thank you. Any more questions? Alright, I would like to, really, those who would like to speak against this case, I would like to hear only if there are, I'm not trying to stop anyone from speaking, but if there are any new items that you are going to tell us. Because we have heard about the noise and we have heard about some of these problems so if you are addressing this board, I would like you to speak in terms of the new information that you have, or new facts that you have because there is no purpose in repeating what we have already heard.

Dr. Sprague: Hi, I am going to speak about the sound but I have something new to tell you.

Dr. Wubneh: Please state your name.

Dr. Sprague: My name is Dr. Mark Sprague. I am an associate professor of physics at ECU. I have a PhD in acoustical physics and I specialize in sound propagation. I'm a subject matter expert at noise and low frequency sound. So I just wanted to tell you a little bit about the nature of low frequency sound. Humans can hear sound from about 20 hertz to about 16,000 hertz. When we talk about low frequency sound we're talking about the very low stuff. It's below 100 hertz. Now those frequencies, as the frequency gets lower, our ear's sensitivity cuts out. It gets less and less and less but that doesn't mean that we cannot sense that sound. Our bodies feel the vibrations. We've all, and we've heard people talk tonight about the thumping that you feel when you are exposed to low frequency sound. That's exactly what happens. There's been extensive research on the effects of all types of sound on people and the research consistently shows that low frequency sound is more annoying to people than sound of other frequencies because it basically shakes their bodies, shakes their walls, shakes their windows. It's even more complicated because when you look at how sound propagates or moves away from a source, low frequency sound travels farther than higher frequencies. You can, higher frequencies are more directional. They're filtered out by trees, by other obstacles, by walls and stuff like that. The farther you go away, you get to a certain point where you can only hear the thumping, or feel the thumping so that's consistent with what's been said here. Furthermore, nobody has said anything about sound level meters, but the sound level meter that is used by the Greenville Police when they check for noise ordinance violations is not sensitive to the lowest of the frequencies of sound so it's entirely conceivable if an officer had used a sound level meter, the sound being produced could be within the noise ordinance, but it could still be extremely annoying. That research that I talked about before said that people who are exposed to low frequency sound for long periods of time suffer from a number of problems including high blood pressure, including excessive stress, lack of sleep and psychological problems.

Mr. Hutchens: Mr. Chairman could I ask a question please?

Dr. Wubneh: Yes.

Mr. Hutchens: Could you testify that you've monitored the sounds of this club and that such low frequency sounds are coming from this club?

Dr. Sprague: No, I have not monitored the sounds from the club.

Mr. Hutchens: Thank you.

Dr. Sprague: So my testimony is only about the nature of sound.

Dr. Wubneh: Do you live in that area? In the Colonial Heights neighborhood?

Dr. Sprague: No I do not.

Dr. Wubneh: Alright, any questions anyone? Thank you.

Mr. Faison: Thank you. I was aware of all those things that you made reference to. The noise has been tested by noise meters but we went over that at the last meeting. The noise meters have never registered at a level, but, like I said, it may or may not affect someone, but thank you for your presentation. I realize he doesn't live in the neighborhood, he's not associated with it so he's non-biased which I appreciate. Thank you.

Dr. Wubneh: Thank you. Okay, again as I said, if you have new facts I think it would help because we have heard the rest of the noise and other matters.

Ms. Smith: Okay. My name is Judy Smith. I live in Belhaven but I'm a property owner in Colonial Heights. I have two rental properties and as of now they're both gonna be vacant. Well, one is completely vacant and the other will be vacant shortly. And due to the fact that I cannot assume my responsibility as a landlord, I cannot provide their right to the quiet enjoyment of their property because of the level of noise. My husband wrote the City of Greenville starting last October and he got letters back. He wrote everybody that he could think of over here that maybe could be of help but nothing happened with that. But anyway, so I looked up the legal definition for nuisance, and bear with me please, it says that if it is a nuisance it interferes with another person's quiet and peaceful or pleasant use of his or her property. It may be the basis for a lawsuit. I'm not saying that I'm thinking about that, but I'm saying that is how serious of a thing that it could be and to appease it, it said the nuisance could be asked to stop or to limit the activity or even to close it down in the evenings, which is when this all happens. Then another thing that it brought out, he was talking about his economic hardships, well, you know, where is the rights of one person versus the rights of another person. And I'm not just speaking of me. I'm speaking of, it goes for blocks into that neighborhood. Well, I came over to spend the night in one of my properties. I have ringing in my ears, that started last March, but anyway, so I have that as a noise all the time so it has to be quite a bit to bother me. In fact I go to sleep with my iPod in my ears just to drown out the ringing. So I was curious about this. So I'm staying in the bedroom with an air conditioning unit and I can still – I was taking a class over here so it was convenient for me to stay in Greenville for two weeks. So during that period of time, it's like to me I thought about when I was a child and the parade would come and the bands would go by and you feel it in your body but even when they're blocks away you still feel it, the thump, you know. And that's what, I couldn't hear any words or anything like that, but it was that thump, thump, thump, thump. Just almost repetitive just about like a heartbeat and so I can only sympathize with the older people and I have some friends that are older people that live in that neighborhood and I can, the quality of life, I can imagine you'd be at your wits end, you know. Because the quality of life, when there is no way to enjoy the rights that you have to a quiet enjoyment of your property.

Dr. Wubneh: Okay, thank you. Any questions the board has for Ms. Smith? Yes, Ms. Bellis?

Ms. Bellis: The night that you stayed in the neighborhood, what is the location of that house?

Ms. Smith: 2701 Edwards Street.

Mr. Ewen: And, can I ask a question? I thought you were going one way that you haven't been able to rent your houses because of the noise.

Ms. Smith: Right, they're vacant now.

Mr. Ewen: Did they leave specifically because of that, your tenant?

Ms. Smith: Well, as far as the one that was on the end of the street, he had complained repeatedly about it and nothing was done and they did move, but you know there was other issues too but it was one of the big things. But the people that stay in this house - that is the sole reason that they're moving because they can't function on a job and I can't rent it so I'm going to be selling all the properties and it's just been a chain reaction in Colonial Heights. If you ride through, for-sale, for-sale, for-sale. I don't know where one person's rights, you know. He's one person but there is a whole bunch that is being affected by this and if you had to live - most people go home for peace and tranquility at the end of a day. But if you're gonna be subjected to all hours of the night, and I was studying up until 1:00 some nights so I could hear it. It was a consistent thing, you know, and I thought to myself, "Wow, I would hate to live here". Since I own the property I thought, this might be kinda hard to sell so it's gonna be a real economic hardship for me.

Mr. Faison: The lady stated that the people are moving. She also said it's not just because of the sound. Every since I've been in Greenville, and I've actually looked at homes in that area, there's always been for-sale signs over in that area. There are a couple more now. I drove down Jefferson today. There's at least four for-sale signs, but two blocks over there's four more for-sale signs. One, you guys asked for something else besides noise. No one has presented anything but noise. The scientist even said that may or may not be an issue; it's going to affect everybody differently. I am one person. I have over 500 members that enjoy my facility weekly and enjoy the safe, secure type of entertainment I provide to them. So I'm not just one person. I'm representing 500 people. I'm representing people that can't go downtown Greenville so they come to my facility. I'm representing students that don't feel safe so they come to my facility. I'm representing doctors and lawyers that can't go and hang out at the same places their patrons go because I do have one of the nicer facilities in Greenville, period. You can ask the representatives from the Greenville Convention Center. When they don't work, they come to my facility, so I'm not just representing myself. Second, when I was initially granted the permit a year and some change ago, Section G. is Nuisance or Hazard. This section is subject to the type of facility or type of business that you run. You guys granted me the special use permit as a public/private club knowing that there would be DJ amplified sound. So, with that being stated, when I was provided the permit, and I understand that I have to do what I have to do to be a good neighbor, and I have, that that was part of, you guys knew the sound system was going to be there and there was a possibility that noise could be loud because every public/private club has a sound system and nothing has changed. The only thing I've changed since I opened up is I changed my sound system but I removed speakers for these people back here. Like I said, there's two other neighborhoods that no one has come from. If it was such a problem, why aren't the apartment complexes complaining. Why aren't the other houses down farther on the street complaining? I wasn't going to say this, but on Wednesday night, there are two churches that have Bible Study catty-corner to me. The one right across the street on Monroe Street then directly across the street on Tenth Street. They have Bible Study every Wednesday night. They have people there. They have music. They've come over to my facility and passed out flyers to come to Bible Study and not once complained about sound. So that's what they're complaining about. There's numerous other houses and Neighborhood Associations within the same circle that you guys put on your map. Why is this the only one with a problem?

Ms. Bellis: You said your business generally starts at 11, 12:00 at night. They don't have Bible Study at that hour do they?

Mr. Faison: Bible Study usually ends around 10:00.

Ms. Bellis: So there wouldn't be a conflict there. They wouldn't be hearing the amplified noise because it wouldn't exist at that time.

Mr. Faison: Correct. But like the lady says at 9:00 if she's hearing noise, maybe it's coming from Bible Study, because my system is not on.

Mr. Hutchens: Mr. Faison, if I could ask one more question please. Is your testimony that not enough people are complaining?

Mr. Faison: I don't wanna get myself in trouble with that one, but I'm saying all these people have legitimate complaints. They own their homes and they work hard to obtain their properties, yes. But, they are a subset of the City of Greenville. That's what I'm saying. They are a small section of our microcosm of Greenville. Just that little, whatever it is, I think it's a 300 yard radius, they're only part of that and they're the only people within that radius that are making complaints.

Ms. Bailey: I thought earlier you said you had about 250 members.

Mr. Faison: No, I said on a regular night, we have about 150 to 200 people that attend.

Ms. Bailey: How many does the city permit you to have? What's the fire code?

Mr. Faison: Fire code is 320 but I have over 500 members that are signed up either online or through the University or what have you. We are just as entitled to operate a business and go out and have fun within the rules and I don't know, like you guys asked for something else. For the last hour, they have gave you nothing else.

Ms. Bellis: I've got another question. One of the conditions here is that amplified sound from inside the building may not be audible more than 25 feet from the end of the property line. 25 feet would be just across 10th Street, wouldn't it? So no one in Colonial Heights should hear any sound at any time, should they?

Mr. Faison: No amplified sound heard, but scientifically that's impossible. That can't happen. They may not hear the sound. They feel the vibration. They're complaining about all of it. That gentleman is the scientist. I can't adhere to that. When I go across the street, if I hear or feel anything, I make an adjustment. The stipulations placed weren't placed by a scientist that conducts sound. It was a round-about estimate by us as average human beings so to that I can't give a scientific answer ma'am.

Ms. Smith: He said that he was not just one person, that he was representing all of the people there. They come there for entertainment and its okay. You can put up with noise for a period of time when you're being entertained, but when you wanna go to sleep, when you need your rest, when you need to enjoy what the law is supposed to provide – the right to quiet enjoyment of your property – when that is being robbed of you, how can he fairly say that people who are being entertained or people who are even in a church group or whatever, for a short period of time, how does that even be on the level with what these homeowners are subjected to night after night after night, when they

are trying to enjoy their home. And we've been renting this property since 1973 through all kinds of businesses up and down there and we have never had to deal with any complaint from any renter.

Dr. Wubneh: Anyone else here? And, again, as I said, unless this is new information you are giving us.

Ms. Smith: Hello, I'll be very brief. My name is Enid Smith. I live at 2802 Jefferson Drive and I am well beyond the 500 feet that his establishment is placed at and I have called because of noise. I am well beyond what the limits have been set and I have gone out and walked to see where it was coming from before I called. I should not have to get up and walk two streets over to stand on the corner to call the police because the music is loud. That's entirely too far. That's basically all I wanted to say to give you an idea of exactly how far this music is traveling.

Dr. Wubneh: Thank you. Mr. Faison is there anything you want to say to that?

Mr. Faison: I just want to remind the board of one thing. When we had our first meeting and you granted me the six months, between my very first meeting and that first six months, there were no sound complaints period and my sound system was definitely louder. The people that are complaining, and I brought this up at the last six month hearing, when I didn't break any rules or do anything to get closed down, their loophole was to file noise complaints. It was told to them by someone, I'm not sure exactly who it was told to them by or I'm not a liberty to reveal that information. Since then, that is the only legitimate complaint that they've been able to make and it's not legitimate because I open – from Wednesday to Sunday I'm open and they don't even know that. I'm just telling them that now so I'm opening myself up to more scrutiny. I'm open from Wednesday to Sunday. 10:00 is when we unlock the doors, 11:00 is when the DJ starts playing his music. At 1:50 the DJ turns the music down and makes sure he's playing slow music. At 2:00, no later than 2:10, there's absolutely no sound coming out of my building because I will unplug the system. I have not paid DJ's because this is my livelihood. This is what I do for a living and I also get up at 9:00 in the morning and work a 7, 10 sometimes 12 hour day and then still come back to operate my business. So I understand what it is to be up. And yes, that is my choice as an individual. I don't know what they go through, I don't know why they can't sleep. Maybe they're light sleepers, but the only thing, from the time I opened up in May to my first hearing, there was nothing they could say, except be mad. After that someone told them the only way you can close them down is the nuisance ordinance. So that's what they've been banking on. She spoke about her rights. I have rights too and one of my rights is free enterprise and the pursuit of making a living the way I see fit. I'm not trying to infringe on their rights. Like I said, tonight and any other night I will go over there and I will meet with them. In a year and a half they have declined every single opportunity. I've been to the Police Department and asked them to set up a meeting. They don't want to meet with me one on one because they don't want me there. It's not the fact that I'm black. It's not the fact that they don't like the kind of thing I provide. They just don't want that type of business in their neighborhood and they're gonna do whatever they can to curtail it. It's not fair to me or whoever else would go to the property next because the same thing could happen if it's leased as a public/private club. You guys were put on the board. You know as well as I do, no more public/private clubs special use permits are gonna be issued. That's what that's gonna be, so whether it's me or someone next, the complaint is going to be there but they just don't want this there and nuisance noise is the only thing that they had to hold onto. I thank you guys for listening. I'm sorry I didn't show up the first time. I've spoke with the city to get my indebtedness taken care of. I was unaware of certain things because of the mail issue but I'm willing to comply and to compromise with the board and with the patrons in fairness. I just need to know who I can speak to because I feel alienated. I don't know where to go or who to talk to because in the streets or in the gossip, people are out to get me. People are out to

close me down. For the lack of violence at my facility, we've had more police officers visit us than anywhere. People got shot inside of BW3's and there's no extra police officers there. We know the situation that occurred downtown and I'm not going to try to belittle that. They did add police officers there but it's not during the night that the young men suffered their tragedy. These police officers that I'm being forced to pay for and that the city that is being called upon night after night to handle what this called nuisance noise is just wasting – I pay taxes in Greenville, too – it's wasting taxpayers' money, it's wasting the police officers' time and it's not solving anything. When I had the police, they made phone calls. When I didn't have the police, they made phone calls. There's no difference. I was wrong with not following through with all the stipulations. I've never been a man to run away from my shortcomings so if we can come up with something realistic to satisfy both parties, I'm more than willing to do that.

Dr. Wubneh: Okay, let's see what the board says. Anyone have any questions for Mr. Faison or for anyone else?

Mr. Ewen: I actually have a question for Major Smeltzer. How does Faces compare to other private clubs in Greenville?

Major Smeltzer: In what respect?

Mr. Ewen: In respect to number of calls and...

Major Smeltzer: There are a significant number of loud noise calls. He's very accurate with respect to violent activity. There are very few fights or anything that you experience at other clubs in respect to anything other than noise.

Mr. Ewen: So noise is just the chief thing you're called on.

Major Smeltzer: That is correct. There have been some issues but I would say less so than most other clubs.

Mr. Shook: Major Smeltzer, how long do you let a club go past due on billing or any entity go past due on billing before you cut off police services?

Major Smeltzer: Generally I'm contacted by the Financial Services Department, which is what happened in this one, and was told how much they were in arrears and I went to the off-duty coordinator immediately and she called the officers that were scheduled, it was like middle of the week, that were scheduled for the weekend and canceled them and I sent somebody by to tell the club.

Mr. Shook: Okay. Are you aware of any night where an officer was scheduled to be on sight and did not show up for work?

Major Smeltzer: I'm not aware of any but I'm sure it happened. More than likely, it's a volunteer activity, more than likely nobody volunteered for a particular night, more so than somebody was scheduled and didn't show up, but I'm sure that did happen probably once or twice.

Mr. Faison: There's only been two times that were called because of violence and it really wasn't violence. One,

there was an incident inside the club that we called the police about and the second one was helping clear the parking lot and that was a night where we had off-duty police officers, we had regular staff, it was just a lot of people there. So it's only been two incidents in regards to safety and we've been open for a year and a half so safety at my club is grade A.

Dr. Wubneh: Any other questions that the board has? And I believe as I said if you have new facts to tell us, anyone who is opposed to this application can come forward but if it's essentially the same items that we have talked about then there's no use in going over this matter over and over again. Okay, I think if there is no one opposed to this application I am going to close the public hearing but before I close the public hearing, what's the staff recommendation? Do we get the staff recommendation? No, we don't have any position. Okay, I'm going to close the public hearing and call for board discussion. Please keep your mics open for any discussions.

Ms. Bellis: Do we actually go through these Findings of Fact?

Dr. Wubneh: Yes, the criteria. Yes it will be done when we do the Findings of Facts and at that point you can vote if you want. You will be voting twice, the Findings of Fact and whether to approve the application. So we'll have that opportunity. At this point what we are going to do is discussion with the board. If there are any particular issues that you would like to talk about or consider or otherwise we will move on to reading the criteria. Any discussion from the board? Yes, Mr. Little.

Mr. Little: Dr. Wubneh, as far as the criteria goes, this is a review whether or not to rescind or continue the permit and if it's continued whether it stays under the same conditions or new conditions. So the criteria are read, however the vote is not to approve or disapprove but it's going to be to continue or to rescind or to continue with additional conditions or with the same conditions. So there's basically three options. You can read the findings and criteria that you normally would read on a new application because whatever vote you take has to be based upon those criteria.

Dr. Wubneh: Did I understand you correct? There's three conditions. Continue with the same conditions, modified conditions...

Mr. Little: You can actually do a fourth. You can continue it with no conditions other than the general conditions that are required by the ordinance. You can continue it with the same conditions. You can continue it with new or additional conditions and the last is to vote to rescind the special use permit.

Dr. Wubneh: So we have to vote on each one?

Mr. Little: You will not have to vote on each one. Any of the members can make a motion on any one of those four. You can vote on all four or you can vote based upon your findings, a motion could be made on any one of those four.

Mr. Hutchens: Mr. Little would you repeat those four circumstances please?

Mr. Little: You can vote to approve it without any conditions, except for the general conditions that are under the ordinance. You can vote to continue the special use permit with the conditions that are in effect now, you can vote to continue it with new or additional conditions, or the last is you can move to vote to rescind the special use permit.

Mr. Hutchens: Thank you.

Dr. Wubneh: But we'll still have the Findings of Fact when we go through the criteria?

Mr. Little: (inaudible) the Findings of Fact.

Dr. Wubneh: Before I go to read the criteria is there any discussion as far as the board goes with respect to any possibilities of these conditions? Do you want to modify the conditions or do you want to maintain the same conditions, I mean any four of these possibilities are there. Are there any discussions that the board has with respect to entertaining any one of these four conditions?

Ms. Harrington: Well it appears to me from all the neighborhood comments that there is a nuisance factor from the neighborhood adjacent to the club. In addition to that I think it is a detriment to public welfare because we have had witnesses say that it's affecting the use of their property with the ability of them to rent the properties.

Ms. Bellis: Your question about did we need any additional conditions – I think the conditions stated that we've had are adequate but the question is, are they being met.

Dr. Wubneh: Yea, I think what he meant by additional conditions is no more DJ's or just soft music, or whatever. Alright, if there are no discussions, I will read the criteria. Members of the board, this is a special use permit hearing and I will now read the criteria by reference. If you want to vote, you can stop me. Otherwise by your silence you are voting in favor of the applicant. First criteria is conditions and specifications.

Mr. Shook: Vote.

Dr. Wubneh: Okay. We have a vote. Let's start at that end. Yes?

Mr. Ewen: Some of the additional conditions, especially the extra security have not been met so clearly that's out of compliance.

Dr. Wubneh: So are you voting no.

Mr. Ewen: I'm voting no.

Ms. Harrington: No, the same that the conditions haven't been met.

Ms. Bellis: No, the additional specific criteria not being met.

Dr. Wubneh: Okay, I vote yes.

Mr. Hutchens: I vote no. The testimony of the applicant himself satisfies that the condition has not been met.

Mr. Shook: I vote no. Specifically, the first criteria was during hours of operation outside security is mandatory. The

permittee has not fulfilled his obligation to maintain outside security during hours of operation.

Ms. Rich: I vote no based on the same condition that has not been met with outside security.

Dr. Wubneh: Six nays. Comprehensive Plan. Health and Safety. Detriment to Public Welfare.

Ms. Harrington: Vote.

Dr. Wubneh: Vote on detriment to public welfare. Mr. Ewen.

Mr. Ewen: I'll have to vote no. There's been enough complaints that seems to be a detriment to the neighborhood.

Ms. Harrington: I would vote no due to the loss of revenue for some of the individuals.

Ms. Bellis: I vote no, it's detrimental to adjacent properties.

Dr. Wubneh: I vote no, too, because there is a revenue loss.

Mr. Hutchens: I vote no also based on the testimony we've heard from neighbors.

Mr. Shook: No, same as the others stated.

Ms. Rich: No, same as the others stated.

Dr. Wubneh: Okay, seven nays. Existing use detrimental. Injury to properties or improvements. Nuisance or hazard.

Ms. Bellis: Let's go back to that, let me read that. I'd have to vote.

Mr. Ewen: Yea, for the same reasons.

Dr. Wubneh: Injury to properties or improvements? Okay. There is a vote on that. Mr. Ewen?

Mr. Ewen: No. We've heard the rentals and such.

Ms. Harrington: No, same.

Ms. Bellis: No. It says by value or otherwise it would harm adjacent and abutting properties.

Dr. Wubneh: Yea, I would vote no because somebody's property value is impacted.

Mr. Hutchens: I vote yes. No testimony has been given about injury to property.

Mr. Shook: I vote yes.

Ms. Rich: I vote no based on the injury to other properties.

Dr. Wubneh: Alright there are 5 nays and 2 yes. I hope you are keeping track. Nuisance or hazard.

Ms. Harrington: Vote.

Mr. Ewen: Vote.

Dr. Wubneh: Okay Mr. Ewen?

Mr. Ewen: I vote no for number 5 under g, the noise and litter.

Dr. Wubneh: Okay. Ms. Harrington?

Ms. Harrington: I would vote no due to the noise and litter.

Ms. Bellis: I vote no for 2 and 5. 2 is the intensity of the proposed use in relation to the intensity of adjoining and area uses and then number 5, the noise is a result of the operation.

Dr. Wubneh: I vote no because of number 5 which basically deals with noise and the impact it's having with adjacent properties.

Mr. Hutchens: No based on number 5.

Mr. Shook: No based on number 5 and the specific testimony of Ms. Dana Winch, the resident that lives closest to the facility.

Ms. Rich: I vote no based on number 5.

Dr. Wubneh: Okay, we have I believe 7 nays. Okay. I cannot, check me on that there is a negative vote on "A" Conditions and Specifications. There are 5 nay votes on Detriment to Public Welfare.

Several board members: 7 on detriment.

Dr. Wubneh: Okay. Injuries to properties and improvements, 5, and Nuisance or hazard, 7 nos. Okay. I now entertain a motion to decide on this matter on any one of those possibilities that were stated by Mr. Little. Of course, given the fact that, we still have to vote on that, is that correct?

Mr. Little: You still have to make a motion to approve your findings of fact, the initial findings of fact that were provided during the staff, these are from the reports and the additional facts that you have found based upon your vote. There has to now be a motion to approve your findings of fact.

Dr. Wubneh: Okay, let me have a motion to approve the finding of facts.

Mr. Shook: Motion.

Mr. Hutchens: Second.

Dr. Wubneh: Motion by Mr. Shook and second Mr. Hutchens. All those in favor of approving the finding of facts please indicate by saying I.

All: I.

Dr. Wubneh: Opposed? Okay now we go to another motion to consider the matter under those four possibilities, given what we have on the criteria.

Mr. Hutchens: Move to rescind.

Dr. Wubneh: Okay, motion to rescind by Mr. Hutchens.

Ms. Harrington: Second.

Dr. Wubneh: Second by Ms. Harrington. All those in favor of rescinding the application please indicate by saying I.

All: I.

Dr. Wubneh: Opposed? Okay, I'm sorry your application is rescinded. You have thirty days from the time you get the note to take the matter to superior court.

Mr. Little: Under the rules as provided by the council and by the ordinance and by the statutes, once the ordinance is signed and served on Mr. Faison he has thirty days in which he can take his appellant rights.

Dr. Wubneh: Thank you. Would the board want to continue or do you need a break? Alright, I think I'm hearing a break. Yes, Mr. Faison?

Mr. Faison: What do I have to do to appeal the process?

Dr. Wubneh: I think Mr. Little might be able to help you.

Mr. Little: The letter will provide the information. The order will provide the information to you.

Dr. Wubneh: You'll get an order from the city. Take that order and you'll have thirty days from the order to appeal the case.

Mr. Faison: Okay, thank you.

Dr. Wubneh: Now, let's take about five minutes break.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY A NEW HORIZON, INC.

The applicant, A New Horizon, Inc., 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 1990-G Allen Road. The property is further identified as being tax parcel number 53000.

Ms. Radcliff swore in all those wishing to speak for or against the case.

Mr. Dail delineated the area on the map. He said the property is zoned OR (Office Residential) & IU (Unoffensive Industry). He said the applicant's unit resides on the OR portion of the property. The property is located along a major thoroughfare being Allen Road.

Surrounding Zoning:

North: RA20 (Residential Agricultural)

South: IU (Unoffensive Industry)

East: OR (Office Residential) & RA20 (Residential Agricultural)

West: IU (Unoffensive Industry)

Surrounding Development:

North: Prices Mobile Home Park

South: Psychotherapeutic Services and Lincare

East: Vacant

West: Glass Doctor, Wesco Security, Children's Home Society and Enrichment Center

Description of Property:

The property contains two 10,600 square foot commercial buildings with multiple units and has approximately 400 feet of frontage along Allen Road with a total lot area of 5.44 acres. The applicants unit contains approximately 2,400 square feet of floor area.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on August 13, 2009. Notice of the public hearing was published in the Daily Reflector on August 17, 2009 and August 24, 2009.

Staff Recommend 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.

Mr. Eric Foushee, applicant, spoke on behalf of his application.

Leigh Bradley, an adjacent property owner, asked if the children had to have mental health problems in order to be placed in his facility. She said she wasn't speaking for or against the application, she just had a question.

Mr. Foushee said that was somewhat correct.

No one spoke in opposition to the request.

Dr. Wubneh asked for staff's recommendation.

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

Dr. Wubneh read the finding of facts.

Motion was made by Mr. Shook, seconded by Ms. Rich to approve the Findings of Fact. Motion carried unanimously.

Motion was made by Mr. Shook, seconded by Mr. Ewen to approve the petition with the conditions. 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 A SPECIAL USE PERMIT BY BRIDGES OF HOPE, INC

The applicant, Bridges of Hope, Inc., 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 214-A E. Arlington Boulevard. The property is further identified as being tax parcel number 27392.

Ms. Radcliff swore in all those wishing to speak for or against the case.

Mr. Dail delineated the area on the map. He said the property is zoned CG, General Commercial. The property is located along a major thoroughfare being East Arlington Boulevard and close to two other major thoroughfares being SE Greenville Blvd. and Evans Street.

Surrounding Zoning:

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

Surrounding Development:

North: Century 21, Aztec Tanning, S&R Computers and Bicycle Post
South: Watch Doctor, Total Care Salon, Richard Cox, CPA and Gail Travis CPA
East: Max Fitness Center and Bank of America Home Loans
West: Brick City, Young Chefs Academy and Byrd Agency

Description of Property:

The property contains a 7,265 square foot commercial building with three units and has approximately 100 feet of frontage along Arlington Boulevard with a total lot area of 0.57 acres. The applicants unit contains approximately 2,000 square feet of floor area.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on August 13, 2009. Notice of the public hearing was published in the Daily Reflector on August 17, 2009 and August 24, 2009.

Staff Recommend 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.

Ms. Amanda Hopkins, applicant, spoke on behalf of her application.

No one spoke in opposition to the request.

Dr. Wubneh asked for staff's recommendation.

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

Dr. Wubneh read the finding of facts.

Motion was made by Ms. Bellis, seconded by Mr. Hutchens to approve the Findings of Fact. Motion carried unanimously.

Motion was made by Ms. Harrington, seconded by Mr. Shook to approve the petition with the conditions. 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 A SPECIAL USE PERMIT BY ARLINGTON CROSSING, LLC

The applicant, Arlington Crossing, LLC, desires a special use permit to operate a medical supply sales and rental business pursuant to Section 9-4-78(f)(10)k. of the Greenville City Code. The proposed use is located at 1908 W. Arlington Boulevard. The property is further identified as being tax parcel number 48582.

Ms. Radcliff swore in all those wishing to speak for or against the case.

Mr. Niki Jones delineated the area on the map. He said the property is zoned MO, Medical Office. The property is located along a major thoroughfare being West Arlington Boulevard.

Surrounding Zoning:

North: MO (Medical Office)

South: MO (Medical Office) & RA20 (Residential Agricultural)

East: MO (Medical Office)

West: MO (Medical Office)

Surrounding Development:

North: Various Medical Offices

South: Vacant

East: Physicians East

West: Vacant

Description of Property:

The property has approximately 850 feet of frontage along Arlington Boulevard with a total lot area of 5.34 acres. Arlington Crossing Commercial Center is located on this property and contains multiple units with various commercial uses. The applicant wishes to operate this business within one of the units in the center.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on August 13, 2009. Notice of the public hearing was published in the Daily Reflector on August 17, 2009 and August 24, 2009.

Staff Comments:

Specific Criteria

(r) *Medical supply sales and rental of medically related products.*

(1) No products shall be visible from a public street right-of-way.

Other Comments:

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

Staff Recommendation:

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

Mr. Jim Moye, applicant, spoke on behalf of his application.

No one spoke in opposition.

Dr. Wubneh asked for staff’s recommendation.

Mr. Jones stated staff had no objection to the request.

Dr. Wubneh read the finding of facts.

Motion was made by Ms. Rich, seconded by Mr. Ewen to approve the Findings of Fact. Motion carried unanimously.

Motion was made by Ms. Bellis, seconded by Ms. Harrington to approve the petition with the conditions. 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 A SPECIAL USE PERMIT BY ARLINGTON CROSSING, LLC

The applicant, Arlington Crossing, LLC, desires a special use permit to operate an athletic club (indoor only) pursuant to Section 9-4-78(f)(6)s. of the Greenville City Code. The proposed use is located at 1852 W. Arlington Boulevard. The property is further identified as being tax parcel number 48582.

Ms. Radcliff swore in all those wishing to speak for or against the case.

Mr. Niki Jones delineated the area on the map. He said the property is zoned MO, Medical Office. The property is located along a major thoroughfare being West Arlington Boulevard.

Surrounding Zoning:

North: MO (Medical Office)

South: MO (Medical Office) & RA20 (Residential Agricultural)

East: MO (Medical Office)

West: MO (Medical Office)

Surrounding Development:

North: Various Medical Offices

South: Vacant

East: Physicians East

West: Vacant

Description of Property:

The property has approximately 850 feet of frontage along Arlington Boulevard with a total lot area of 5.34 acres. Arlington Crossing Commercial Center is located on this property and contains multiple units with various commercial uses. The applicant wishes to operate this business within one of the units in this center.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on August 13, 2009. Notice of the public hearing was published in the Daily Reflector on August 17, 2009 and August 24, 2009.

Staff Comments:

Definition

Athletic club. A commercial establishment engaged in providing a variety of apparatus and facilities, to individuals and/or groups of persons, for purposes of physical exercise, athletic competition, and related recreational, educational and personal development activities. An athletic club may include the following accessory activities: racquetball courts, basketball courts, volleyball courts, tennis courts and the like; swimming pools, lap pools, diving pools, water slides and the like; roller skating, roller blading, ice skating, skate boarding and the like, soccer fields, baseball/softball fields and the like; track and field event facilities; exercise programs including aerobic and strength training; personal training, fitness evaluation, massage therapy treatment by members in the American Massage Therapy Association or equivalent per Title 11, Chapter 10, Article B, section 11-10-11 of the city Code, as amended, wellness and health education programs; ancillary food services such as an employee and/or patron cafeteria or eating area.

Other Comments:

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

Staff Recommendation:

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

Mr. Jim Moye, applicant, spoke on behalf of his application.

Mr. Bob Brewer also spoke on behalf of the applicant.

No one spoke in opposition.

Dr. Wubneh asked for staff's recommendation.

Mr. Jones stated staff had no objection to the request.

Dr. Wubneh read the finding of facts.

Motion was made by Mr. Hutchens, seconded by Ms. Harrington to approve the Findings of Fact. Motion carried unanimously.

Motion was made by Mr. Shook, seconded by Ms. Rich to approve the petition. 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 A SPECIAL USE PERMIT BY DENISE WALSH AND DEBBIE VARGAS (UPTOWN GREENVILLE)

The applicant, Denise Walsh and Debbie Vargas (Uptown Greenville), desires a special use permit to operate a commercial service not otherwise listed (outdoor concert series) pursuant to Section 9-4-78(f)(15)c. of the Greenville City Code. The proposed use is located at the southwest corner of Evans Street and Fifth Street. The property is further identified as being tax parcel number 35489.

Ms. Radcliff swore in all those wishing to speak for or against the case.

Mr. Niki Jones delineated the area on the map. He said the property is zoned MO, Medical Office. The property is located along a minor thoroughfare being East Fifth Street.

Surrounding Zoning:

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

Surrounding Development:

North: Starlight Cafe
South: Sheppard Memorial Library
East: Cubbies, Hooker and Buchanan Insurance Agency
West: Jarvis Memorial Church Parking Lot, Humber House

Description of Property:

The city owned parking lot has approximately 156 feet of frontage along E. Fifth Street and approximately 325 feet of frontage along Evans Street and has a total lot area of 1.2 acres.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on August 13, 2009. Notice of the public hearing was published in the Daily Reflector on August 17, 2009 and August 24, 2009.

Staff Recommended Conditions:

The applicant shall provide proper portable bathroom facilities, which shall include a minimum of one handicap unit, as per the North Carolina State Building Code.

Events will be limited to the following dates; September 4, 2009, September 25, 2009, October 16, 2009, November 6, 2009 and November 20, 2009

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.

Ms. Denise Walsh, applicant, spoke on behalf of her application. She asked for an amendment in case of a rain-out to have a rain-date added.

Mr. Little said they could ask for extra dates in case of rain-outs. He said if the board granted their amendment then if any one of their dates results in a rain-out, their permit would be continued to a rain-out date without having to come back to the board.

No one spoke in opposition.

Dr. Wubneh asked for staff's recommendation.

Mr. Jones stated staff had no objection to the request.

Dr. Wubneh read the finding of facts.

Motion was made by Mr. Hutchens, seconded by Mr. Shook to approve the Findings of Fact. Motion carried unanimously.

Motion was made by Ms. Rich, seconded by Mr. Ewen to approve the petition with the amendment. 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.

Respectfully Submitted

Michael R. Dail, II
Planner