

May 26, 2005

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of the Municipal Building. The following members were present:

Mr. Charles Farley, Chairman
Ms. Sharon McLawhorn Ms. Ann Bellis
Mr. Thomas Harwell Dr. Multau Wubneh
Mr. Joe Wright Mr. William Dunn
Mr. Charles Ward

THOSE MEMBERS ABSENT: Mr. Warren and Mr. Hutchens

VOTING MEMBERS: Farley, McLawhorn, Bellis, Harwell, Wubneh, Wright and Dunn

OTHERS PRESENT: Mr. Ed Lynch, Planner
Ms. Kathy Stanley, Secretary
Ms. Sylvia Brown, Code Enforcement Officer
Mr. Harry V. Hamilton, Jr., Chief Planner
Mr. Les Everett, Chief Building Inspector
Mr. Tim Corley, Engineer
Mr. Bill Little, Assistant City Attorney

MINUTES

Chairman Farley asked if there were any corrections to the minutes. Motion was made by Mr. Harwell, seconded by Ms. Bellis to accept the April 28, 2005 minutes as presented. Motion carried unanimously.

REQUEST FOR A SPECIAL USE PERMIT BY WINSTEAD PROPERTIES – GRANTED (Verbatim Transcript)

Chairman Farley: First item on our agenda is an old item that has come back to revisit us. Winstead Properties request for a conventional restaurant at the 400 block of Red Banks Road further identified as Tax Parcel 14406. Counselor can you advise the way we can expedite this?

Mr. Bill Little: Basically why we're here tonight, I provided a handout to each one of you in part of your advanced packet explaining what happened at the court hearing on May 6th concerning the appeal by Winstead after the vote. As the outline goes and I'm not going to read it detailed however I will incorporate the original here into the record and the minutes for historical reference as necessary. The court issued the decision that Winstead Properties had satisfied its burdens that it was required and that those who were opposed did not satisfy their burdens as imposed by case law to establish that it truly did have, in this case, an impact, a negative impact on the property values. As the court went on to explain what in affect happened was that Ms. Leonard had presented evidence that properties along Greenville Boulevard, which was zoned commercial, had a negative impact on those residential properties adjacent thereto. However, what she did not take into account, at this hearing or the evidence that she presented, was that the property was zoned O&I in its current

zoning and did not present any evidence that (1) a restaurant, a special use restaurant, in an O&I zone, would have a negative impact and what that negative impact was and (2) she did not present as an alternative did not present an evidence to show that a negative impact would have been created in this adjacent property in an O&I zone with the proposed conditions. You could have taken it one or two ways in attempting to establish and satisfy the burden of negative impact on the properties. When we look at this court says under case law that is in existence is that when you're going to establish negative values on property you have to look at what is going to be the negative impact on that particular property with the proposal. Not necessarily what similar properties may have but what is the exact impact on this property. As far as what this means to the Board the court said it would not issue a mandamus which meant that the court could in itself say the special use permit is now issued and there would be no further action. It returned or remanded the case to the Board of Adjustment so that it could approve the special use permit which the court said you must. Secondly, but it said that the court said you could approve any, all or none of the conditions that you had attached previously. You noted in your packet of information there was the original conditions which Mr. Harwell had made the pen and ink changes to and then I typed up the conditions as they were approved by the Board at the February 24th and then the March 9th hearing. What the Board has the option of doing is that (1) it must issue the special use permit and it will take a vote just like it would on any special use permit but in this case the vote is truly a formality. Then if the Board desires to incorporate these same conditions which it had previously approved we can make a motion, a motion to be made and it's adopted, of course, this is done by simple majority as far as the conditions go. If the Board decides to eliminate one, two or three or more of those conditions then it can have its usual round table discussion as to whether or not it wants to eliminate any of the conditions. It's the staff's recommendation that the Board approve and issue the special use permit with the conditions that had been attached to it as the original approval that had occurred on February 24th which we had to come back and correct on March 9th because of my inability to count beyond one that night. That's our staff's recommendation. Yes, Mr. Harwell.

Mr. Harwell: Which takes precedence, my handwriting on the conditions of issuance of a special permit or the typed version?

Mr. Little: What do you mean by takes precedence in this case?

Mr. Harwell: I notice differences.

Mr. Little: Well I'm sure you're going to notice right there at the very top there's a difference but those were the two conditions that had been applied as part of the issuance.

Mr. Harwell: I noticed that the word "land" is missing in the write-up.

Mr. Little: Well then you may write "land" in Mr. Harwell.

Mr. Harwell: Okay, that's why I'm asking.

Mr. Little: I typed it spell check doesn't always show me that I missed a word.

Mr. Harwell: I'm not criticizing. I just wanted to make sure that we could discuss the difference in the handwritten version and the typed version and the intent thereof.

Mr. Little: If there is any omissions on the typed version then you need to go back and use the one that you approved which is the handwritten one. We were all trying to read.

Mr. Harwell: I've got it. My handwriting is very hard to read probably only I can read it.

Mr. Little: That is our recommendation that you approve the special use permit with those conditions that you had attached earlier.

Chairman Farley: Now, it is my understanding Counselor the Superior Court has established the findings of fact, we are not to do that.

Mr. Little: That is correct. The findings of fact have been established that the criteria in affect had been met. Now you need to vote on those criteria. Again, if by chance we have two no votes then we're going to have to have the reasons why the Board members believe that the court was wrong. We may have to have the court explain to that person why their vote is wrong.

Chairman Farley: I believe then we should proceed as follows. I will comply with the Superior Court and I will call for an administrable vote to approve this special use permit first. All in favor please say Aye. Any opposed say Nay. We have unanimously complied with the Superior Courts direction to approve this special use permit.

Ms. Stanley: Mr. Chairman, please state who made the motion and seconded it cause I didn't hear it.

Chairman Farley: Okay. I would like Mr. Wright, I believe he raised his hand and may I have a second?

Ms. McLawhorn: Second.

Chairman Farley: Second, Sharon McLawhorn.

Ms. Stanley: Thank you.

Chairman Farley: Thank you madam secretary. Now, we need to have a discussion on the conditions. I believe Ms. Bellis had some concerns about putting in the stormwater detention pond.

Ms. Bellis: Well I think first there is a question of procedure. We can eliminate or we can change but we couldn't add to it a condition.

Mr. Little: You cannot add, you cannot, as I understood from the directions of the court you can, you cannot add to them, you can only subtract which in my understanding would be revise the ones that you previously approved. I don't think you can revise them.

Chairman Farley: With the exception of if a word was left out from the original.

Mr. Little: If there is a ministerial word that makes the sentence correct.

Chairman Farley: I believe what Ms. Bellis was concerned about was number three is the restricted area, “no buildings, signs, balloons, parking areas or trash disposal areas are to be located within the restricted area.” It then goes on to say thus establishing a non-disturbance area except as necessary.

Mr. Harwell: A non, really it says in my handwriting, a non-land disturbance area except necessary for utility and drainage. There’s the omission of the word “land” and the subtraction of the word “storm” and then one whole sentence is left out.

Chairman Farley: Would you read us that sentence?

Mr. Harwell: The evergreen trees in the hedge shall be planted not more than seven feet on center. This does not change any other requirement.

Chairman Farley: That is inserted in Item 4.

Mr. Harwell: That was really in ..

Dr. Wubneh: That’s in Item 4.

Chairman Farley: The evergreen trees and the hedge shall be planted not more than seven feet on center, that’s covered in Item 4.

Mr. Harwell: Okay.

Chairman Farley: So on Number 3 they just need to put “land” in where you indicated and take the word “storm” out.

Mr. Harwell: That’s correct.

Chairman Farley: Does that satisfy the Counselor?

Mr. Little: That’s a ministerial change.

Chairman Farley: Do I have a motion to add these 12 conditions?

Mr. Little: Basically what we’re looking for right now for those if there is any question is that they have to comply with the stormwater drainage requirements and the as far as if the road is approved from that stand point. There is a fence they have to build as part of the separation agreement. Once those are built then they would restore them to the non-disturbed area and there would not be anything built.

Mr. Harwell: The other word that’s in there that’s not suppose to be in there is the word “water”. It’s suppose to read “just and for utilities and drainage except necessary utility and drainage.”

Chairman Farley: So we need to elide the term “stormwater” out of it?

Mr. Harwell: Yes sir.

Mr. Little: I believe under the stormwater ordinances are there not going to be required

Mr. Harwell: That's precisely why you have hit the button precisely and exactly. That's why stormwater drainage was never in there. The word stormwater was not because there is a thing in the regulations for stormwater and we aren't sure that meant what the regulations meant for that specific area. Am I expressing that correctly?

Mr. Little: Do you want to simply say then to comply with the ordinances concerning.

Mr. Harwell: Except as necessary for utility and drainage. That's what the handwriting says.

Mr. Little: Ok.

Mr. Harwell: I did it that way on purpose. It wasn't, the others were not added specifically as per Ms. Bellis' comments.

Chairman Farley: Any further discussion? Call for a motion to add these conditions to this special use permit. Do I have a motion?

Mr. Wright: Motion.

Chairman Farley: Mr. Wright.

Mr. Little: I need to confer, just a second.

Lady Attorney: We want to make sure we're doing what the Judge has ordered us to do so we don't have to go back.

Chairman Farley: You've got us in mid-motion here.

Mr. Little: There was a concern about making sure that they could comply with the stormwater drainage.

Chairman Farley: Oh absolutely.

Mr. Little: (Unclear) in some cases may require by the Inspections Department that they create a retention area. We agreed that if the language "stormwater" is taken out and it's just drainage that can include all of the encompassing terms of the ordinance.

Chairman Farley: Okay. Thank you for clarifying that. That change holds and passes. I have a motion from Mr. Wright and I was waiting for a second.

Ms. McLawhorn: Second.

Chairman Farley: Second, Sharon McLawhorn. All in favor please say Aye. Any

opposed? The special conditions are accepted and the special use permit is issued. Thank you for coming tonight.

REQUEST FOR A SPECIAL USE PERMIT BY JIM MOYE OF ARLINGTON CROSSING, LLC – GRANTED

Chairman Farley stated that the next item is a request by Jim Moye of Arlington Crossing, LLC. The applicant, Jim Moye of Arlington Crossing LLC, requests a special use permit to allow a Conventional Restaurant, pursuant to Section 9-4-78(f)(10)h of the Greenville City Code. The site is located in the proposed Arlington Crossing Center along the 1800 block of West Arlington Blvd directly in front of the new Physicians East building, and is further identified as Tax Parcel 48582.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on May 16, 2005 and May 23, 2005. Those wishing to speak for or against the request were sworn in.

Mr. Lynch delineated the area on the map. The proposed use is to be located along the 1800 block of West Arlington Blvd, directly in front of the new Physicians East building. The lot has 5.45 acres with 857 feet of frontage along Arlington Blvd. Arlington Crossing development consists of 56,670 gross building area. Parking for the project as a whole complies with the required retail parking standards. The applicant proposes to occupy unit “A” of the attached site plan, which totals 11,583 square feet. The property is located within Vision Area "F" of the Comprehensive Plan. This property is located in the “Medical Area” uses in this area should support the medical professionals and clientele. The Land Use Plan Map designates the subject property as Office/Institutional/Multifamily. The current Medical Office zoning district designation is in conformance with the land use plan recommendations. Mr. Lynch read the definition of the Medical Office district and specific criteria for restaurants. Mr. Lynch asked that the proposed findings of fact be entered into the record.

Applicant: Arlington Crossing, LLC
Jim Moye, Managing Partner

Request: The applicants, Arlington Crossing, LLC., desire a special use permit to allow a conventional restaurant pursuant to section 9-4-78(f)(10)h of the Greenville City Code.

Location: The proposed use is to be located along the 1800 block of West Arlington Blvd, directly in front of the new Physicians East building. The property is further identified as being a portion of Tax Parcel Number 48582.

Zoning of Property: MO (Medical Office)

<u>Surrounding Development:</u>	<u>Zoning</u>
North: Arlington Medical Park Railroad Tracks	MO (Medical Office)
South: Vacant	MO (Medical Office)

East: Physicians East Facility
West: Vacant

RA-20 (Rural Residential)
MO (Medical Office)
MO (Medical Office)

Description of Property:

The lot has 5.45 acres with 857 feet of frontage along Arlington Blvd. Arlington Crossing development consists of 56,670 gross building area. Parking for the project as a whole complies with the required retail parking standards. The applicant proposes to occupy unit "A" of the attached site plan, which totals 11,583 square feet.

Comprehensive Plan:

The property is located within Vision Area "F" of the Comprehensive Plan. This property is located in the "Medical Area" uses in this area should support the medical professionals and clientele. The Land Use Plan Map designates the subject property as Office/Institutional/Multifamily. The current MO (Medical Office) zoning district designation is in conformance with the land use plan recommendations.

Sec. 9-4-57. MO medical-office.

The MO district is primarily designed to provide for general business, professional offices and institutional uses, as well as to provide additional areas for medical offices and clinics to locate in a professional office environment. In addition, the district shall prohibit commercial and industrial land uses, which can generate large traffic volumes, and shall encourage the development of areas that will serve as a buffer for residential zoning districts.

Limited commercial uses are permitted within the MO District subject to special use permit approval and/or subject to specific performance standards, which are intended to ensure compatibility within district guidelines.

SPECIFIC CRITERIA FOR RESTAURANTS

(q) Restaurant; conventional or fast food.

(1) Except as further provided, whenever a proposed restaurant is to be located adjacent to a permitted residential use, or a residential zoning district, the following minimum standards shall be required:

- (a) The restaurant principal structure shall maintain a public street (front yard) setback not less than the adjoining residential zoning district;
- (b) The restaurant principal structure shall maintain a side and rear yard setback not less than twenty-five (25) feet from any property line which abuts a residential zoning district or a permitted residential use;
- (c) The maximum height of the restaurant principal and/or accessory structure(s) shall not exceed thirty-five (35) feet; and
- (d) Any exterior menu reader board or order station which contains an audio speaker(s) shall be setback not less than fifty (50) feet from any side or rear property line which abuts a permitted residential use or residential

zoning district, and such speaker shall be oriented and directed away from any adjacent permitted residential use or residential zoning district in a manner approved by the director of planning or the director's authorized representative and such requirements shall be indicated upon an approved site plan. Separation of such speaker from an adjacent permitted residential use or residential zoning district by an intervening nonresidential building or structure of sufficient dimension to negate or block the transmission of sound may, upon approval of the director of planning or representative, substitute for the speaker setback, orientation and direction standards of this section. No exterior menu reader board or order station shall be utilized or operated in a manner which constitutes a nuisance or hazard to the general public.

- (2) No new restaurant within any MS zoning district shall be located within five hundred (500) feet of any existing or vested restaurant in any zoning district or within one thousand (1000) feet of any existing or vested restaurant in any MS district, as measured between the nearest enclosed structural part of such establishments. (not applicable)
- (3) Within any MO zoning district no fast food restaurant shall be located in a freestanding detached structure exclusive to such use. All fast food restaurants in any MO zoning district shall be located within and be part of an attached multi-unit structure which contains not less than three (3) individual units occupied by, or are available for sale or lease, to separate establishments.

Notice:

Notice was mailed to the adjoining property owners on May 12, 2005. Notice of the public hearing was published in the Daily Reflector on May 16, 2005 and May 23, 2005.

Staff Recommendation:

Site plan approval required prior to issuance of a building permit.

Based upon the information provided the proposed request is able to meet all applicable standards for the issuance of a special use permit. Planning staff does not object to the proposed request.

Mr. Jim Moyer, of Arlington Crossing, LLC, spoke on behalf of the request. Mr. Moyer stated that K & W Cafeteria will be located at this site. Mr. Moyer stated the Mr. Wheeler, CEO of Physicians East, is in support of the request.

Mr. Dale Ray Hartman, General Manager of K & W Cafeteria, spoke on behalf of the request. Mr. Hartman stated that at present K & W is located at Carolina East Mall but will be moving to this site.

No spoke in opposition.

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

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

Motion was made by Dr. Wubneh, seconded by Ms. McLawhorn, to approve the request. Motion carried unanimously.

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

REQUEST FOR A SPECIAL USE PERMIT BY D. L. ROGERS CORPORATION
– GRANTED

Chairman Farley stated that the next item is a request by D. L. Rogers Corporation. The applicant, D.L. Rogers Corporation, request a special use permit to allow a restaurant with outdoor activities, pursuant to Section 9-4-78(f)(10)j of the Greenville City Code. The property is located at 3725 S Memorial Drive where McLawhorns Animal Care is located now, and is further identified as Tax Parcel 39170.

Chairman Farley declared the meeting a public hearing as advertised in The Daily Reflector on May 16, 2005 and May 23, 2005. Those wishing to speak for or against the request were sworn in.

Mr. Lynch delineated the area on the map. The proposed use is located at 3725 S Memorial Drive where McLawhorn’s Animal Clinic is currently located. The property is located at the intersection of S Memorial Drive and Thomas Langston Road. Currently the property consists of a building that houses the McLawhorn Animal Clinic. The parcel is 73,000 square feet and has 259 feet of frontage along Memorial Drive. The property is located in Vision Area “E” as designated in the City Comprehensive Plan. Management actions for Vision Area “E” encourages development and redevelopment within existing commercial areas. The Horizons Land Use Plan classifies the area as Office/Institutional/Multi-Family. Under the existing zoning of the property, General Commercial, a Restaurant either conventional or fast food is permissible by right. It is the interpretation of staff that the proposed use is not inconsistent with the Land Use Plan. Mr. Lynch asked that the findings of fact be entered into the record.

Applicant: D. L. Rogers Corporation

Request: The applicant, D. L. Rogers Corporation, desires a special use permit to allow a restaurant with outdoor dining pursuant to Section 9-4-78(f)(10)j, of the Greenville City Code.

Location: The proposed use is located at 3725 S Memorial Drive where McLawhorn’s Animal Clinic is currently located. The property is further identified as being Tax Parcel Number 37190.

Zoning of Property: CG (General Commercial)

Surrounding Development:

Zoning

North: Bojangles

CH (Heavy Commercial)

South: Vacant Farmland	RA-20 (Rural Residential)
East: Westhaven Subdivision	R-9S (Single Family Residential)
West: Heavy Retail (Food Lion, Lowes, Home Depot)	CH (Heavy Commercial)

Description of Property:

The property is located at the intersection of S Memorial Drive and Thomas Langston Road. Currently the property consists of a building that houses the McLawhorn Animal Clinic. The parcel is 73,000 square feet and has 259 feet of frontage along Memorial Drive. The property is located within city limits and has water and sewer services available to it.

Comprehensive Plan:

The property is located in Vision Area "E" as designated in the City Comprehensive Plan. Management actions for Vision Area "E" encourages development and redevelopment within existing commercial areas. The Horizons Land Use Plan classifies the area as Office/Institutional/Multi-Family. Under the existing zoning of the property, General Commercial, a Restaurant either conventional or fast food is permissible by right. It is the interpretation of staff that the proposed use is not inconsistent with the Land Use Plan.

Notice:

Notice was mailed to the adjoining property owners on May 12, 2005. Notice of the public hearing was published in the Daily Reflector on May 16, 2005 and May 23, 2005.

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. Therefore, staff does not object to the request.

Mr. Jon Day, representing the applicant, spoke on behalf of the request. Mr. Day stated that Sonic will be constructing a new restaurant at this location. Mr. Day indicated that the construction will be similar to the Sonic on Greenville Boulevard.

Mr. Rick Arthur, Manager of Sonic, spoke on behalf of the request. Mr. Arthur reiterated Mr. Day's comments.

No spoke in opposition.

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

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

Motion was made by Ms. McLawhorn, seconded by Ms. Bellis, to approve the request. Motion carried unanimously.

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

APPOINTMENT OF A BOARD PARLIAMENTARIAN – NO ACTION

Chairman Farley stated the first item for discussion is appointment of a Board Parliamentarian. Chairman Farley stated that he and Mr. Little had discussed this issue and decided it was not necessary.

Mr. Little explained that the Boards and Commission within the City have a staff advisor which is the City Attorney which acts as the Parliamentarian on behalf of the Board or Commission.

ELECTION OF VICE-CHAIRPERSON

Chairman Farley advised the Board that Ms. McLawhorn will be resigning as of June.

Motion was made by Mr. Harwell, seconded by Dr. Wubneh, to elect Ann Bellis as Vice-Chair. Motion carried unanimously.

BOARD OF ADJUSTMENT TRAINING

The Board elected to hold a training session on July 21st at 5:30 PM. Mr. Little and Mr. Lynch will prepare topics for discussion.

Motion was made by Mr. Harwell, seconded by Mr. Dunn to adjourn the meeting at 8:00 PM.

Respectfully submitted

Ed Lynch, AICP
Planner

APPROVED

Charles Farley, Chair