

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT  
January 23, 2014

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

Scott Shook, Chairman-\*

Charles Ewen *	Claye Frank *
Linda Rich X	Sharon Ferris X
Justin Mullarkey *	Bill Fleming X
Kevin Faison *	Thomas Taft, Jr. *

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

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

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney  
Mr. Michael Dail, Planner  
Mr. Merrill Flood, Director of Community Development  
Mr. Thomas Weitnauer, Chief Planner  
Ms. Amy Nunez, Secretary  
Mr. Jonathan Edwards, Communications Technician

**MINUTES**

Mr. Ewen made a motion to approve the November 21<sup>st</sup> minutes as presented, Mr. Taft seconded and the motion passed unanimously.

**PUBLIC HEARING ON A REQUEST TO RENEW A SPECIAL USE PERMIT BY CHRIS WOELKERS-APPROVED**

The applicant, Chris Woelkers, desires to renew his special use permit to operate a home occupation; bed and breakfast inn pursuant to Appendix A, Use (3)d. of the Greenville City Code. The proposed use is located at 1105 E. Fifth Street. The property is further identified as being tax parcel number 20507.

Mr. Dail delineated the area on the map. He stated that this is the second renewal for this use. He stated that the property is located in the central portion of the city’s jurisdiction.

**Zoning of Property:** R6S (Residential-Single Family)

**Surrounding Zoning:**

North: R6S (Residential-Single Family)  
South: OR (Office Residential)  
East: R6S (Residential Single Family)

West: R6S (Residential-Single Family)

**Surrounding Development:**

North: Single Family Residences  
South: East Carolina University (Main Campus)  
East: East Carolina University (Ward Guest House)  
West: University Auto Care

**Description of Property:**

The property contains a 3,376 square foot single-family residence currently being operated as the Fifth Street Inn. The property has approximately 70 feet of frontage along E. Fifth Street and 150 feet of frontage along S. Library Street with a total lot area of approximately 11,065 square feet.

**Comprehensive Plan:**

The property is located within Vision Area "I" as designated by the Comprehensive Plan and within the College View Historic District. The proposed use is in general compliance with the Future Land Use Plan which recommends medium density residential development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on January 9, 2014. Notice of the public hearing was published in the Daily Reflector on January 13, 2014 and January 20, 2014.

**Related Zoning Ordinance Regulations:**

Specific Criteria:

Home Occupations; Bed and Breakfast Inn.

- (a) Shall be restricted to property that is located both within a R-6S Zoning District, and within a locally designated Historic District (HD) Overlay Zoning District.
- (b) The principal use single-family dwelling structure shall have a minimum of 3,000 square feet of mechanically conditioned enclosed floor area.
- (c) Not more than 60% of the total mechanically conditioned enclosed floor area of the principal use single-family dwelling structure shall be utilized as part of the bed and breakfast establishment, including guest rooms and associated baths and closets, guest sitting or lounging areas and other interior spaces which exclusively serve such areas and rooms. Common areas utilized by both guests and the resident owner family, including but not limited to kitchens, dining rooms, foyers, halls, porches and stairs, shall not count towards the allowable percentage. A dimensional floor plan of the principal use dwelling shall be included at the time of initial application, which

illustrates compliance with this section.

- (d) The use shall be conducted completely within the single-family dwelling and no part of any detached accessory structure or building shall be devoted to the use; provided, however, a detached garage may be utilized to fulfill parking requirements.
- (e) Not more than five rooms devoted to such overnight accommodations shall be permitted in addition to bathrooms or other common use areas.
- (f) All entry and primary exits to the individual tenant occupancy rooms or common use areas shall be through the principal use dwelling area of the owner occupant. Other exits as shall be available or required shall only be utilized by the tenant occupants in the event of an emergency.
- (g) In addition to the parking requirement of the principal use dwelling, one off-street parking space shall be required for each allowed tenant occupancy. No outdoor, unenclosed parking area associated with the accessory use shall be located in any front yard or any street right-of-way setback area. Such separate or joint parking facility shall comply with applicable design and construction standards.
- (h) The parking area bufferyard, screening and landscaping requirements for each separate facility shall be established in the individual case; however, no side or rear bufferyard shall be less than Bufferyard B of the bufferyard regulations set forth in Article G.
- (i) The maximum number of days allowed per individual tenancy shall be limited to applicable State and County Health Department standards, however, not to exceed 30 continuous days.
- (j) Commercial cooking facilities shall not be allowed, and breakfast may only be served between the hours of 5:00 a.m. and 11:00 a.m. and shall be the only meal offered to overnight guests. No persons other than overnight guests shall be served food and/or beverages for compensation. No alcoholic permits shall be issued to any such facility.
- (k) One nonresident person in addition to the resident owner family may be employed in connection with the operation of the establishment. For purposes of this section, the term person may be construed to include two or more shift employees, provided the employees are not on simultaneous duty.
- (l) The principal structure or additions thereto which contain the accessory use shall maintain a single-family residential character of like scale and design to adjoining and area properties. A certificate of appropriateness shall be required prior to alteration of a locally designated historic property.
- (m) The single-family dwelling and lot that is converted into a bed and breakfast inn shall meet the following minimum district requirements for construction of a new dwelling: lot area, lot width, street frontage, side yard setback and rear yard setback; provided, however, where the proposed bed and breakfast inn is located adjacent to a property containing a nonconforming land use the setback requirements of this subsection shall not apply to that adjacent common boundary, at the

time of initial application and approval. When a nonconforming adjacent use is converted to a conforming use, at any time after the initial approval of the bed and breakfast inn, the conversion shall not affect the continued use and/or renewal of the bed and breakfast inn with respect to the requirements of this subsection. The minimum lot area, lot width and lot frontage requirement shall not be reduced in accordance with section 9-4-33, and the minimum requirements set forth in section 9-4-94(E) shall apply for both new construction or conversion.

- (n) Room renting, as defined under section 9-4-22, shall not be permitted within any dwelling that contains a bed and breakfast inn.
- (o) The owner shall request that the Building Inspector and Zoning Enforcement Officer conduct an inspection of the premises each year during the month of original approval for compliance with applicable codes and conditions of special use permit approval. The owner shall pay any fee associated with the inspection as may be established by City Council.
- (p) The special use permit may be approved for a three-year period and continued use shall be subject to renewal in accordance with original submission requirements.

**Other Comments:**

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

Mr. Dail stated that in previous renewals the applicant has met all the specific criteria.

Mr. Mullarkey asked if it is a requirement every year.

Mr. Dail stated the criteria for a Home Occupation/Bed and Breakfast renewal is every 3 years and the last one was 2010.

Chairman Shook opened the public hearing.

The applicant, Chris Woelkers, spoke in favor of the request. He stated he would answer any questions.

Mr. Faison asked how his business was.

Mr. Woelkers stated it was good.

No one spoke in opposition of the request.

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

No board discussion was made.

Chairman Shook read the required findings criteria. No objections.

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

Mr. Mullarkey made a motion to approve the petition, Mr. Taft seconded and the motion passed unanimously.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY MOE AND MURAD BADWAN- APPROVED**

The applicants, Moe and Murad Badwan, desire a special use permit to operate a hookah café pursuant to Appendix A, Use (10)hh. of the Greenville City Code. The proposed use is located at 204 E. Fifth Street. The property is further identified as being tax parcel number 19612.

Mr. Dail delineated the area on the map. He stated that the property is located in the central portion of the city’s jurisdiction. He stated the applicant operated a hookah café across the street from this location but lost their location due to the rehab work being done on that building. They wish to move across the street to replace their location.

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

**Surrounding Zoning:**

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

**Surrounding Development:**

- North: Rehab Builders Renovation Project
- South: Still Life, Pantana Bob’s
- East: Vacant, Cape Fear Tattoo
- West: Michelangelo’s, 5<sup>th</sup> Street Distillery

**Description of Property:**

The property contains a 5,632 square foot commercial building with two units. The property has approximately 70 feet of frontage along E. Fifth Street and 100 feet of frontage along Cotanche Street. Michelangelo’s Pizza is located in the western most unit of the building.

**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. It is located along the minor thoroughfare of E. Fifth Street.

**Notice:**

Notice was mailed to the adjoining property owners on January 9, 2014. Notice of the public hearing was published in the Daily Reflector on January 13, 2014 and January 20, 2014.

**Related Zoning Ordinance Regulations:**

**Definition:**

*Hookah Café.* An establishment that, as a primary or accessory use, provides for the on-site consumption of shisa or similar flavored tobacco products.

**Specific Criteria:**

No hookah café shall be located within a one-fourth mile (1,320 feet) radius of an existing or approved hookah café.

**Staff Recommended Conditions:**

Shall not operate as a public/private club.

Shall not be a place of entertainment.

Shall not charge a cover for entry.

Shall not have a dance floor.

Shall not have any outdoor activities.

Shall not operate a class 1 or class 2 tobacco shop.

Shall not be a defacto nightclub.

**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. Faison asked why they shall not charge a cover.

Mr. Dail stated that is a use associated with nightclub activities.

Mr. Ewen asked if there were any issues at their previous location.

Mr. Dail stated none that he was aware of.

Chairman Shook asked that by not operating as a club there could be no alcohol.

Mr. Dail stated yes.

The applicant, Murad Badwan, spoke in favor of the request. He stated he had his business since 2009 previously at 203 E. Fifth Street which was successful and no problems. He stated there was no cover charge and no dance floor. He stated people could come in to smoke or use the wireless internet. He stated they offered beverages such as water, soda, or energy drinks and no alcoholic beverages.

Mr. Taft asked if there would be any exterior façade or building changes.

Mr. Badwan stated they will clean up the back and front and possibly redevelop the back area later.

Chairman Shook asked for the hours of operation.

Mr. Badwan stated 3pm to 2am Monday to Thursday, 5pm to 3am Friday to Sunday.

Chairman Shook asked if he was okay with staff recommendations.

Mr. Badwan stated yes and that they are the same as his previous location.

No one spoke in opposition of the request.

Chairman Shook asked for staff recommendation.

Mr. Dail stated no objection with the recommended conditions.

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

Mr. Taft asked if possible to add store front upfit to the review process.

Attorney Little stated they would have to comply with building and zoning codes. This would cover safety hazards.

Mr. Taft asked what about aesthetics.

Attorney Little stated it would be a zoning issue and not for this board. The Historic Preservation Commission provides Façade Improvement Grants. He stated if the board put a condition of upfit the façade as part of the special use permit, it could hinder receiving a grant.

Mr. Taft stated if they could add a recommendation to apply for a grant.

Attorney Little stated it could be a recommendation addition but would not be binding.

Mr. Ewen stated that it could be encouraged to use the grants.

Mr. Faison stated the window and awning was added to this building.

Mr. Taft stated he is not trying to signal out this location regarding downtown appearance.

Mr. Frank asked the difference between type 1 and 2 tobacco shop.

Mr. Dail stated Type 1 is more than 20% of tobacco sales. Type 2 includes the sales of pipes and bongs.

Mr. Mullarkey asked if there would be an age limit.

Mr. Badwan stated 18 and over. He also stated regarding the front of the building that his intention is to improve the look.

Chairman Shook read the required findings criteria. No objections.

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

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

### **PUBLIC HEARING ON A REQUEST FOR A VARIANCE AND A SPECIAL USE PERMIT BY 3JMG ENTERTAINMENT, LLC- DENIED**

The applicant, 3JMG Entertainment, LLC, desires a variance from the 500 foot spacing requirement between public/private clubs and conforming use single family residences. (Section 9-4-86(F)(7) of the Greenville City Code.

The applicant, 3JMG Entertainment, LLC, desires a special use permit to operate a public or private club pursuant to Appendix A, Use (6)m. of the Greenville City Code.

The proposed use is located at 310 W. Ninth Street. The property is further identified as being tax parcel number 04592 and 22624.

Attorney Little: They are both the applications are by the same group. One is a variance request and the other is a special use permit. For purposes that will be easier for all parties concerned, since many of the facts that would be presented would be the same, what we are going to do is we are going to combine the hearing the public hearing on both of these topics or both of these applications. However we will bifurcate the vote. First you would vote on the variance and with that the variance you must then determine if it meets the criteria and that is a four fifths majority which in this case it would be all 6 of you will have to approve the variance based on the criteria that we'll discuss when comes the time to take the vote. And you had in your packets and when we did



the workshops and the changes in the rules and procedures based upon the language that the General Assembly had go into effect on 1 November. And then if from your vote you find that they meet they satisfy the variance criteria, then you will go to the second vote and vote on the special use permit which is a simple majority which would be 4 of you would have to approve that. Now if at the end of the hearing and you take the vote on variance, the variance is not unanimous, that is that it fails, then a second vote is not required because the criteria for the variance if it fails to meet the variance then it will fail to meet about 5 of the classifications for a special use permit specifically the conditions and specifications, that is it meets all the conditions of a zoning ordinance, the comprehensive plan, detriment to public safety, existing use is detrimental to the other properties in the area and that again would impact the general welfare and public safety because it did not meet the criteria for a variance. Now there are 2 types of variances. One is called an area variance. An area variance is permits the applicant or permits the deviation from the zoning requirements about construction and placement but not from requirements about use. An area variance is one which does not involve a use prohibited by a zoning ordinance and generally speaking it involves no change in the essential character of the zoned district nor does it seek to change the essential use of the land. When applying the elements to determine whether the applicant can actually satisfy the criteria, you must keep that definition in mind and when it comes time to vote I can reread that. A use variance is another type of variance. This permits a deviation from zoning requirements. A use variance generally permits a land use other than the uses permitted in a particular zoning ordinance and essentially is a license to use the property in a way not permitted under an ordinance or as a legislative rezoning and amendment to the ordinance. If the Board finds that the applicant is seeking an amendment to the ordinance by allowing a use on this property not allowed by the ordinance, then the Board as a quasi-judicial body does not have statutory authority to amend the ordinance. Now no matter how smart some of you think I am, I didn't come up with that. I am definitely not that smart. It came from a 2011 North Concord Appeals Case defining what use and area variances are. Again, I can read the definitions again as we go through the criteria if there are any questions at that time. But I wanted you to keep those in mind as you listen to the facts of the case.

Chairman Shook: Obviously if the variance is approved then we vote on the special use.

Attorney Little: Right.

Chairman Shook: If the variance is denied, do we still vote on the special use?

Attorney Little: (Unintelligible)...if it failed to meet the criteria.

Chairman Shook: Gotcha. Just because if it did by in fact, I didn't know if we were still required to vote on that. Okay. And technically when I open up the public hearing, I am opening up the public hearing on both cases so we have to read through...

Attorney Little: All those who want to speak in favor or opposition to that. Again as a reminder to everybody that it is a factual evidentiary hearing and not an opinion that I like this kind of stuff. That would not be admissible for your consideration.

Mr. Faison: You said there are 2 types of variances. An area variance and a use variance.

Attorney Little: Right.

Mr. Faison: In the request is just says desires a variance.

Attorney Little: Right.

Mr. Faison: So is it an area variance because of the 500-foot spacing.

Attorney Little: That is going to be the factual decision that you are going to have to make.

Mr. Faison: Which variance.

Attorney Little: Which kind of variance it is. That's correct.

Mr. Faison: I appreciate it.

Attorney Little: That's why you get the big bucks for.

Chairman Shook: Okay. At this point in time I am getting ready to open the public hearing. It is my duty to advise the applicant that a full board constitutes 7 members. We have 6 which still constitute a quorum. However if we had a full board complement you could sustain 1 negative vote. If we have 6 folks here to vote, you cannot sustain any negative votes. So I have to give you the opportunity if you want to delay this until the next time that we would have a meeting to have a full complement of 7. It is your right to do so. So I think you have been advised of that but I just wanted to make sure. In this point in time I am going to open a public hearing on a request for a variance by 3JMG Entertainment LLC. The applicant, 3JMG Entertainment, LLC, desires a variance from the 500 foot spacing requirement between public/private clubs and conforming use single family residences. (Section 9-4-86(F)(7) of the Greenville City Code. The subject property is located at 310 North, excuse me West Ninth Street. The property is further identified as being tax parcel number 04592 and 22624. This public hearing is also a request for a special use permit by 3JMG Entertainment LLC. The applicant, 3JMG Entertainment, desires a special use permit to operate a public or private club pursuant to Appendix A, Use (6)m. of the Greenville City Code. The proposed use is located at 310 W. Ninth Street. The property is further identified as being tax parcel number 04592 and 22624. All those wishing to speak in favor or in opposition to this application please come forward and be sworn.

Ms. Nunez: Do you swear or affirm to tell the truth, the whole truth and nothing but the truth so help you God?

Witnesses: I do.

Ms. Nunez: When you speak, please sign your name on this sheet. Thank you gentlemen.

Chairman Shook: Mr. Dail.

Mr. Dail: Yes.

Chairman Shook: You mind explaining all this stuff.

Mr. Dail: I will do my best. The red star indicates the general location. The requested variance of the subject property is in the center portion of the City's jurisdiction. The highlighted property shows a more specific location along West Ninth Street. The reason for the request is stated in the findings and facts. At the time of

special use permit approval, a public or private club shall not be located within a 500 foot radius, including street right-of-ways, of a conforming use single-family dwelling located in any district, or any single-family residential zoning district. The required measurement shall be from the building or structure containing the public or private club to the nearest single-family dwelling lot line. In this slide I have illustrated the distance between the two as shown to be measured by the ordinance. We measured from the building the applicant intends to use to the single-family lot line. The single-family residence is at 817 Washington Street. There is a distance of 460 feet. So it does not meet the 500 foot spacing requirement. The applicant needs a variance reducing the required spacing by approximately 40 feet in order to be eligible to receive a special use permit for their public/private club at the subject location. The zoning of the property is CD (Downtown Commercial). To the North it is zoned IU (Unoffensive Industry) & CDF (Downtown Commercial Fringe). To the South is IU and to the East is IU. To the West is CDF. Surrounding development. To the North is Greenville Automotive Center. To the South is the Building Hope Community Life Center, Pitt Co. Sheriff's Offices, and Collide Ministries. To the East is UNX Chemical Incorporated. And to the West is Tony's Automotive. The subject property contains a 5,000 square foot vacant commercial warehouse. The property is a 0.42 acres in size and has 360 feet of frontage along W. Ninth Street and 115 feet of frontage along Dickin, ah Ficklen Street. Excuse me. The proposed use is in general compliance with the Future Land Use Plan which recommends commercial development for the subject property. That would be the request for the public/private club. Notice was mailed to the adjoining property owners on January 9, 2014 and notice of the public hearing was published in the Daily Reflector on January 13<sup>th</sup> and January 20<sup>th</sup>. I have included the variance statues, the State's general statues in your findings and we will go over those here in just a second. First I am going to show you some views of the property. This is the view of the property from the West looking down 9<sup>th</sup> Street. This is the view of the associated fenced in area, which is proposed to be a parking lot by the applicant. This is the view to the West. This is a view of the property from the East. The view of the grass area the applicant proposes to be a parking lot. View of the rear of the property. View to the East of UNX Chemicals. View also to the East. View to the North directly across the railroad tracks. And view to the South. I brought this slide back up to also show you this is not the only residential structure in the area. There are 2 more residential structures along S. Washington Street. They are labeled as duplex or triplex on the Pitt County Parcel Information, those red stars on both of those. This is the view of the subject, um, single-family dwelling at 817 Washington Street. And this is the views of the residences on either side of it. The purple star indicates UNX Chemicals. Just wanted to note that, the building is in between the subject property and the property that doesn't meet the spacing requirement, the single-family structure. This is the view directly across the street from the single-family residence. This is the view along W. Ninth Street and the pointer is pointing at the applicant's building if you can see it on the screen. I am not sure if you can. I will give you a little history on the ordinance. City council created the 500 foot spacing requirement standard on August 12, 2012 to protect single family dwellings and single family neighborhoods from the possible negative effects of public/private clubs in the area. There's also other uses in the City Code that have spacing requirements. They include sweepstakes or internet cafes, family care homes, and tobacco shops also including hookah cafes. So public/private clubs are not unique in that nature.

Chairman Shook: Home daycare doesn't have a separation, does it?

Mr. Dail: No. I'll give you a little history also. The City was contacted by the applicant to determine if the subject property could be used for a public/private club on August 5, 2013. The applicant was made aware that the location did not meet the spacing requirement for a public/private club use on the same date. Amy, if you'll pass out the, uh, it's actually going to be the second piece of information. It should be an email. (\*Pause while email is passed out to board members\*) As you can see in the email, we were asked the question if the property qualified and you see me response on the top. The applicant then submitted an application for a special use permit on November 10, 2013.

At that time the applicant was notified that they did not have a valid application because the subject property did not meet the spacing requirement for public/private clubs. The applicant submitted an application for a variance request on December 9, 2013. Staff notified the applicant that the City would recommend denial of the requested variance at the BOA hearing. Under staff recommendation, staff has reviewed each of the criteria the board must consider in order to grant a variance and has listed the comments, as you will see as we go through. Number 1 is unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. Strict application of the City's 500 foot spacing requirement does not create a hardship for the applicant because there are other properties in the City's Jurisdiction with the proper zoning for the public/private club use that meet the 500 foot spacing requirement that the applicant could potentially operate their business on. Greenville's Jurisdiction is 42,652 acres in size or 66.64 square miles. Public/private clubs are allowed in the following zoning districts: CD, CDF, CG, and CH as a special use. Roughly 3,000 acres of the City's Jurisdiction is zoned in this matter. 1,255 acres or 42% of these are commercially zoned would allow a public/private club use after all spacing standards are applied. So there is a substantial portion of our commercial zoning that would meet the requirements, uh, spacing requirements for public/private clubs. This is a map illustrating those areas in red that are zoned appropriately and also meet the spacing requirements. Also I would like to note that the applicant received a special use permit from the Board of Adjustment to operate a public/private club at 1001 West Street on June 27, 2013. That further shows the fact that there are spaces available that could be used as public/private club. City staff did not object to that request because it met all the applicable spacing standards for public/private club use. Number 2 from the General Statute: the hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. Staff states the subject property has no peculiar condition or restraints such as location, size, or topography that creates a hardship for the applicant or prevents the property from being developed or utilized in accordance with city dimensional standards for other uses. The subject property is currently developed and has been used in the past for commercial/light industrial uses. As you can see there is a building on the property and has been developed. Also the subject property is zoned CD, Downtown Commercial. In the CD zoning district development standards are reduced making for easier development of CD zoned property. Specifically there are no setback requirements from property lines and there are no onsite parking requirements. So a CD property is easier to be developed when you take in dimensional zoning standards. With respect to location, there are properties within this area and in other parts of the City's jurisdiction that are located within 500 foot of single family dwellings that cannot be used for public/private club uses. The distance to a single family dwelling is not unique to this property only. There are other properties in the City's jurisdiction that are eliminated from use because of the standard. This is along S. Memorial Drive. Currently now the Salvation Army has taken over this building which was a former furniture store. It is right beside the post office. And this motel has been torn down. But it shows as you apply the standards, the spacing standards to a conforming us single-family dwelling, that this property is within 470 feet and cannot, could not be used as a public/private club. We have had people contact us in the past about purchasing this building and applying for a special use permit and we have notified them that it does not meet the spacing requirement. So this is further evidence to show that there are other properties affected in the City by the spacing requirement and not just the applicant's. Number 3 the hardship did not result from actions taken by the applicant or the proper owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. Staff states the applicant's perceived hardship did not result from the action taken by the applicant or property owner. In accordance with the provisions of General Statute 160A-388, the act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. Because of this, the applicant selecting a site that does not meet the spacing standard established in the zoning ordinance, it is not to be regarded as a self-created hardship. Number 4 the requested variance is consistent

with the spirit, purpose, and intent of the ordinance, such that public-safety is secured, and substantial justice is achieved. Staff states the City developed a spacing requirement after holding public hearings and receiving public input that the location of public/private clubs in close proximity to single family dwellings is objectionable and is a detriment to livability and safety. During this process the City found that 500 foot spacing would be the minimum distance needed to protect public safety. Also as shown in the minutes. Amy, you can pass out the minutes I have given you. In the minutes of the August 12, 2010 City Council meeting, Council established that 500 feet was the minimum acceptable spacing between any conforming use single-family dwelling and public/private club uses. This was a result of testimony from affected property owners that lived in close proximity to established nightclubs. The final portion of the General Statute and I'm going to touch some on what Bill said on use variance. It says no change in permitted uses may be authorized by a variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection. Staff would like to argue that this is a use variance. The public or private club use is not permitted use on this property as a result of the separation requirement and granting the variance, excuse me I left the "g" out, granting the requested variance would authorize this use on this property which is contrary to the spirit, purpose, and intent of the ordinance and the specific statutory prohibition set forth in General Statute 160A-388 that no change in permitted uses may be authorized by a variance. Public/private clubs are permitted as a special use in the CD zoning district only if the location meets the following specific criteria related to spacing: 500 foot from existing public/private clubs, 500 foot from conforming single-family dwellings, and 500 foot from single-family residential zoning districts. A public/private club that does not meet any of the spacing requirements would not be considered a permitted use in the CD zoning district. Granting of the variance would create a new permitted use in the CD zoning district, which is not permitted by the General Statute 160A-388 that states, "no change in the permitted uses may be authorized by the variance". If you have any questions, I will be happy to try to answer them at this time.

Chairman Shook: Any questions for City Staff?

Mr. Mullarkey: I, I think I have a question. Are we legally allowed to grant this variance? Is that legally acceptable? Because from what I understand from what you just read.

Mr. Dail: If you determine that it is a use variance, than no.

(Unintelligible from audience)

Chairman Shook: You will get a chance. We are going to get questions then yeah. Okay, any other questions for City Staff on clarification on anything?

Mr. Dail: Bill would you like to say something about that?

Attorney Little: I read you 2 definitions. What you will have to decide from the hearing is, 1 is it an area based upon the fact or is it a use based upon the facts. If it is an area, you can find and then go through the variance criteria and find yes or no. If you find that it is a use variance based upon the facts that have been admitted, then it becomes a legislative issue which will be outside of your authority.

Chairman Shook: Right. Thank you. Any other questions for City Staff about their presentation at this point? Okay. At this time I will ask the applicant representative to come forward. State your name for the record and tell us about your application.



Sonny McLawhorn: First of all.

Chairman Shook: Can you state your name for the record.

Sonny McLawhorn: My name is Sonny McLawhorn.

Chairman Shook: Okay.

Sonny McLawhorn: And I represent the applicant. Um, I wanted to address that because it is true that there are area variances and use variances. But when it comes to the question of use, the applicant still has to meet the use criteria. And if you don't grant them a special use permit, then, you know, they are not entitled to operate a public/private club. So, this is an area variance and that's all it is, is a physical issue. I mean, he said many many times 460 feet and we measured 468 feet. But I am not going to argue about the 8 feet. Um, everybody in this room wants to have quality development in Greenville. You saw the pictures of this neighborhood. Uh, this is a building that's owned by Michael Glenn. His family developed the Glenn Harvey Restoration. And I would ask you to take judicial, um, notice, of the fact that's an extremely high quality development that is um, in the best interest of Greenville. It's the Jefferson's Florist Property. Michael Glenn is the owner of this building. This is a brick building that would be really a wonderful building if it was well developed. And it would also improve the character of the neighborhood. But to promote the adaptive reuse of buildings, especially in this general warehouse area is desirable and to have aesthetically pleasing and functionally desirable buildings is something that is (unintelligible). That's why we are here tonight because we support good planning. There. This is. When you measure for the 500 foot rule, we don't question the 500 foot rule; we think that's a good rule. When you measure the 500 feet, we measure it as 468, but it's measured but us as well as the City from the edge of our building, which you saw the photos of, to the property line of the single-family dwelling. There is one single-family dwelling within 500 feet of this building. And it is sandwiched in between 2 duplexes, which are not single-family dwellings. Um, in between the single-family dwelling, which is admittedly 460 or 468 feet away from our building, or at least the property line is, is the UNX building which is a pretty giant warehouse operated by UNX, it's the old fifth and tobacco company warehouse. Big warehouse, 75,000 square foot building. There is no communication that I could tell between our property and that single family dwelling. That's what makes this a unique hardship, is the physical location of this warehouse between these 2 uses. I would like to say that we are not seeking a change in the permitted use as is referred to by statute. We want to build and operate the use you permit us to operate. So this is purely an area variance. Um. There is a big difference between the Salvation Army building. I am the lawyer for the Salvation Army and I am familiar with where the building is. It is 470 feet from a single family dwelling. And perhaps people have asked to operate a bar in that building in which we recently purchased. But there is no UNX building in between there. The part when you look at this, when you look at the photos, that UNX building is massive impediment between those 2 properties. We would contend that this variance, that granting this variance would be in harmony with and in the spirit of the ordinance. Um. The portion of the ordinance is designed to protect single-family neighborhoods. Admittedly. But there is, except for these 3 properties, there's not a single-family area, there's not uh, there's not any kind of residential area within 500 feet except for that one single-family dwelling surrounded by the 2 duplexes. This property is away from neighborhoods. Property that is otherwise, you know, in, in as the City pointed out, it is in an appropriate use to have a public/private bar in a commercial, in CD zoning. Um. The stringent requirements of the 500 feet have, has been some time since my client, my client was granted a special use permit to operate a bar that didn't work out before. But at that hearing I presented to this Board the fact that there never been any police complaints. It there had been, the City would have pointed that out. But there haven't been any. So, my client has operated Limelight Bar since January 2012 until August 2013. And they were

moved by the 10<sup>th</sup> Street Connector. So they had to go find somewhere to be. And they have, they have abided by the law. They never had any ABC violations. They never had any complaints for service. So I would argue that they are a very good citizen of the City of Greenville. The granting of this ordinance would allow 3JMG to operate a private club in the same matter that we did before as Limelight which is off of Dickinson Avenue. Um, and as to the special use permit, if I can refer to our application, we are in conformity with the lot, area, and dimension and setback standards. Our intention to operate, is to operate a private nightclub for those 18 years and older. There is going to be an enclosed patio on the proposed site, here we are talking about issues that relate to special use permit, to provide an area for outdoor smoking which is in accordance with North Carolina law. But this is an enclosed patio. The lot is located in conforming downtown commercial zoning, which is of course is the required zoning for private clubs. I will add as it was pointed out, that the Future Land Use Plan has this entire area as commercial. I think that is a very important thing for you to consider because so far as possible you would want to make your decision in conformity with the Future Land Use Plan. Um, as to the health and safety issue, my client will have 2 driveways on the parcel, which will front on to Ninth, West Ninth Street. There will be a clear view of all traffic in either direction. Vehicular traffic will be at night which there is not much traffic on Ninth Street at anytime of the day but especially at night. And so this won't pose any type of traffic hazard or pedestrian hazard. I might point out, and there is no guarantee this will be in the future, but as of now the Sheriff's Office is right across the street. Um, as far as the detriment to public welfare, our client intends to provide just a safe and secure social environment. They are going to have well lit parking and surveillance and on busy nights they are going to have an office duty policeman. Um, there will be no detrimental effect on the area businesses and neighborhoods. Our client will not open, when our client does open, they will have adequate parking so not to infringe on any area businesses. Um, the proposed site plan will enhance the proposed lot by redevelopment because this would be a newly remodeled building that takes place of a building that has broken windows and sitting there doing nothing. It is a crummy looking building. Michael Glenn is going to transform it. We are going to have, uh we are going to make, uh, good use and it's going to be a beautiful building. As far as nuisance or hazard, my client is not going to create any nuisance or hazard in the future, as it has not in the past. The current attendance ranges from 150 to 200 patrons Thursday, Friday, and Saturday nights. The intensity of traffic of traffic will be minor. And um, we have several people, I don't know that they all are going to speak, but I would ask Michael Glenn to come up here and speak and I, if the Board has any questions I will try to answer those.

Chairman Shook: Okay. Any questions for Mr. McLawhorn?

Mr. Ewen: I have one. What happened to the last place we approved?

Mr. McLawhorn: I'll let Jeremy Jordan address that.

Mr. Faison: That's what the email said.

Chairman Shook: Mr. Little, just a point of clarification. I remember there was, and it may not have fallen under the definition of a single-family residence but there was a mobile home there, that was right beside it, and nobody showed up that lived there. I don't even know if we ever established if somebody lived there. But does that, that doesn't meet the specification of a single-family dwelling. And that's what the, that's what um that's what the ordinance says, it doesn't reference the neighborhood or single family.

Attorney Little: That's right.

Chairman Shook: Okay. Go ahead. State your name for the record.

Mr. Jordan: My name is Jeremy Jordan. I am one of the owners of 3JMG Entertainment. We are all 4 here tonight. Um, just to address the issue of what happened to the other permit, uh, we did come before you before and we got a special use permit approved quite easily, which we were very happy about. But if you remember our original scheduled hearing for that was delayed because it was a lack of a quorum. I am just giving that as background. We had a verbal approval for a commercial construction loan from East Carolina Bank, which everybody knows just merged with Vantage South. During that 30-day delay, the merger completed. Vantage South stomped it out. They said they were not doing loans for anything for which they considered hospitality business. We went through, Michael would you say 100 other banks? Every bank you could ever hear of and 300 that you never heard of, and they all said the same thing, your credit is great, your business plan is great, but we are not doing loans for hospitality in this economic climate. Um, so that answers that question. Just one other thing I would add, the one residence if it was zoned CD, we wouldn't be having this discussion.

Chairman Shook: Any questions?

Mr. McLawhorn: Mr. Chairman, if I might ask those who support this project, would you please stand?

Chairman Shook: Sure. Okay.

Mr. McLawhorn: Thank you. And Michael Glenn will speak for us as well.

Chairman Shook: Please come forward and state your name for the record.

Mr. Glenn: Good evening. My name is Michael Glenn. I am the property owner. And based on what Sonny has told you, it looks like I might be spending a whole lot of money. Certainly not on the scale of what we did at Blount-Harvey, but nonetheless. I want to make the place look great. I am not proud of it as it sits. But despite having a developed building, I don't have a whole lot of people lined up rent it. And the sort of interest that I have had and the time I have owned it and I have owned it since 2008. The sort of calls that I have had for rental have been a metal recycler, a computer recycler, and a storage facility. So that's great, that generates a rent check, but I don't feel like it's really in the interest of where the neighborhood is trying to go. This is obviously a neighborhood that's seeing a lot of change and certainly on the fringe with the 10<sup>th</sup> Street Connector coming through, that's really going to change the landscape. You know, I applaud the fact that these guys are interested in being in what I consider to be downtown. This is obviously not the, the core we think of downtown. You know, certainly there could be other opportunities for them. But this building is in dire need of redevelopment. I need a roof. Immediately. When it rains, it rains inside. But again, you know, for their commitment to come before you all and try to look at this at an angle to see this get developed, I appreciate their interest in the historic property. Interesting that seeing this aerial shot of the distance between our property and the residence in question, even standing on the roof of my building, I don't think you can see that single-family residence. You know, UNX is really quite a massive structure. The timing for this obviously could not be better. The incentive for me as the property owner to invest is obviously present. Along with the new roof we will have several new hvac systems, new restrooms, all plumbing and electrical would be rehabbed. And, you know, I'm estimating about \$250,000 in work. And I have known Jeremy and his business partners for many years. I have been a patron in their business. I appreciate the responsibility that they take not only for their guest, but for their, their neighbors. And I would certainly appreciate some consideration tonight on the request before you. I would be happy to answer any questions.

Chairman Shook: Any questions? Is it your knowledge they intend to use the full space, is that correct? How many



square foot is in that location?

Michael Glenn: It was mentioned that there is about 5,000 feet. We've measured about 4,200 feet that would be useable in the building. And, um you know, it's just a rather open space. The, the walls, the exterior walls is all masonry, and probably 16 inches thick. So it's a pretty well insulated building as well.

Chairman Shook: Okay. Any other questions?

Mr. Mullarkey: I have a question that may not be for Michael. Was the previous location of uh Limelight within 500 feet of a single-family dwelling? Was it not?

Mr. Jordan(from audience): Do I need to go up there? From where we previously were we or the previous location (cut off my Mr. Mullarkey)

Mr. Mullarkey: Where you previously were located.

Mr. Jordan: We had residential on 2 sides of us. And we never had any complaints.

Mr. Mullarkey: Okay. So when you bought, when you went into business, at your old location before you were displaced from the 10<sup>th</sup> Street Connector, you were within 500 feet of a single-family home?

Mr. Jordan: Yes. Two. It was a grandfathered location.

Chairman Shook: Yeah grandfathered, yeah, yeah.

Mr. Faison: It was ruled as existing.

Mr. Mullarkey: Right, that's what I am getting at. He went into business in January 2012 which this variance, this, this, this buffer zone of 500 feet was installed in August of 2012.

Chairman Shook: I think he took over an existing business. It was an existing business he took over so yeah, it was grandfathered.

Mr. Mullarkey: That's, that's what I'm saying. He was operating there within 500 feet and then a law was passed after the man was in operation.

Attorney Little: Because it was a grandfathered business and it stayed in continuous operation and did not change, then because it was grandfathered, it was exempted from 500 foot rule. If it had quit being a facility, it would lose its grandfathered status and would have had to start all over again.

Mr. Faison: Like if it had been closed for 6 months or something.

Mr. McLawhorn: If I may say. We don't disrespect the 500 foot rule. We just say that when there is no site line and no communication from those 2 points, that, that's what the variance law is for. The reason we are here tonight is for what we think is the perfect example of why a variance would be considered.

Chairman Shook: Yep. Mr. Little, I see that the way they are measuring it's from, obviously Mr. McLawhorn makes a point, that's it's from the property line on the single family residence to the structure wall.

Attorney Little: That's right. To the wall itself.

Chairman Shook: Okay. Now that assumes that they are going to use all of that space. Is that correct?

Attorney Little: The wall would have, to uh, whether they used all of it or not, it has to go from the wall. Let's say that 40 feet of that wall was chopped off. And the building was, and that 40 feet was moved to the other side, so you no longer had a 40 foot, you have 40 foot gone, you would now have 500 feet. That would be okay.

Chairman Shook: Well, let me ask you, and I don't know. I am just trying to think here. What if they didn't use that space and it was permanently separated from the rest of the space.

Mr. Mullarkey: And the other space was used as office for, uh.

Mr. Faison: Like for storage.

Mr. Dail: The ordinance clearly states that shall be from the building or structure contained public/private club to the single-family dwelling lot line. So it would have to be measured from the outer wall, even if they didn't use that space. Even if this was a multi-unit building, and they were in the far western portion, they would still not meet the spacing requirements.

Chairman Shook: Okay.

Mr. Taft: And that's based on the City ordinance.

Mr. Mullarkey: Ok. I got you.

Mr. Faison: So if you knocked off 50 feet of the wall. And we're charged with deciding if this is an area variance or a use variance. And it's obvious that it's not a use variance because it's zoned in the proper use. Correct?

Chairman Shook: It uh, and I still want to give. If you want to add some information here from the City. Is that what you want to do?

Mr. Flood: Right, and you may want to give the applicant a chance to fill in too. Just history, they way this occurred. And Mr. Dail provided you with a copy of the minutes from the City Council meeting. When City Council enacted this ordinance, it was at direction from Council at their May meeting of 2010. They said we need to have proper spacing of uses. What Council didn't do was that didn't give elasticity. They didn't give sort of a stretch ability to say, well you know in this case you could have less than 500 feet. They established 500 foot as the, the standard. They didn't, in any place in the ordinance say for public/private clubs operating less than 500 feet it is a permitted or special use. That's the reason why the staff's contention is that this would be a use variance because they didn't give permission to consider anything but 500 feet. And as a result, it is not a use that's authorized by the Code. So, so that's the reason why the Staff believes this would be a use variance. In addition, they didn't give us the ability to, to change the way we measure it because of intervening properties or when you are at a specific

location that may not be near neighborhoods, but that's why they say conforming single-family dwelling. Because they wanted to take into account conforming single-family dwellings and not necessarily neighborhoods and other intervening buildings.

Chairman Shook: Mr. McLawhorn.

Mr. McLawhorn: It's true that the City Council did not foresee giant intervening buildings, but the legislature did. And that's why they provided for undue hardship. And that's what we are contending we have here.

Chairman Shook: And you've heard City Staff and make the differentiation between the area variance, and uh you know, use variance. Give us your definition and your argument specifically as it, why this is not a use variance. Summarize that back up and define an area variance as you legally see it.

Mr. McLawhorn: Well this reminds me of the guy who killed his mom and dad and then he asked the court to give him mercy, because he was an orphan. We're, we're not asking for a use variance. We're going to meet the use criteria or you're going to deny us based on use criteria. That's just the smoke screen. I mean this is just a simple area variance. And a use variance would not be, you know, that would be a whole different thing. And we're not seeking a use, we're seeking to be measured by the use law as a special use because we are not a permitted use. You know what I'm saying?

Chairman Shook: But we've got a difference of 32 feet that it very clearly states in the statute and in the ordinance. And what we need to be concerned about, as you well know, if we grant a one time variance to this, what stops it, you know, what precedent have we set in other cases that could say, well we have a big tree or we have a big fence or we can erect a tree or fence or whatever it takes to put something between us and 500 feet. I mean, that's, you have to be unique in that circumstance, and obviously the situation is unique. But we need a legal reason why it is unique and why it doesn't apply to anybody else and that's.

Mr. McLawhorn: Well, that is a very good question. And, uh, you have the wisdom and judgment to consider the whole picture of Greenville and what you want Greenville to look like. And if somebody wants to come into a crummy looking area and put up a great looking building and you can, you consider them a variance and you grant it and somebody else wants to come into a great looking area and put in a crummy looking building, you know, you can consider that at that time. So, I really feel like, like this is an unnecessary hardship and an, and an uncalled for distinction. I mean, cuz we're not asking for a use variance. And we respect the use law. My clients are very respectful of the law. And one reason that it causes me such energy on their behalf is because I know how careful they are to abide by the ABC laws and all the other laws. I mean they are very careful in abiding and good neighbors.

Chairman Shook: Certainly, they have testified here but and before and obviously and didn't receive any opposition I believe based on track record and based on a lot of issues. But this is a hurdle we have to jump over. Okay, we got to get and whether it's 40 feet or 32 feet.

Mr. Mullarkey: 11 feet.

Mr. McLawhorn: I understand.

Chairman Shook: If it's one foot or if it's not a neighborhood. You mentioned that it's only 1 single-family

residence but unfor, that's what the law says, that's all it takes. You know.

Mr. McLawhorn: I understand. Right. But the making of one legislative or judicial decision does not, does not make another decision. You know what I'm saying?

Chairman Shook: Yeah, I, I understand. But if, what's the difference us granting a variance in this issue and not, and based on your argument, and not legislating from this position.

Mr. McLawhorn: Because of the UNX building. Because, if that was all vacant land, I wouldn't be standing up here.

Chairman Shook: Sure.

Mr. McLawhorn: So that's what I would argue.

Chairman Shook: So based on a structure being in between the two has created the hardship for you to have to do this. I mean, I.

Mr. McLawhorn: And I have used the word communicated and what I mean is that there is no perception if you stand on the porch of the single family dwelling and look, all you see is the side of the UNX building.

Chairman Shook: Yeah, I understand.

Mr. McLawhorn: But I think it is very unusual that there would be such a building. You know.

Mr. Taft: So this ordinance came into being based on public comment. Is that, is that our understanding?

Mr. McLawhorn: That's a good ordinance. Right.

Mr. Flood: City Council received quite a bit of concerns about the activities of night clubs near single-family residences and established neighborhoods. And they said, staff go back and develop an ordinance that will cause proper spacing between this use and single-family dwellings and neighborhoods. And, in effect, that is what you have. And it was a clear cut action by City Council. They said 500 foot is the standard.

Mr. Faison: This was researched?

Mr. Flood: It was over a 3 month period.

Mr. Taft: So that would bring me to maybe the question of since this is just a variance and not a referendum on the overall ordinance, would it be worthwhile to hear if there is public objection to this variance?

Mr. Flood: Well certainly you are in the public hearing stage.

Chairman Shook: You couldn't come up with 450 feet, you had to come up with 500 feet?

Mr. Faison: It already was 450 feet or 425.

Mr. Flood: Well I think City Council has already said.

Chairman Shook: Yeah, I understand. Mr. Dail. I'll get him and come back to you real quick. Go ahead.

Mr. Dail: I'd like to state also that you know the 500 foot spacing did not, was it, was it a measurement that was set. As Merrill said, there was no elasticity for intervening uses. As we know, development can come and go. The UNX building could be gone in the future. Along Memorial Drive, the other example that we've shown, somebody could redevelopment the property along Memorial Drive and build a very large building that would further protect that single family residence that was within 470 feet. But the, so the, I just wanted to mention that.

Mr. Faison: Is the single, Is the single-family residence inhabited? Is someone there? Is it empty, is it?

Mr. Dail: It looks to be occupied to me when I go by there, but I cannot guarantee that.

Mr. Mullarkey: To the same point that you just said, I mean, that could just as easily cut the other way is that the single-family applicant who's right now the Land Use Plan is showing it's in a commercial district, could obviously come before us and or before the Planning and Zoning and reapply and get that property rezoned. And then there's not a single-family.

Mr. Dail: That is correct.

Mr. Mullarkey: So, you know, it can go both ways.

Mr. Dail: Sure.

Mr. McLawhorn: And under the health and safety, I ask for you to consider us and judge us by that measure as well. Public outcry for the 500 foot rule as I well remember, was because of bad patron behavior and noise. And you know, those are not issues here, so I mean, the reason for the 500 foot rule, which is a very good rule, is not a play in this case. So, I don't think that, that citing the public outcry is the compelling argument for it because the outcry was based on bad behavior and noise.

Chairman Shook: Well, I mean, that process goes into a legislative process as you know.

Mr. McLawhorn: That's right.

Chairman Shook: But that's why (unintelligible). We're just trying to find, you know there are very specific hurdles. And anytime that you have a variance, we hear a fair number of these, but they're, as you can well imagine, they're not an everyday or every month occurrences here. So then they've got a high standard because of that. And I am just asking from you, you know, specifically, you know, the legal reason why we should grant this and you stated that it is because of the building that's there.

Mr. McLawhorn: Yes sir. Yes sir.

Mr. Mullarkey: And understanding, that's the hardship?

Mr. McLawhorn: That's the hardship. But I'm also stating that we meet, that we check all the other boxes off about public safety, parking, and all that stuff.

Chairman Shook: I understand.

Mr. McLawhorn: So I really, so I. You all have been very polite to me and I appreciate that. But this is a hard thing to argue when I believe in the 500 foot rule but I also believe there's an UNX building between that one single-family. I mean the single-family dwelling is a permitted use, you know, in that CD district. But there is not another one that's anywhere close I mean no where around.

Chairman Shook: Okay.

Mr. McLawhorn: So I would also ask you to consider the relative lack of neighborhood that is in the penumbrae of this property.

Chairman Shook: Okay, okay. I understand. And, and obviously stay up here because you may be asked and obviously have any chance to retort. At this point in time, I will ask if anybody else want to speak in favor of this application and offer testimony. Please come forward again and state your name for the record.

Mr. Wilson: My name is Deryck Wilson. I am a lifelong resident right here in Greenville. I think we all can agree that the ordinance was put in place to, to, uh, not let nightclubs and the noise in a single-family residence area. Obviously with the Future Land Use Plan being commercial downtown for where the single-family residence is. As one of you stated, in the future, you know, this will more likely be developed as commercial property noting that it is the Land Use Plan for that. This is pretty hard to imagine a really nice building along Ninth Street if you look at what's around it right now. But the, the decency of the area now and then what will be there in the future, you would, you would think they could improve it in the place and surroundings. They've um, just as Justin Mullarkey said, they already have proved that they can operate within a 500 foot, within 500 foot of residences with no complaints in the past. So they've already proved themselves that, you know, in that matter. This is an area that will more likely be right on the verge of the down, 10<sup>th</sup> Street Connector. It is a place, you know, that the City wants to continue to grow, grow in a positive manner. So this is a business that wants to come in, rehabilitate at 4200 square foot property and make it look a lot better there than it ever was before. Bring business down to the uptown downtown Greenville sector. And, you know, the use will meet pretty much everything. It won't cause any hardship on the single-family residences there now because of the chemical plant.

Chairman Shook: Okay. Any questions? Okay thanks. Anybody else here to speak in favor of this application? Please come forward and state your name for the record.

Mr. Taft: Can we have ask one of the owners to come up.

Chairman Shook: In a minute.

Mr. Lucier: Good evening. My name is Aaron Lucier and I have lived in Greenville for 19 years. When I attended the planning sessions that they had on the new arts and entertainment district for Dickinson Avenue, a lot of the discussion talked about this adjoining region and what was going to happen with it. And the discussion is arts and entertainment. And this is an entertainment venue. I think the City Staff did a very good job of talking about how there's so many other opportunities in the City for them to develop in other areas of the City. But they have made a

decision as a business to return to the same neighborhoods that they have had a business in before. Their being, their, uh, as business owners they were displaced by development, important development but they're uh, they are under business hardship based on a development that is pushing them out of their old business location. And they have decided to return to that neighborhood. That neighborhood is littered with single-family homes spotted throughout, so the actual number of properties that they can choose and meet the requirements is not as exactly as limited as the City Staff would make you believe, I would think. If you started researching how many available properties are there, how many are for rent, how many are available, and then how many single-family homes litter those commercial districts and those areas. So I do think there is a lot of arguments about hardship that you could really down. Both the business hardship of losing their existing property that did have residential properties nearby. The existing, the, what we wanted to be in a district that we wanted to redevelop as a City. We feel strongly that we want to redevelop as a City. But they are being held back by a property that has no visible site line, no visible noise line, and to the existing thing, the, you know, the existing single family home that is in a commercial district. In an otherwise, in a, you know, a warehouse district. So I think you could make several arguments about the hardships that they are facing as business owners trying to develop in a neighborhood that they want to stay in and support and be part of and have been a part of for a long time. Thank you.

Chairman Shook: Any questions for Mr. Lucier? Thank you very much. Is there anybody else here to speak in favor of the application? Okay.

(Unintelligible from audience)

Chairman Shook: Okay, if, are you hear to speak in favor? Okay, please come forward and uh.

Ms. Nunez: She hasn't been sworn in.

Chairman Shook: Yeah, that's right. Please swear in.

Chairman Shook: Please, I've been asked please remind people to sign the sheet. Thanks Amy. Okay. If you haven't signed the sheet please come up and sign the sheet before you leave. Okay, please state your name. I'm sorry. Go ahead.

Ms. Eribo: My name is Luga Eribo. And I'm seeing it for the first time. But I understand if, if we can measure a distance from point A to point B. We are not going to fly over. I understand this building, chemical building, has a, owns the rights. Is it 130 feet? They would not allow us to walk over. So to measure distance, actual distance, we would have to walk the around the corner of that building and come, to come to the corner of the building that is in question. And looking at the aerial map, it would add at least 80 foot, 80 feet, and it would make it over 500 feet. I don't know how you overlook that. You will, you will either have to climb on the roof, walk over the roof, come down. Or go around the corner. I don't know, no matter how you measure, you take the tape and you measure. And there is no way going over there.

Chairman Shook: Any questions?

Mr. Mullarkey: Are you aware of the, the law that was read by City Staff excluded topography and I think the building would be, is that, would that be included, the topography?

Ms. Eribo: I understand the law.



Mr. Mullarkey: The 500 feet was?

Mr. Dail: The 500 foot is a straight line.

Mr. Mullarkey: It's a straight line.

Mr. Dail: Yeah.

Mr. Mullarkey: As defined by the State or the City?

Mr. Dail: Shall not be located within a 500 foot radius.

Mr. Mullarkey: Okay. Thank you.

Ms. Eribo: And I understand that law was clear to protect the residence, the single-family residence. So, let's say there is a kid there that we trying to protect from rowdy people. Well that kid has to travel much longer distance to the rowdy building which was never rowdy. That 460, because that kid will have to go around the corner.

Chairman Shook: Okay, thank you very much.

Mr. Mullarkey: Thank you.

Chairman Shook: Anybody else here to speak in favor of the application? Anybody here to speak in opposition of the application? Okay.

Mr. Ewen: I have a question, if I can.

Chairman Shook: Sure.

Mr. Ewen: Have we heard from the resident of the single family residence?

Mr. Dail: Uh, no sir.

Mr. Ewen: And they were contacted?

Mr. Dail: A notice letter was sent to surrounding properties and I have not received any negative phone calls concerning the use.

Mr. Ewen: Okay.

Chairman Shook: Okay. Any other questions? Haven't heard any, we normally give rebuttal to anybody that is in opposition. Is there anything you want to say before we close the public hearing on this?

Mr. McLawhorn: (Unintelligible) I respect your courtesy.



Chairman Shook: Okay Mr. McLawhorn. Alright, having heard none, I'm going to close the public hearing at this point in time and open it for discussion. Well, Mr. Dail before we do that, what's the opinion of City Staff?

Mr. Dail: Based on the facts we stated previously, Staff recommends denial of the requested variance.

Chairman Shook: Do you have an opinion on the special use permit, I guess as well?

Mr. Dail: We would also recommend denial of that because it does not meet the 500 foot spacing requirement.

Mr. Ewen: If the 500 foot spacing requirement were not an issue, with the City Staff have any problem with the club.

Mr. Dail: Well, City Staff states that it doesn't meet the 500 foot spacing requirements, so we recommend denial.

Mr. Ewen: I know. But if you were to take that off, are there any other problems?

Chairman Shook: I think looking at the special use, they have their Staff recommended conditions about parking and things like that. And yeah.

Mr. Dail: And let me touch real quick on the special use application. There is an easement on the property that was brought to our attention by the City Engineering Staff. So, if the variance was approved and the special use permit would be approved, we would, there are several uh, conditions that we would like to recommend. One is under the Engineering Division Recommended Conditions. And there is a culvert that runs along this white line right here where I am pointing at with the arrow. I hope you can see it. There is a 30 foot drainage easement that runs over top of that, 15 foot on either side. And before any improvements could be made in that area, they would have to get written permission from the Public Works Department. We would like to ask that to be a condition placed to prevent disturbing that culvert. And also, all onsite parking areas must be improved and met, and meet city standards. Prior, prior to establishing and improving parking areas a site plan showing parking areas must be submitted and approved by City Staff. And prior to construction, constructing any additions or new structures on the subject property a site plan showing proposed improvements must be submitted to and approved by City Staff. So that's the three conditions we would like to, asked to be placed on the special use permit if you guys determine to approve it.

Chairman Shook: Okay and the public hearing is still open. Mr. McLawhorn, do you or the applicant have anything in regards to the, to the conditions as it relates to the special use permit?

Mr. McLawhorn: No sir. I think all that is reasonable.

Chairman Shook: Okay. Alright. Alright now at this point in time I will move close the public hearing open up board discussion. Keep your mics open. Any discussion?

Mr. Taft: I would just like to say this is the first time that it hasn't been almost a cut and dry case with Staff's recommendation, you know. It, it, it kind of seems that this might be the one time as a Board as I have been on here that you look at what the ordinance says and what Staff is kind of forced to say based on that ordinance versus what we might see as smart growth in our City. And we're, we're kind of, as a quasi legal Board, you know, we're supposed to pay 100 percent attention to the facts. But, you know, I just see this as being such a unique situation

with the, with the UNX building being, you know, such an unusual use already in that area, and the fact that you don't have a site line or a hearing line that it becomes a very a uh, it's not an easy case to judge on or in. And I don't think we intend to set a precedent that, you know, in anything that is not conforming to the 500 foot rule automatically get a variance. But this one seems to be as, as close to anything I have ever seen as being necessary to have a variance.

Mr. Ewen: I have to agree with Tom. It, it seems to me that there's been no objections by the people that would be affected by it. Every other aspect seems to be in conformance. So, it's very close anyways to the linear footage. That building in the way, I think if we, if we weren't allowed to give a variance then, then why even have this. So, I would be inclined to look upon that.

Mr. Faison: I would encourage the City Council to revisit the 500 foot variance in the future.

Mr. Mullarkey: I agree with what, what you 3 gentlemen have said. And it is a very unique circumstance. And there is a couple of things, and Mr. Taft touched on this, is that the, the UNX building is a unique buffer. The Future Land Use Plan designates this whole area for commercial development. That I think is important to note. And then, thirdly, the, the hardship placed on the business owner, and frankly on the, on the owner of the property in that they bought the building and were, one, the property owner bought the building before this variance was passed and then on top of that the business owner was in business before this variance was passed. And so it does make a unique circumstance because I think the City Staff does a great job at protecting our City and, and lining itself with good positive growth. But we have an area here that is going to be certainly developed as, as, as commercial, as seen it with the majority of users around it. And also we got a, we got a potential to have a redevelopment in an otherwise a dilapidated building.

Mr. Taft: I think that is spoken perfectly. Again my only real problem with this whole thing is, is going, with allowing the variance, is possibly going against City Staff recommendation, who, ever since I have been on this board, you know, we have paid the utmost (Interrupted).

Mr. Mullarkey: Absolutely.

Mr. Taft: Attention to every recommendation we've heard from them. And it's almost against the grain to think that we could possibly say, okay well even though City Staff doesn't recommend this maybe, you know, we do as a Board.

Mr. Mullarkey: I concur.

Chairman Shook: Bill Little is not the smartest person in the room no matter what he tells you.

Mr. Faison: And the property owner of this single-family home is not in objection.

Mr. Mullarkey: That is another, another very important fact.

Chairman Shook: You know, all these issues speak to reasons why you can do this. Tend to be more in an interpretation of a piece of legislation. And we don't legislate on this Board, we oversee and more or less enforce the rules. My concern, anytime that we have a variance, you have to make sure what you are doing is not creating a precedence for anything else. Is this unique? Yeah, theirs is unique because it's their situation. And I'm, there's no

other situation like that, that you could probably come up with, and if presented to this at City Council and say hey 500 feet unless this situation were there. Probably would have a very good case for that. But 460 feet is not 500 feet. And I kind of like the idea of making people walk around the corner. We could say, hey it's a one way street, you got to go the other way, and make it 1,000 feet. But we have to have some way to get past the 460 to 500 feet. You know, it's a tough one, but that's, that's the issue. And, I mean, I think if we can have a way to get over that then it opens everything else up. We've heard cases from them in the past and approved their case with no problem because they're good citizens and doing what they are supposed to do. The ordinance says 500 feet. They measured it, it's 460, 468. We're 32 we're 40 feet different. And I keep staring at it, and it won't change. It still says 460 feet. But, any thoughts relative to that?

Mr. Faison: Well, I know there are other business owners that have attempted, that went and sought City Staff to see for other locations and venues. And it was always said it doesn't fit the 500 feet. This is just the first time it's made it to a special use hearing. I was not aware, that there were so many, that 42 percent, that Mike Dail put up there, that there were so many properties that did fit the criteria. So with that being said, it's still 460 feet.

Chairman Shook: Yep. I mean, that's the area that we get into that we have to careful in any variance, they we don't legislate. That's not our job. Even though the Councilman did say we had wisdom and a bunch of other nice things. I agree. But, you know, I'm struggling with this and obviously and that's why I'm trying to incite some more conversation around this point. You know, as you read down through conditions and specifications it meets all required conditions. And this is not the point where we are voting, I'm just reading over this. Notice; obviously think they have done that. Unnecessary hardship; you know that's intended for where they didn't create it. Now they didn't create their hardship, they were doing what they were suppose to do and operating a business and the town came on and said you have to get out and of because of progress. Unique circumstance; you know, it obviously fits that. General purpose of the Ordinance; the general purpose of the ordinance is separating it from single-family dwelling not a neighborhood of single-family dwellings. And there's 2 other residences on the opposite sides, but they are duplexes, so they're not single-family dwellings. So, you know we keep going in circles, you know.

Mr. Mullarkey: And at what point do we say, as a quasi judicial Board, that the interpretation of this law that they're applying for is in fact a variance of the 460 feet.

Mr. Faison: That's a good question.

Mr. Mullarkey: And, and so as a Board, you know, we can't, we obviously can't say, and, and make a judicial stance to say that we're impeding redevelopment into, into downtown. We just, we just don't, that's just not within what we are here for. But what we are here for is to, is to understand why this 500 variance, 500 foot variance was there and in the spirit of that, why is it there. It's because of the people that have single-family residences don't want nightclubs there. But there is nobody here saying that. Now if this was in some other place. For example, Dr. Unk's, the room would be divided, in that we would have a lot people saying I don't want it in my backyard, my grandkids are back there. And I get that. But in this case, how do we interpret this law in the spirit of protecting the single-family residence, when they're, they're not even here guys.

Mr. Faison: Because depending on who your neighbor is, is whether the complaint is going to come from.

Mr. Mullarkey: And that's what I'm saying.

Chairman Shook: And the other argument could be said, you know, in any other time we get another case like this

that there is no unique situation and the homeowner doesn't show up, then, you know, we can't discern whether they believe it one way or another because of their, their attendance one way or another. Technically we could rule in one way and they could appeal to Superior Court and say, hey you know it's not within the setback and there you go. I mean, so, we have to, uh, I get what you're saying, I'm just you know.

Mr. Mullarkey: Yeah, I understand.

Mr. Ewen: Well for me the law was intended to protect the single families and neighborhoods. And in fact, I don't see this as circumventing that protection. That protection is granted by that big old building in between there. And so, so the spirit of the law is upheld even though we grant them a variance. And I would move to grant the variance on that basis in that it does not endanger the single-family dwelling within the radius area.

Mr. Mullarkey: So doctor, you're, you're arguing that it is truly an area variance? It's not a use variance.

Mr. Ewen: That's what I would argue. Yes.

Mr. Faison: That's kind of how I (interrupted)

Mr. Mullarkey: That's where the issue has to boil down. That is this a use variance or is it area variance. If it's a use variance, we're done. We don't, we don't need to carry this on. We don't have the, we don't have the power to decide that.

Mr. Faison: And the City's stance is that it's a use variance and to deny. But I feel the same way that's it's an area variance and it would go, but.

Chairman Shook: Mr. Little, on point of clarification could you define again in very specific terms why the City states that this is a use variance and not an area variance. And be very specific to that point. Obviously the public hearing is closed but we are going to ask for clarification.

Attorney Little: Okay, alright. An area variance is one that looks to deviate from the construction and placement of the zoning ordinance. For example, the last variance request, I believe we had, was where the builder constructed the garage. They measured it. It met the 38 or 39 foot rule but then they poured the concrete and that changed it. And then the builder left town. The owner was stuck.

Mr. Faison: They made it like 2 feet over or something.

Attorney Little: It was a 2 foot differential in there. And so then the option was to tear it down, now then again that under the old statutory rules which was undue hardship. This is the statue, the City legislature modified it as unnecessary versus the undue and it no longer says there cannot be any other use of the property. It's just now that, it's just is there a reasonable use of the property. So they, they made, they reduced some of the criteria, but they still have the same four-fifths majority. Now a use variance, as Staff has asserted to you, the use is a deviation from the zoning requirements. It permits a land use other than the use particularized in the zoning ordinance and it is essentially a license to use the property not in a way permitted under the ordinance. Or to give you another, is that, a use variance is a legislative rezoning or amendment to the ordinance. Staff, as I understand, their assertion is that Council made the zoning ordinance 500 feet. That's, that is, that is the condition for any property if it is a special use permit, not one of right, but if it's a special use permit, the zoning ordinance says it must be no closer than 500

feet from a single family residence. That would be, that would be the zoning requirement and that, that's the Staff position. The uh, now as I understand, and please correct me if I am wrong Mr. McLawhorn, their argument is that it is an area because the UNX building creates a uniqueness to the topography because of the size of the building. That's why their argument is that it is an area versus a use. You have to decide is that area based upon their argument, is that correct summary? Okay. And that the Staff says it's a use because the Council said it may not be within 500 feet.

Mr. Faison: It had some specific language about it not all or no variance. There was some specific language somewhere along the way.

Chairman Shook: While you are looking for that Bill, let me get you to define in this setting the word area. I mean, the general area, the.

Attorney Little: Area is again, is probably a term that is, trying, that the court tried to differentiate between use and area. Area is the property is the placement for the construction. We go back to our garage. It was placed was correctly before and then due to no fault of the owner, the property owner, it was modified by the builder.

Mr. Mullarkey: Well Bill, couldn't we make the same argument that this building was built before this variance went in, and, and so, not the variance, excuse me, but the ordinance went in. And so the builder made it before this ordinance went in, and so if he bumped it back 42 or 32 feet, 40 or 32 feet, then he wouldn't have this hardship.

Mr. Flood: Mr. Mullarkey, let me just take a final point on that. If the City Council had said existing uses, existing buildings have flexibility with the administration of the 500 foot spacing, then that could be the case. However, City Council didn't, they didn't single out. They said new clubs. They didn't say whether you are going into an existing building or building a brand new building. They said all new clubs shall have a 500 foot spacing. So if they had, if they had finer, or had put finer point in and defined it and said yes, and you know, and I don't want to through City Council under the bus. But they asked for a 500 foot spacing requirement.

Mr. Mullarkey: I understand.

Mr. Flood: And you can't think of every circumstance when an ordinance is drafted. But they said 500 foot spacing for new clubs whether it is an existing building or a new building. And so it gets back to the whole question. Area standards are dimensional standards required for any use, any lot throughout the City. They said that as a special use permit, it's permitted if it meets these standards. And the standard is 500 feet. So, so that's why Staff contends that it's an area use.

Chairman Shook: So it's your contention that area doesn't mean the general area of this.

Mr. Flood: Exactly. Exactly.

Mr. Faison: Merrill, if this was approved, that means also another club couldn't open up within 500 feet of this one, right?

Mr. Flood: That is correct. Unless they came before the Board and we would have the same opinion because the spirit of the ordinance in City Council is 500 feet.

Mr. Faison: 500 feet is 500 feet.

Mr. Flood: That's correct.

Chairman Shook: And I know the public hearing is closed but we asked for clarification, I'll ask for your additional clarification about that.

Mr. McLawhorn: Yes sir, thank you. I just want just to say that we're, we, that we think we have to meet for special use. You know, it doesn't seem logical to me. But we are not a new club. We're an existing club that was displaced by the City of Greenville in this construction. I mean its transportation needs. That's a hardship in itself.

Chairman Shook: And I, and I, I don't disagree with that. What the nature I am trying to get over and I'm trying to find a way around the corner, as it were, you know, it says 500 feet radius. And that's the law that we have to comply with.

Mr. McLawhorn: Or vary from.

Chairman Shook: That's right.

Mr. Ewen: And I said, I mean, if it was that straight forward we wouldn't have a variance.

Mr. Mullarkey: We wouldn't have a variance.

Mr. Ewen: Well if we couldn't do the variance, then we shouldn't even sit here.

Mr. Faison: So then we are within our rights to do the variance. We're within our quasi-judicial rights.

Mr. Mullarkey: If it's an area variance. If it's a use variance we don't have that.

Chairman Shook: They're stating that the area again was specific to the area there at the building.

Mr. Ewen: Well, it's up to us then if it's an area variance and use variance.

Chairman Shook: Well, one could argue that.

Mr. Ewen: Then the City takes us to court.

Mr. Taft: (Unintelligible) The fact that it's in front of us as a variance gives us a right to vote on it. I mean, is there any reason we don't, someone doesn't either move or not move to make a motion to pass this?

Mr. Mullarkey: I think my question and maybe Chairman maybe you can help me with this. You, you got a great insight on this. Is this a matter of taking it and saying it's not 500 feet, period. Or is this the matter of taking a subjective look the situation?

Chairman Shook: Well I don't know that. You got to have a hurdle to get over you know. Here's the subjective look. Conditions, specifications, notice, unnecessary hardship, unique circumstances, general purpose, safety and

welfare. There stated right there. Does it meet all conditions and requires special use? Well, uh no, uh again. What we have to guard against is, we grant this within 500 feet, 6 months down the road somebody else comes up and says well you granted it based on this and here are the specific reasons why you did that. And by the way, we have a building in front of ours too. And in the background you have 100 residences that say no. Well, we're still arguing the special, we're still arguing the variance. Do we have the right? Well, now we're in the realm of saying it's 500 feet unless, you know, and that's just.

Mr. Faison: And then we are in litigation.

Chairman Shook: That's, that's you know, I mean.

Mr. Ewen: That's why we have the courts. So.

Chairman Shook: Yeah, well, yeah, I mean.

Mr. Ewen: Do we force the issue?

Chairman Shook: Well, you now.

Mr. Mullarkey: It's very difficult in this unique circumstance. I would argue that, this is a really different situation. It would be, I mean, if we had, and it's not to be a referendum that we have people in here, they get to inject their opinion and whoever raises the most hands or stands the most seats up they win. We can't do that. But at the same time there are some very unique circumstances with this.

Chairman Shook: I understand. And when you create. And variances, and again, special use permits, you know, the applicant has the right, or the burden of persuasion. Anybody against has the burden of proof. If you're a variance you have to prove that you didn't create a hardship.

Mr. Mullarkey: Right.

Chairman Shook: They didn't create a hardship. You know, did they create the hardship by choosing this location? Well the City is going to contend other locations. Well I kind of want to shy away from that. Look, the City is not in business, with all due respect to the City folks, of choosing business locations. And thank goodness we're not. But we still as a community we say hey we want certain things zoned. And we go through the legislative process and we say this zone or that and we get feedback. And we elect City Council Members, and they come up with their infinite wisdom and say 500 feet and then enforce it. And if we go around that, we better have a reason. You know, it's not to say that City Council couldn't say 500 feet unless you have this building in front of you.

Mr. Mullarkey: I understand.

Chairman Shook: It's just.

Mr. Ewen: Well I think it goes with saying there is a building in front. And we're, and that's why it's a variance.

Mr. Faison: Well, first we have to make a motion to decide.



Chairman Shook: Well, I mean, what we're going to do is get through, we'll get through this and read the conditions and specifications and then if you want to call for a vote on any of those, then we'll vote on the very specific items, as we read, and if not. Yeah, we just need more board discussion. I'm just keeping the discussion going because I want to hear, well you know.

Mr. Mullarkey: Mr. Chairman, don't we have to, don't we have to vote on the issue of the variance and then rather or not.

Chairman Shook: We have the variance request that requires four-fifths majority vote which means that any one negative vote would in effect deny this request. So we read through these. If you want to vote on any of those. If you are voting in favor we don't do anything. If you want to call a vote, it doesn't mean you get a vote no, it just means you are calling a vote on each one of those. We have to vote up or down on each item that a vote is called for. Okay, so, um, I just keeping the board discussion, at this point of time, we are still a board discussion. So when we finish discussing this, then we go into the advising criteria and, and then we approve or deny, and you know, go from that point. So any other discussion?

Mr. Taft: No.

Chairman Shook: Okay I will advise the Board and the public of the criteria for your review. For expediency criteria will be read by reference. You may call for a vote on any criteria as read. Your silence on each criteria is recognized as a vote in favor of the application. Conditions and specifications. I am going to call for a vote. I am going to start down with Mr. Frank. Yes or no? If you are voting in favor you are saying that they have met the conditions and specifications of each one of those and if you want to have a chance to review that before you vote, that's fine.

Mr. Frank: This is a dilemma, not to say the least. I'd say, I'd say yes. (vote)

Chairman Shook: Okay. Mr. Mullarkey.

Mr. Mullarkey: I, I need a little, I don't read as fast as him. I'm trying to just read through this for a moment please.

Chairman Shook: Okay.

Mr. Mullarkey: Just to recap Mr. Chairman, we are voting on conditions and specifications.

Chairman Shook: Conditions and specifications. The application filed as a request number meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a variance application.

(from the audience: It's not a variance)

Mr. Mullarkey: I, I want to say yes, but the fact is that it does not meet all required conditions and specifications of the zoning ordinance and policies of the City for, well, excuse me. It does meet the requirements for submission of a variance application. Is that what I'm voting on?

Chairman Shook: Meets all required conditions and specifications of the zoning ordinance and of the policies for



the City for submission of a variance application. So I would say yeah.

Mr. Mullarkey: For variance application

Chairman Shook: So is that yes or no?

Mr. McLawhorn: (from audience some of which unintelligible) Mr. Chairman, that is for submission. It's not. You're not deciding on a variance. You can't say. It's a form.

Chairman Shook: That's the first one.

Mr. Mullarkey: Yes. My vote is yes.(vote)

Mr. Ewen: Yes. (vote)

Chairman Shook: No. (vote)

Mr. Taft: Yes. (vote)

Mr. Faison: Yes. (vote)

Chairman Shook: Okay. Notice. (silence-vote) Unnecessary hardship. I'll call for a vote. Unnecessary hardship that the applicant would suffer an unnecessary hardship if a strict application of the ordinance is applied. Not necessary to show that in the absence of the variance, no reasonable use could occur. Again, Mr. Mullarkey, Mr. Frank, I'm sorry.

Mr. Frank: Ah, yes. (vote)

Chairman Shook: Mr. Mullarkey.

Mr. Mullarkey: Yes. (vote)

Mr. Ewen: Yes. (vote)

Chairman Shook: No. (vote)

Mr. Taft: Uh, yes, but I would add, I mean, if you could sub-out the word unnecessary for arbitrary hardship. That's kind of how I would. I mean, I know I'm not trying to say something (unintelligible).

Attorney Little: The statue language is unnecessary.

Mr. Taft: Yes. (vote)

Chairman Shook: Okay. Mr. Faison

Mr. Faison: I'm contemplating.

Chairman Shook: I understand.

Mr. Faison: Unnecessary hardship. Which would mean that, that there's other situations that it could have been avoided. No. (vote)

Chairman Shook: Okay. Unique circumstances. Call for a vote. Mr. Frank.

Mr. Frank: Yes. (vote)

Chairman Shook: Okay. Mr. Mullarkey.

Mr. Mullarkey: Yes. (vote)

Chairman Shook: Mr. Ewen.

Mr. Ewen: Yes. (vote)

Chairman Shook: No. (vote)

Mr. Taft: One second. Yes. (vote)

Mr. Faison: Yes. (vote)

Chairman Shook: Okay. General purpose of the ordinance. Call for a vote. Mr. Frank.

Mr. Frank: Yes. (vote)

Chairman Shook: Mr. Mullarkey.

Mr. Mullarkey: I would have to say yes, but I do want to comment on that. In that, that the purpose and intent of the zoning ordinance was to protect the single-family residence. The single family residence, we don't even know if it actually exists. So, so in that regard, I say yes. (vote)

Mr. Ewen: Yes. (vote)

Chairman Shook: Mr. Ewen, yes. I vote no. (vote)

Mr. Taft: I'm in the same opinion as Mr. Mullarkey is. (vote)

Mr. Faison: Yes. (vote)

Chairman Shook: Okay. Safety and welfare.

Mr. Frank: Yes.

Chairman Shook: I'm not calling for a vote. Is anyone else call for a vote? Okay, and as that you've sustained at least one negative vote on two items, excuse me three items. And two negative votes on one. So Mr. Little, give me some guidance here.

Attorney Little: Because there is a lack of in this case unanimity. That's my big word for tonight. On each of the criteria, then the motion would not pass, which you would have to have, the variance request would not pass. You then would have to have a vote consistent with that to show that it does not pass.

Chairman Shook: Okay, so we take a motion that we approve the findings of facts with the vote, with this, this outcome. Correct?

Attorney Little: That is correct. That's your finding the facts are that and the, based upon the vote. And then as I indicated earlier, because it did not pass muster on the variance, then it is a defacto denial of the special use.

Chairman Shook: Okay. Motion to approve the findings of fact.

Mr. Taft: So moved.

Mr. Ewen: Second.

Chairman Shook: So moved, Mr. Ewen seconded. All in favor say "Aye".

All members: "Aye"

Chairman Shook: All opposed. (silence). And by defacto, the variance request has been denied, which also by defacto denies the special use permit. I will take a motion to adjourn as that is our only (unintelligible).

**With no further business, Mr. Ewen made a motion to adjourn, Chairman Shook seconded, and it passed unanimously. Meeting adjourned at 8:56 p.m.**

Respectfully Submitted

Michael R. Dail, II  
Planner