

**MINUTES ADOPTED BY THE GREENVILLE BOARD OF ADJUSTMENT**

**SEPTEMBER 26th 2019**

The Greenville Board of Adjustment met on the above date at 6:00 PM in the City Council Chambers of City Hall.

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

Bill Johnson -Chairman - *	Nathan Cohen-X
Christopher Lilley- X	Michael Glenn- X
Rodney Bullock - *	Ann Bellis - *
Hunt McKinnon - *	James Moretz- *
Dillion Godley-X	Sharon Evans-*
Stephen Atkinson –*	

**VOTING MEMBERS:** Johnson, Bellis, McKinnon, Bullock, Atkinson, Evans and Moretz

**OTHERS PRESENT:** Ms. Elizabeth Blount, Lead Planner; Mr. Donald Phillips, Assistant City Attorney  
Ms. Camillia Smith, Secretary, Notary; Kelvin Thomas, Communication Specialist

**AGENDA:**

Attorney Phillips informed the board that item 3 on the agenda had to be continued due to the number of members that heard the case during the last meeting not being present at this meeting.

A motion made to continue the item until the next meeting made by Mr. McKinnon, seconded by Mr. Bullock. Motion passed unanimously.

**MINUTES**

Ms. Bellis made a motion to approve the September 3<sup>rd</sup> 2019 minutes with the following changes:

Page 7 Mr. Bullock made the motion to approve the finding of facts and Ms. Evans seconded.  
Ms. Bellis made the motion to approve the request and Ms. Evans seconded.

Mr. Bullock seconded the motion. Motion passed unanimously

Attorney Phillips reviewed information. As stated on pages 2 to 3 of the Meeting Handout available to the Public, the EVIDENCE TO BE CONSIDERED BY THE BOARD OF ADJUSTMENT IS AS FOLLOWS:

A. The Board of Adjustment is a quasi-judicial body that makes a decision concerning an application, petition or appeal based on the evidence presented by those in favor as well as those in opposition.

B. The members of the Board of Adjustment are lay persons and as such, the rules of evidence that are followed in a court are relaxed for cases heard before this body.

C. Though the rules of evidence are relaxed, it does not mean they are ignored. Only evidence that is material, competent and substantial will be considered and may be used by the Board in its decision-making process.

D. The Board may not consider, nor is it admissible to present or offer affidavits, letters or other writings in support of or in opposition to a matter before the Board unless the person who prepared the writing is testifying. These writings are considered hearsay.

1. Statements by a person such as in my opinion, the application will create a traffic hazard," is not an admissible opinion and may not be considered by the Board.

a. However, such an opinion may be admissible if it is made by an expert or a person who is qualified to give opinions concerning traffic hazards, is making a presentation to the Board concerning his or her investigation and the basis for his or her conclusion in the report.

b. A lay person can give an opinion but he or she also must present facts to show how the proposal affects his or her piece of property specifically and not just in a general way.

2. A statement that another person who is not present and not testifying either supports or doesn't support the petitioner or application is hearsay and is not admissible.

3. The same rule applies to both the applicant and those in opposition.

Pursuant to North Carolina General Statute 160A-388 and Section 4 of the Board of Adjustment's Rules of Procedure:

4-3. No member of the Board of Adjustment shall participate in either the discussion or vote on any special use permit, variance, or appeal from an administrative officer's decision in any manner that would violate the affected persons' constitutional right to a fair and impartial decision maker.

Prohibited conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter and not willing to consider changing his or her mind; and undisclosed ex parte communications with the person before the Board, any witnesses, staff, or other Board members. Decisions on either a request for recusal by a member or objections by a person appearing before the Board shall be decided by a simple majority vote.

4-4. No Board Member shall take part in the hearing, consideration, or determination of any matter in which that Board Member is involved or has a financial or personal interest. Personal interest shall be defined as having a family member involved in the project under consideration, a neighborhood association involvement where a Board Member is on the governing body of such association, or where the Board Member is involved in a conflict or dispute with the applicant on a matter unrelated to the application. [f a Board Member has such a conflict, he shall declare the conflict and request to be excused from voting on the issue. A majority vote of the remaining members present shall be required to excuse the member.

4-5.No Board member shall vote on any matter deciding an application or appeal, unless he shall have attended the public hearing on that application or appeal.

4-6. No Board member shall discuss any case with any parties in interest prior to the public hearing on that case, provided however, that members may receive and/or seek information pertaining to the case from any other members of the Board.

If a Board member has had an ex parte communication that also needs to be disclosed at this time.

The notary swore in staff and all those speaking for and against the request.

## **NEW BUSINESS**

### **PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY NAJEH JABBAR**

The applicant, Najeh Jabbar, desires a special use permit to operate a Hookah cafe pursuant to Appendix A, Use (10)hh. of the Greenville City Code. The proposed use is located at 3016 S. Memorial Drive. The property is further identified as being tax parcel number 27149.

Ms. Blount delineated the property on the map. She stated that the subject property was located in the southwestern portion of the city.

Zoning of Property: CH (Heavy Commercial)

#### Surrounding Zoning:

North: CH (Heavy Commercial) and CN (Neighborhood Commercial)

South: CH (Heavy Commercial)

East: CH (Office Residential) and OR (Office Residential)

West: CH (Heavy Commercial) and RA20 (Residential Agricultural)

#### Surrounding Development:

North: Street Sounds and Rintyme

South: Go Beyond Relief

East: Pitt Community College Continuing Education Center and Greenville Financial Services

West: Clubway Apartments

The property contains a 1,800 square foot commercial building and has approximately 152 feet of frontage along S. Memorial Drive with total lot area of 0.53 acres.

Comprehensive Plan:

The property is located within the Commercial character type as designated by the Horizon 2026 Plan. The proposed use is in compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on September 12, 2019. Notice of the public hearing was published in the Daily Reflector on September 16, 2019 and September 23, 2019.

Related Zoning Ordinance Regulations:

Definition:

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

Specific Criteria

Section 9-4-103 (AA)

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

Staff Recommended Conditions:

The applicant shall comply with Section 310.9 of the North Carolina Fire Code to include but not limited to an approved ventilation system, an approved noncombustible container for coals, location and position of hookah pipes and disposal, use or handling of ashes and coals.

Shall not operate as a public/private club.

Shall not be a place of entertainment, shall not offer floor shows or dancing area.

Shall not charge a cover for entry.

Shall not offer live entertainment or amplified audio entertainment. Amplified audio entertainment shall mean any type of music or other entertainment delivered through and by an electronic system; provided, however, televisions operating with no amplification other than their internal speakers or televisions connected to a master sound system operating at low amplification and indoor background music system operating at low amplification and not intended as principal form of entertainment shall not be deemed amplified audio entertainment.

No loitering or outdoor activities permitted.

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

Shall not be a defacto nightclub.

#### Other Comments

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

Applicant shall obtain building permits for any work done and have approved inspections.

#### 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.

Chairman Johnson opened the public hearing.

Mr. Jabbar, the applicant, spoke in favor of the request. He stated that he is interested in operating a Hookah Café with serving ice tea or soda and watching TV.

Ms. Bellis asked if food or drinks would be sold.

Mr. Jabbar replied that he would like to but it is not allowed.

Mr. Atkinson asked if tobacco products could not be sold, how would the patrons be able to smoke it?

Mr. Jabbar answered he would buy in bulk and put it on the hookah.

Mr. Moretz asked what about the intended hours of operation.

Mr. Jabbar replied ten 'clock on the weekday and if business picks up then 11 or 12 on the weekend

Mr. Johnson asked if the applicant owned any similar business.

Mr. Jabbar replied that he owned a convenience store but nothing like this business.

Mr. Atkinson asked about the hours of operation in the application

Mr. Jabbar replied if he was limited to ten 'clock then he will close at ten 'clock. He will go by the law.

Mr. Moretz asked the applicant if he understood the conditions being placed on the special use permit.

Mr. Jabbar replied he received an email from Ms. Blount yesterday and he agreed with everything in the email.

Mr. McKinnon asked if there had been any discussion about signage or lights and any particulars regarding any restrictions.

Ms. Blount stated that was not a part of the request but the board could make that a condition.

Chairman Johnson asked for staff recommendation.

Ms. Blount gave the staff recommendation of approval with the conditions.

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

Chairman Johnson read the criteria and the board's silence was a vote in favor of the criteria.

**Mr. McKinnon made a motion to adopt the Finding of Facts with the recommended conditions, Mr. Bullock seconded the motion and it passed unanimously.**

**Ms. Moretz made a motion to approve the petition with the conditions, Ms. Evans seconded the motion and it passed unanimously.**

### **PUBLIC HEARING ON A REQUEST FOR A VARIANCE BY MICHAEL BALDWIN**

The applicant, Michael Baldwin, desires a variance from the setbacks and separation of single family group development found in Section 9-4-145 of the Zoning Ordinance in Greenville City Code. The subject property is located at 411 West 3rd Street. The property is further identified as being tax parcel number 04409.

Ms. Blount delineated the property.

Zoning of Property: CD (Downtown Commercial)

#### Surrounding Zoning:

North: CD (Downtown Commercial) and CDF (Downtown Commercial Fringe)  
South: CDF (Downtown Commercial Fringe)  
East: CD (Downtown Commercial)  
West: CDF (Downtown Commercial Fringe)

#### Surrounding Development:

North: A vacant lot  
South: Single family dwellings and a vacant lot  
East: A wooded lot  
West: A vacant commercial building and lot

#### Description of Property:

The subject property is 0.25 acres in size and has approximately 124 feet of frontage along W 3rd Street. The property owner wishes to sell the units individually. The property use will remain residential.

#### Comprehensive Plan:

The property is located within the Uptown Edge character type as designated by the Horizon 2026 Greenville Community Plan. The proposed use is in compliance with the Future Land Use Plan which recommends redevelopment projects and multi-family residential development for the

subject property.

Notice:

Notice was mailed to the adjoining property owners on September 12, 2019. Notice of the public hearing was published in the Daily Reflector on September 16 and September 23, 2019.

Staff Comments:

Pertinent facts regarding the application:

The property owner initiated conversion of the units from two-family attached dwellings to single family dwellings in order to sell the units individually. During the conversion, the owner rezoned the property from Downtown Commercial Fringe (CDF) to Downtown Commercial (CD). After completion of the renovations, the owner submitted a plat for recordation. Staff informed the owner that single family dwellings were not allowed in the current zoning district; however, single family group development under the multi-family regulations was permitted.

Greenville City Code Section 9-4-145 (E)(4) states principal structures shall be located not less than 16 feet from any other principal structure within a single family group development. The current separation between the units is 15 feet 3 inches and 15 feet 4 inches. These units were originally built in 1940 prior to the development of this regulation. A variance would be required for legal documentation in order for the units to be sold individually. The group development must have common area and establish a home owner's association.

Relief from the setbacks is not required since the units are in the CD zoning district and there are no minimum street, side and rear yard setbacks.

Variance Criteria:

The Board must find in favor of the applicant on each criteria in order to grant the requested variance

1. Conditions and Specifications - The application filed meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a variance application.
2. Notice - Persons owning property adjacent of the proposed development or use, as listed on the current tax records, were served notice of the public hearing by mail in accordance with applicable requirements; and that notice of a public hearing to consider the special use permit was published on September 16 and September 23, 2019 in The Daily Reflector.
3. Unnecessary Hardship - The applicant would suffer an unnecessary hardship if a strict application of the ordinance is applied.
4. Unique Circumstances - The hardship of which the applicant complains results from unique circumstances related to the applicant's land – location, size, topography. It is not a unique circumstance if the hardship is caused by the personal actions of the applicant or is a

hardship common to others in the development or the general public is not a basis for granting a variance.

5. General Purpose of the Ordinance - If granted, the variance would be in harmony with the general purpose and intent of the Zoning Ordinance and would preserve its spirit.
6. Safety and Welfare - The granting of the variance secures the public safety and welfare and does substantial justice.

The Applicant is seeking relief of

SEC. 9-4-145 DEVELOPMENT STANDARDS

*(E) Building separation within group developments containing two or more principal structures on one lot of record.*

(4) No portion of any principal structure shall be located less than 16 feet from any other principal structure as measured to the closest point.

Staff Recommended Conditions:

A site plan indicating the common area and the agreement to establish a homeowner association shall be approved prior to marketing the property.

A final plat and homeowner association documents shall be recorded with the Register of Deeds prior to marketing the property.

Staff Recommendation:

Planning staff recommends approval of the request.

Chairman Johnson opened the public hearing.

Mr. McKinnon asked if parking had been discussed.

Ms. Blount replied there is sufficient parking for the units.

Mr. Moretz asked for the purpose of the request if relief from the setback requirement was not necessary.

Ms. Blount answered because under the single family multi-family development, a 16 foot separation between the units is required and the separation between the units is 15 feet 3 inches and 15 feet 4 inches.

Mr. Mike Baldwin, applicant, spoke in favor of the request. He passed out several pictures of the property. He stated that the owner of the property, Michael Overton, gutted the inside and turned a duplex into a single family home. The property was rezoned in 2018 however CD doesn't allow for single

family so they had to go to single family under your multifamily ordinance. There is still the issue with not having adequate separation between the buildings. The site plan has been approved pending a variance from this board. It meets the list of criteria for the variance.

Mr. Atkinson asked wasn't a building permit issued and wasn't there discussion about the plans for the property.

Mr. Baldwin replied that he wasn't involved then and he was just the petitioner. He also stated that he thought that the property owner wasn't sure he wanted to sell them at that time. The issues arose when the desire came to want to market them.

Mr. McKinnon asked if sidewalks were required and if the car parked in the photos was on the sidewalk. The parking clearly obstructed the sidewalk.

Ms. Blount replied yes that would be correct if this was new construction, but seeing how these were built in 1940, that pavement is just is an access to the door and not a sidewalk because it does not extend the entire length of the structures. It is a continuation of the concrete walkway.

Mr. Johnson asked if the reasoning for the variance is because the proximity of the structures to each other or closer to the street.

Mr. Baldwin replied it is for the proximity to each structure because there are no setbacks for CD.

Mr. McKinnon asked if this plan was reviewed by the Fire Marshall and Public Works.

Ms. Blount answered yes.

Chairman Johnson asked for staff recommendation.

Ms. Blount gave the staff recommendation of approval with the conditions.

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

Chairman Johnson read the criteria

### **VARIANCE REQUESTS**

(Requires 4/5ths majority vote)

1. **Conditions and Specifications.** That the application filed as Request # \_\_\_\_\_ meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a variance application.

**VOTE:** Unanimously Passed

2. **Notice.** That those persons owning property adjacent parcels of the proposed development or use, as listed on the current tax records, were served notice of the public hearing by mail in accordance with applicable requirements; and that notice of a public hearing to consider the special use permit was published on September 16th, 2019 and September 23rd, 2019 in The Daily Reflector, a newspaper having general circulation in the area, as required by law.

**VOTE:** Unanimously Passed

3. **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.

**VOTE 1:** 5 in favor (Bellis, Bullock, Moretz, Johnson, Evans), 2 opposed (McKinnon and Atkinson)

Mr. McKinnon and Mr. Atkinson stated that it was clear when the property was purchased that the separation criteria was not there.

Attorney Phillips reminded the board that the act of purchasing a property with the knowledge that the circumstance exist shall not be regarded as a self-created hardship and is not a basis for denial.

**VOTE 2:** Unanimously Passed

4. **Unique Circumstances.** That the hardship of which the applicant complains results from unique circumstances related to the applicant's land – location, size, topography. It is not a unique circumstance if the hardship is caused by the personal actions of the applicant or is a hardship common to others in the development or the general public is not a basis for granting a variance.

**VOTE 1:** 6 in favor (Bellis, Bullock, Moretz, Johnson, Evans, Atkinson), 1 opposed (McKinnon)

Mr. McKinnon stated that he did not see how the property is unique.

Attorney Phillips read the statutes for Unique Circumstances. He also read a portion from the Quasi-Judicial Handbook from the School of Government providing examples of unique circumstances.

Mr. McKinnon said the property is the normal building pattern for West Greenville and the board should be cautious about setting precedent as stated by Attorney Phil Dixon during a previous case.

Mr. Moretz asked staff if there was any other property in that zoning district with the same circumstance.

Ms. Blount stated that the variance request is about the separation between the buildings and that three separate structures on one lot is not common in the West Greenville area. The particular property is unique.

**VOTE 2:** Unanimously Passed

**5. General Purpose of the Ordinance.** That if granted, the variance would be in harmony with the general purpose and intent of the Zoning Ordinance and would preserve its spirit.

**VOTE 1:** 5 in favor (Bellis, Bullock, Moretz, Johnson, Evans), 2 opposed (McKinnon and Atkinson)

Ms. Blount explained that the use would remain residential.

Mr. Moretz asked if the property could be converted to commercial.

Ms. Blount explained that the zoning district does allow for commercial use but converting a house to a commercial use would require the structure to be brought up to building code and it may not be that easy.

Ms. Johnson asked if the structures had to be sold all at once.

Ms. Blount stated that they could be sold individually which is the reason behind the request.

Mr. McKinnon asked if the units were treated like condominiums.

Ms. Blount stated the structures do not fit the condominium act criteria because they are single family dwellings but it is similar with the common area and the homeowner association requirement.

**VOTE 2:** Unanimously Passed

**6. Safety and Welfare.** That the granting of the variance secures the public safety and welfare and does substantial justice.

**VOTE 1:** 5 in favor (Bellis, Bullock, Moretz, Johnson, Evans), 2 opposed (McKinnon and Atkinson)

Because of the previous explanations, the second vote was changed.

**VOTE 2:** Unanimously Passed

**Mr. Bullock made a motion to adopt the Finding of Facts with the recommended conditions, Ms. Bellis seconded the motion and it passed unanimously.**

**Ms. Moretz made a motion to approve the petition with the conditions, Mr. Bullock seconded the motion and it passed unanimously.**

With no further business, Mr. Moretz made a motion to adjourn, Mr. Bullock seconded and it passed unanimously.

Meeting adjourned at 7:13 pm

Respectfully submitted

Elizabeth Blount

Lead Planner