

## ADOPTED MINUTES OF THE GREENVILLE BOARD OF ADJUSTMENT

**August 6, 2020**

The Greenville Board of Adjustment met electronically on the above date at 6:00 PM from different locations due to Covid 19 protocols.

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

Michael Glenn – Acting Chairman - *	Nathan Cohen-X
Christopher Lilley- *	Stephen Atkinson- *
Rodney Bullock - *	Ann Bellis - *
Hunt McKinnon - X	Dillion Godley-X
Sharon Evans-*	John Landrine -*

**VOTING MEMBERS:** Glenn, Bullock, Lilley, Bellis, Atkinson, Evans, Landrine

Mr. Glenn told the commission that Mr. McKinnon was traveling for business purposes and could not make the meeting tonight.

Motion made by Mr. Bullock, seconded by Mrs. Bellis, to excuse Mr. McKinnon for this evening's meeting. Vote was unanimous.

**OTHERS PRESENT:** Ms. Elizabeth Blount, Lead Planner; Les Everett, Assistant Director of Planning and Development Services; Mr. Thomas Barnett, Director of Planning and Development Services; Mr. Emanuel McGirt, City Attorney; Ms. Camillia Smith, Secretary, Notary; Kelvin Thomas, Communication Specialist; Margo Castro, GIS Technician II; Tony Parker, Planner I; Brian Meyerhoeffer, Council Member At-Large

**OPENING STATEMENT:** Mr. Glenn read the following statement:

*I would like to start by acknowledging that we are conducting this meeting using a remote, electronic platform. This is the first remote meeting of the Greenville Board of Adjustment. I would ask for your patience today as we proceed. There may be slight delays as we transition between speakers, participants and presentations.*

*The Board of Adjustment is a quasi-judicial body that is governed by the North Carolina General Statutes and the City's Code of Ordinance. We conduct evidentiary hearings on requests for special use permits, variances, appeals of administrative decisions and interpretations.*

*Before we begin the evidentiary hearings on today's agenda, I would like to provide some important information about the steps taken to ensure that each parties' due process rights are protected as we proceed in this remote platform.*

*First, today's meeting will be conducted in accordance with the newly enacted statutes in Session Law 2020-3, which allow for remote meetings and quasi-judicial hearings during declarations of emergency.*

*Second, each applicant on today's agenda was notified before being placed on the agenda that this meeting would be conducted using a remote, electronic platform. Every applicant on today's agenda has consented to the Board conducting the evidentiary hearing on their request using this remote platform. We will also confirm today at the start of each evidentiary hearing that the participants in the evidentiary hearing consent to the matter proceeding in this remote platform. If there is any objection to a matter proceeding in this remote platform, the case will be continued.*

*Third, notice of this meeting was provided to the applicants and the public in numerous ways, well beyond the legal requirements for noticing this meeting and the evidentiary hearings.*

*Specifically, notice of today's evidentiary hearings was provided by mail to all property owners within 250 feet of each subject property. The mailed notices were sent two weeks in advance of the meeting date and within the law to provide such notice – and each notice letter notified the recipient of the remote meeting platform. **No case is proceeding today in which the City has been contacted by an individual with an objection to the case or to the matter being heard in this remote meeting platform.***

*Notice was also provided by posting signs on the site of each property, publishing notice in the newspaper and providing notice on the City's website. Each of these notice methods were also done within the legal requirement to provide such notice.*

*The notices for today's meeting contained information about the means by which the public can access the remote meeting, as the meeting occurs.*

*Fourth, any individual wishing to participate in today's evidentiary hearings was required to sign-up prior to the meeting to participate. Information about this sign-up requirement, along with information about how to sign-up to participate, was included in the mailed notice letters sent to each property owner within 250 feet of each subject property. This information was also included on the Board's website and, among other information, a link to the Board's website was included in all methods of notice. **No case is proceeding today in which anyone contacted the City to voice an objection to a request or the remote meeting platform.***

*All individuals participating in today's evidentiary hearings were also required to submit a copy of any presentation, document, exhibit or other material that they wished to submit at the evidentiary hearing prior to today's meeting. All materials that the City received from the participants in today's cases, as well as a copy of City staff's presentations and documents, were posted online on the Board of Adjustment Meeting Schedule and Agenda prior to this meeting. All materials that will be discussed today can be viewed at any time during today's meeting by visiting <https://www.greenvillenc.gov/government/city-council/boards-and-commissions/board-of-adjustment/2020-board-of-adjustment-meeting-schedule-and-agendas> and clicking the August 6, 2020 Agenda and Meeting packet link. No new documents will be presented at today's meeting. All decisions of this board are subject to appeal with the Pitt County Superior court.*

*Finally, all individuals who signed-up to participate in an evidentiary hearing on today's agenda, as well as all City staff participants, were emailed a witness oath form prior to today's meeting. Any individual planning to testify or submit evidence in an evidentiary hearing was notified that they must sign the oath form prior to today's meeting. We will also reaffirm everyone's oath on the record at today's meeting.*

## **MINUTES:**

**Motion made by Mr. Bullock, seconded by Ms. Evans, to approve the February 27<sup>th</sup>, 2020 minutes, Ms. Evans seconded the motion. Motion passed unanimously.**

## **SPECIAL RECOGNITION:**

Mr. Glenn announced there would be special recognition this evening, and turned the floor over to Council Member At-Large Brian Meyerhoeffer.

Mr. Meyerhoeffer expressed his appreciation for William Johnson and his six years serving on the board from June 2014 – June 2020, and for being the chair for the last three of those years. He presented Mr. Johnson a certificate of appreciation signed by himself and Mayor PJ Connelly. The certificate read as follows:

*For enduring public service through dedication and commitment to the Greenville Board of Adjustment, the City of Greenville and Greenville City Council express our gratitude and appreciation to William Johnson, Chairman, Board of Adjustment, Service time 2014-2020.*

Mr. Johnson thanked Elizabeth Blount, Lead Planner and Board Liaison and her staff, and also all of the board members he had the pleasure to serve with.

Attorney McGirt 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. [if 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.

Mr. Glenn then swore in staff members who would be presenting, Elizabeth Blount, Les Everett, and Tom Barnett.

## **OLD BUSINESS**

### **PUBLIC HEARING ON A REQUEST TO RENEW A SPECIAL USE PERMIT BY CHRISTOPHER WOELKERS**

The applicant, Christopher Woelkers, desires a 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 5th Street. The property is further identified as being tax parcel number 20507.

The applicant has requested that this renewal be continued.

Mr. Glenn called upon Mrs. Blount to read the request made by the applicant.

**Mr. Bullock, seconded by Mr. Atkinson, made a motion to continue the renewal request until the August 27, 2020 BOA meeting. Motion passed unanimously.**

### **DECISION AND ORDER OF THE ADMINISTRATIVE APPEAL FROM FEBRUARY 27, 2020 HEARING**

Staff has requested that this administrative appeal be continued.

Mr. Glenn asked Mrs. Blount to state the reason for the request. Mrs. Blount then deferred to Mr. McGirt who explained that he was filling in for Assistant City Attorney Donald Phillips who was on vacation. Mr. McGirt said Mr. Phillips represented the board, and he represents staff, and that he cannot represent both on this, or any one item. He also said the applicant had spoken with his attorney and was not opposed to the continuation of this case.

Mrs. Bellis asked what the case pertained to.

Mr. McGirt said the case was about a setback on Greenville Boulevard at the old Adams Car Wash.

Mrs. Blount reminded the board that they would just be voting on the written order from that meeting.

**Mr. Bullock, seconded by Ms. Evans, made a motion to continue the administrative appeal until the August 27, 2020 BOA meeting. Motion passed unanimously.**

## **NEW BUSINESS**

### **PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY TIMMONS GROUP**

The applicant, Timmons Group, desires a special use permit to operate a convenience store with gasoline sales and outdoor dining pursuant to Appendix A, Use (10)b. and 10j. of the Greenville City Code. The proposed use is located at 950 E Fire Tower Rd. The property is further identified as being tax parcel number 79547.

The applicant has requested that this special use permit hearing be continued.

Mr. Glenn asked Mrs. Blount to read a statement dated July 14, 2020, from the applicant, Mr. Brian Downs, Project Manager for the Timmons Group, which read as follows:

“As discussed, please push the Circle K SUP for Fire Tower/Bayswater until the August 27th hearing.”

**Mr. Bullock, seconded by Mrs. Bellis, made a motion to continue the special use permit hearing until the August 27, 2020 BOA meeting. Motion passed unanimously.**

### **PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY KRISTOPHER PAIN DBA WELL PLAYED GAMES, L.L.C.**

The applicant, Kristopher Paine DBA Well Played Games, desires a special use permit to operate a game center pursuant to Appendix A, Use (6)d. of the Greenville City Code. The proposed use is located at 1400-G 14<sup>th</sup> Street. The property is further identified as being tax parcel number 00602.

Mr. Glenn asked Mrs. Smith to name registered speakers. Mrs. Smith stated there were two, Kristopher Paine and Jon Day. Both speakers confirmed their names and addresses, and gave consent to the electronic format of the meeting. Mr. Glenn swore them in individually.

**Zoning of Property:** CG (General Commercial)

**Surrounding Zoning:**

North: CDF-UC (Downtown Commercial Fringe – Urban Core Overlay District)

South: R6 (Residential) and CH (Heavy Commercial)

East: CN (Neighborhood Commercial) and CG (General Commercial)

West: CH (Heavy Commercial)

#### **Surrounding Development:**

North: Jolly Roger student development

South: Bowers Apartments

East: China King, Stadium Sports, Dollar General, and a parking lot

West: Hair Salon, Nail Salon, Tobacco Shop, and Shenandoah Graphics and Framing

#### **Description of Property:**

The subject property is a 5-acre lot containing a 33,000 sq. ft. commercial building with 670 feet of frontage along E 14<sup>th</sup> Street and 333 feet of frontage along Charles Boulevard. The proposed use is in 3600 sq. ft. Unit G. The applicant proposes a use of 1500 sq. ft. for retail sales, a snack bar, and board game tables as well as 2100 sq. ft. for arcade games.

#### **Comprehensive Plan:**

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

#### **Notice:**

Notice was mailed to the adjoining property owners on July 21, 2020. Notice of the public hearing was published in the Daily Reflector on July 27 and August 3, 2020.

#### **Related Zoning Ordinance Regulations:**

##### **Definition:**

*Game center.* Any establishment that has more than five coin/token operated or other amusement devices or whose principal purpose is the operation of a “game center” regardless of the total number of amusement devices. For purposes of this definition, the term “amusement devices” shall include electronic games and similar machines, and any other game table or device. Bingo parlors shall be considered as “game centers” regardless of the number of participants. See also definition of billiard parlor; pool room.

#### **Staff Recommended Conditions:**

Request may not evolve to a public/private club or an internet sweepstakes business without issuance of special use permit for such use.

Must comply with all local, state, and federal laws.

No loitering outside business.

#### **Other Comments:**

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

**Staff Recommendation:**

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

Ms. Blount delineated the property located in the central portion of the city and informed the board that the subject property is zoned General Commercial. She stated that the intended use involves both gaming and retail functions.

Mr. Atkinson asked how occupancy limits were established.

Ms. Blount deferred to Assistant Planning Director Everett.

Mr. Everett was unable to answer due to connection difficulties.

Ms. Blount stated that occupancy was determined by fire and building codes.

Mr. Atkinson asked if the sketch in the application was valid.

Ms. Blount clarified that the certification will be determined by the fire and building inspections departments.

Mr. Glenn opened the public hearing.

Mr. Kristopher Paine, applicant, spoke in favor of the request. He said that we required expansion to continue his business.

Jon Day, Real Estate Agent, spoke on behalf of the shopping center owner Sterling Rental Company, LLC in favor of the request. Mr. Day elaborated on the basics of the shopping center and that the owners believe that DBA Well Played Games is a good use of the location.

No one spoke in opposition.

Mr. Glenn asked for staff recommendation.

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

Mr. Glenn closed the public hearing and opened for board discussion.

No board discussion.

**Mr. Glenn read the criteria and the board's silence was a vote in favor of the criteria. Mrs. Smith conducted a roll call vote to confirm the board's vote in favor of the criteria. Vote: 7 to 0.**

**Mr. Bullock made a motion to adopt the Finding of Facts with the recommended conditions, Ms. Bellis seconded the motion and it passed unanimously. Vote: 7 to 0**

**Mr. Bullock made a motion to approve the petition with the conditions, Ms. Evans seconded the motion and it passed unanimously. Vote: 7 to 0**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY FAROUQ SALEH**

The applicant, Farouq Saleh, Inc., desires to amend a special use permit to operate a tobacco shop class 1 pursuant to Appendix A, Use (10)ff. of the Greenville City Code. The proposed use is located at 1311 W Arlington Blvd, Suites 100 & 100A. The property is further identified as being tax parcel number 14287.

Mr. Glenn asked Mrs. Smith to name registered speakers. Mrs. Smith stated there is one, Farouq Saleh. Mr. Saleh confirmed his name and address, and gave consent to the electronic format of the meeting. Mr. Glenn then swore him in.

**Zoning of Property:** CH (Heavy Commercial)

**Surrounding Zoning:**

North: OR (Office Residential) and CH (Heavy Commercial)

South: OR (Office Residential) and R6 (Residential)

East: CH (Heavy Commercial)

West: OR (Office Residential)

**Surrounding Development:**

North: McDonald's, Capital Bank and a vacant lot

South: Pirate's Cove Car Wash and Value Max Cars Dealership

East: Kangaroo Convenience Store

West: Vacant lot and Meridian Park Apartments

**Description of Property:**

The subject property is approximately 1 acre in size and contains a 7,000 square foot multi-tenant commercial building. The building currently houses a barbershop, nail shop, beauty salon, financial management company and a nutrition shop. The property has approximately 217 feet of frontage along W. Arlington Blvd. The property is located less than half a mile from the intersection of two major thoroughfares (roads that are the principal traffic carriers of the city), a gateway corridor and a connector transportation corridor.

**Comprehensive Plan:**

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

**Notice:**

Notice was mailed to the adjoining property owners on July 21, 2020. Notice of the public hearing was published in the Daily Reflector on July 27 and August 3, 2020.

**Related Zoning Ordinance Regulations:**

**Definition:**

*Tobacco Shop (Class 1).* An establishment that, as a substantial portion of the use, entails the retail sales of tobacco products including, but not limited to, cigarettes, cigars, chewing tobacco, shisha, unformed or loose tobacco, and/or similar products. For the purpose of this definition, a substantial portion of the use is established if:

- (1) At least 20% of the establishment's floor area open and accessible to customers is used for the display and/or stocking of tobacco products as provided herein; or

- (2) At least 40% of the sign area of the establishment's on-site signage that is visible from public rights-of-way advertises tobacco products as provided herein.

**Specific Criteria**

Section 9-4-103(BB)

*Tobacco Shop (Class 1)*

- (1) No tobacco shop (class 1) shall be located within a 500-foot radius of an existing or approved school. This measurement shall be made from the exterior wall of the proposed tobacco shop (class 1) to the nearest exterior wall of any existing or approved school.
- (2) No tobacco shop (class 1) shall be located within any certified redevelopment area.

**Staff Recommended Conditions:**

No retail sales of any smoking apparatus to include but not be limited to water pipes, hookah pipes, bowls, water bongs or similar products.

No drive through window shall be permitted.

No sign or lights around the building or windows may contain or be illuminated by flashing or intermittent lights or lights of changing degrees of intensity or color

Advertisement shall not cover more than 25% of the windows nor doors.

No advertisement shall be located on the backside of the unit unless it is included in the permitted wall signage allowance.

No parking on the side of the unit due to the drive-out.

No loitering or outdoor activities permitted.

The establishment shall not operate or evolve into a hookah café or a tobacco shop (class 2).

No smoking permitted on the premises.

Must comply with all federal, state and local laws.

**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.

Ms. Blount delineated the property located in the Commercial character type and provided a definition of a Class 1 Tobacco Shop. She noted the need for an amendment was a result of moving the business from the original Special Use Permit for Unit 104 to Units 100 and 100A.

Mr. Glenn opened the public hearing.

Farouq Saleh, applicant, spoke in favor of the request. He said the landlord asked if he would move to Units 100 and 100A in order to rent Unit 104 to a new business.

Mr. Glenn asked if Mr. Saleh was familiar with all the recommended conditions stated by Ms. Blount.

Mr. Saleh affirmed that he understood the conditions. He asked if a traditional wooden pipe is allowable under a class I tobacco shop.

Ms. Blount said she believed it is an allowable smoking apparatus and read the definitions of class I and s class II tobacco shops. She stated that interpretation of the code is the responsibility of the Planning Director.

Ms. Bellis asked if any non-tobacco products could be used in such pipes and stated she did not see an issue with that type of pipe.

Mr. Saleh stated that only tobacco could be used.

Mr. Bullock agreed with Ms. Bellis in the interpretation of a class I tobacco shop.

Mr. Glenn asked for staff recommendation.

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

Mr. Glenn closed the public hearing and opened for board discussion.

Mr. Bullock reiterated his statement that traditional pipes are not hookah-related products so they are not a class II product.

Mr. Atkinson noted that the definition of shisha tobacco included use in hookahs and that he found it confusing that this was permitted but not the sale of hookahs in class 1 tobacco shops.

Mr. Glenn said that the interpretation of tobacco use does not fall under the jurisdiction of the Board of Adjustment and asked if there was any additional board discussion.

**Mr. Glenn read the criteria and the board's silence was a vote in favor of the criteria. Mrs. Smith conducted a roll call vote to confirm the board's vote in favor of the criteria. Vote: 7 to 0**

**Mr. Bullock made a motion to adopt the Finding of Facts with the recommended conditions, Ms. Evans seconded the motion and it passed unanimously. Vote: 7 to 0**

**Mr. Bullock made a motion to approve the petition with the conditions, Mr. Atkinson seconded the motion and it passed unanimously. Vote: 7 to 0**

#### **PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY BRICE AND TASHARA BARNES**

The applicants, Brice and Tashara Barnes, desire a special use permit to operate a home occupation: otherwise not listed (child day care) pursuant to Appendix A, Use (3)a. of the Greenville City Code. The proposed use is located at 2112 Cameron Court. The property is further identified as 52087.

Mr. Glenn stated the item was asked to be continued, and asked Mrs. Blount to state the reason. Mrs. Blount deferred to Mr. McGirt. He stated that the letters that went out notified interested parties that if there were any opposition to a case, the case would then be continued. Mr. McGirt stated since this is the first electronic BOA

meeting, staff decided to not hear any case with opposition. This was decided to allow board members to be comfortable with the format. He also stated that both parties agreed to a continuance.

**Mr. Bullock, seconded by Mr. Lilley, made a motion to continue the renewal request until the August 27, 2020 BOA meeting. Motion passed unanimously.**

### **PUBLIC HEARING ON A REQUEST FOR A VARIANCE BY MODULAR SOLUTIONS, INC.**

The applicants, Modular Solutions, Inc., desires a variance from the setbacks for a single family home found in Sections 9-4-94 (A)(4)(a) of the Zoning Ordinance in the Greenville City Code. The subject property is located at 117 Chipaway Drive. The property is further identified as being tax parcel number 19711.

Mr. Glenn asked Mrs. Smith to name registered speakers. Mrs. Smith stated there is one, Jeremy McAllister. Mr. McAllister confirmed his name and address, and gave consent to the electronic format of the meeting. Mr. Glenn then swore him in.

**Zoning of Property:** RA20 (Residential Agricultural)

#### **Surrounding Zoning:**

North: RA 20 (Residential Agricultural)  
South: RA 20  
East: RA 20  
West: RA 20

#### **Surrounding Development:**

North: Single family dwellings  
South: Wooded vacant lot  
East: Single family dwellings  
West: Single family dwellings

#### **Description of Property:**

The property is located in the extraterritorial jurisdiction of Greenville, it is 0.28 acres and has approximately 95 feet of frontage on Chipaway Dr. The owner has been displaced due to a house fire and the property will remain residential. A plot plan indicated that the house would encroach on the side setback. The applicant informed staff that the North Carolina Office of State Budget and Management Disaster Recovery issued notice to proceed prior to a septic inspection. The inspection failed and a new system was required that moves house further to the front of the property. As such, the side setback would be 7.6 feet, short of the 10 feet RA 20 requirement per the City Code and a variance is necessary. The property owner claims a variance under the hardship component of variance approval based on the time restrictions of building another modular home.

#### **Comprehensive Plan:**

The property is located within the Low to Medium Density Residential character type as designated by the Horizon 2026 Plan. The proposed use complies with the Future Land Use Plan, which recommends residential development for the subject property

**Notice:**

Notice was mailed to the adjoining property owners on July 21, 2020. Notice of the public hearing was published in the Daily Reflector on July 27 and August 3, 2020.

**Related Zoning Ordinance Regulations:**

Definition:

*Modular home.* A manufactured building designed to be used as a detached single-family dwelling or two-family attached dwelling (duplex) which has been constructed and labeled indicating compliance with the North Carolina State Building Code, as amended.

Specific Criteria:

(A) *RA-20 District.*

(4) Side setback

(a) Single-family: Ten feet.

**Staff Recommended Conditions:**

Must ensure that newly installed septic system is in full compliance with all the state law and local regulations.

Must obtain a building permit prior to construction

Must comply with all federal and state laws, rules, and local ordinances pertaining to the project.

**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.

Ms. Blount described the property and the failed septic inspection which led to the project encroachment on the side setback.

Mr. Glenn opened the public hearing.

Mr. Jeremy McAllister, applicant, spoke in favor of the request. He clarified that hurricane-related damage caused the prior house damage and explained that the North Carolina Office of State Budget and Management Disaster Recovery was premature in moving the project forward so quickly as they are eager to help displaced residents. Mr. McAllister said that Modular Solutions, Inc. has the modular home and is ready to begin construction immediately after potential approval.

Mr. McAllister showed photos of the property and explained that the lot is the last location in a dead-end lot.

Mr. Atkinson asked why the lot next to 117 Chipaway Drive is not buildable.

Mr. McAllister claimed that the state road would require an extension and the land is too low-lying to consider construction.

No one spoke in opposition.

Mr. Glenn asked for staff recommendation.

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

Mr. Glenn closed the public hearing and opened for board discussion.

No board discussion.

**Mr. Glenn read the criteria and the board's silence was a vote in favor of the criteria. Mrs. Smith conducted a roll call vote to confirm the board's vote in favor of the criteria. Vote: 7 to 0**

**Mr. Bullock made a motion to adopt the Finding of Facts with the recommended conditions, Mr. Atkinson seconded the motion and it passed unanimously. Vote: 7 to 0**

**Mr. Bullock made a motion to approve the petition with the conditions, Mr. Landrine seconded the motion and it passed unanimously. Vote: 7 to 0**

#### **PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY BRENDA ACKLIN**

The applicant, Brenda Acklin, desires a special use permit to operate a home occupation: otherwise not listed (child day care) pursuant to Appendix A, Use (3)a. of the Greenville City Code. The proposed use is located at 506 Fenner Drive. The property is further identified as 29706.

Mr. Glenn asked Mrs. Smith to name registered speakers. Mrs. Smith stated there is one, Brenda Aklin. Ms. Acklin confirmed her name and address, and gave consent to the electronic format of the meeting. Mr. Glenn then swore her in.

##### **Zoning of Property:**

RA20 (Residential Agricultural)

##### **Surrounding Zoning:**

North: RA 20 (Residential Agricultural)

South: RA 20

East: RA 20

West: RR (Pitt County designation – Rural Residential)

##### **Surrounding Development:**

North: Single Family Homes South: Vacant lot

East: Single Family Homes West: Single Family Homes

### **Description of Property:**

The subject property is 0.36 acres in size, contains a 952 square foot mobile home residence, and has 129 feet of frontage along Fenner Drive and 118 feet of frontage along NC Hwy 33 West Court.

### **Comprehensive Plan:**

The property is located within the Low to Medium Density Residential character type as designated by the Horizon Plan. The proposed use is in compliance with the Future Land Use Plan which recommends low to medium residential development for the subject property.

### **Notice:**

Notice was mailed to the adjoining property owners on July 21, 2020. Notice of the public hearing was published in the Daily Reflector on July 27 and August 3, 2020

### **Related Zoning Ordinance Regulations:**

Definition:

*Home occupation.* An activity conducted for financial gain as an accessory use to a detached single-family dwelling unit by a member of the family residing in the dwelling unit.

- (1) "Home occupation" shall meet all of the following characteristics:
  - (a) Shall only be permitted within detached single-family dwelling units;
  - (b) Shall not be permitted within any accessory building;
  - (c) Shall constitute an accessory use to the principal use;
  - (d) Shall not occupy more than 20% of the mechanically conditioned enclosed floor space of the dwelling unit;
  - (e) Shall not employ more than one person other than those persons legally residing within the principal use dwelling;
  - (f) Shall not be visible from any public right-of-way or adjacent property line;
  - (g) Shall not involve the on-site sales of products;
  - (h) Shall not involve any outside storage of related materials, parts or supplies;
  - (i) Shall have signage in accordance with Article N; and
  - (j) Shall not create any hazard or nuisance to the occupants residing or working within the principal use dwelling or to area residents or properties.

**Staff Recommended Conditions:**

Day care must comply with all state licensing requirements and regulations for a family child care homes.

Applicant may provide service for up to five (5) children.

An outdoor play area shall be provided at a ratio of not less than seventy-five (75) square feet per child and shall be enclosed by a fence at least four (4) feet in height.

Three off-street parking spaces must be provided and parking area must be improved to meet city standards before operation of home occupation.

All accessory structures, including but not limited to playground equipment and pools must be located in the rear yard.

**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.

Mrs. Blount delineated the property. The property is in the RA20 zoning district, and the surrounding districts are RA20. Staff has several conditions that must be complied with. Mrs. Blount finished by stating the project must meet all NC state fire and building codes.

Mr. Glenn opened the public hearing by asking Ms. Acklin to state her purpose for the SUP.

Brenda Acklin, applicant, spoke in favor of the request. She operated a day care inside her home so that she may offer a fun and nurturing environment for children. Ms. Acklin said that she was made aware that the driveway needed to be brought up to standards and is currently having this done. She mentioned that she has over five-thousand square feet of fenced in area, and hopes the board will give her the opportunity to open her day care. She followed up by stating that she and her daughter, who has a degree in Early Childhood Development, would be the care givers.

Mrs. Bellis asked if a home occupation had to have a specific area dedicated to the operation of the business.

Mrs. Blount responded by saying the definition for a home occupation states that the area cannot take up no more than twenty percent of the home, but does not state the area had to be specific.

Mrs. Bellis stated there were concerns regarding the yard, which had no play equipment, the fence was broken, the gate opened, a dead tree, and several pine trees cut off thirty feet above the ground, rendering them dead. She stated

that if the SUP was granted, there should be conditions attached to it, including installing play equipment and making the yard safe.

Ms. Acklin responded by saying they are currently working to get everything in order. She said the fence was broken when the trees were taken down, and that it would be repaired before opening the day care. She also said she did not realize the topped off trees would be a problem because they were outside of where the children would be. However she said she is going to have them removed if need be. Ms. Acklin said she has plenty of play equipment, and plans to purchase more, but would not install it until the SUP is granted.

Mrs. Bellis said she has had personal experience with dead pine trees and that they will fall on their own accord eventually. Therefore the topped off trees will have to be removed and the fence repaired. She said the SUP should have conditions with these items and that they must be met before children are allowed in the house.

Mr. Atkinson asked if Ms. Acklin and her daughter had any experience operating a day care center.

Ms. Acklin responded by saying that she has experience working in day care centers, and was a director of one as well. Her daughter has a degree in Early Childhood Development and has worked in the industry as well.

Mr. Glenn asked if the pine trees were within or outside of the fenced in area.

Ms. Acklin said they are located outside of the fence, on the property line.

Mr. Lilley requested to see a picture of the trees, to which Mrs. Blount obligated.

Mrs. Bellis stated that the trees are of a large diameter, and they will rot and decay and eventually fall, possibly on the house.

Mr. Glenn asked for the staff recommendation.

Mrs. Blount said staff has no objections to the request with the recommended conditions.

Mr. Glenn closed the public hearing and asked for board discussion.

Mr. Lilley asked to see the pictures again, and asked Mrs. Bellis to show the board which trees she is most concerned about.

Mrs. Bellis spoke about the three large pine tree trunks remaining at the back of the property.

Ms. Acklin said that the trees in question will be cut down completely and removed.

Mr. Lilley agreed that with the tops taken off of those trees, they pose a risk and need to be removed.

Mrs. Bellis stated that the SUP must have a condition that the trees come down.

Ms. Acklin said she agreed with Mrs. Bellis, and has no problem with the conditions. She said she would never place children in an unsafe environment.

**Mrs. Bellis, seconded by Mr. Atkinson, made a motion to add the following conditions to the SUP; that prior to the day care opening the tree stumps be cut down completely and removed, and that the fence be repaired. Mrs. Smith conducted a roll call vote, which was unanimous. Vote: 7 to 0**

**Mr. Glenn read the criteria and the board's silence was a vote in favor of the criteria. Mrs. Smith conducted a roll call vote to confirm the board's vote in favor of the criteria. Vote: 7 to 0**

**Mr. Bullock, seconded by Mr. Landrine, made a motion to adopt the Finding of Facts with the recommended conditions. The vote was unanimous. Vote: 7 to 0**

**Mr. Bullock, seconded by Mrs. Bellis, made a motion to approve the petition with the recommended conditions and the additional conditions the board asked for. The vote was unanimous. Vote: 7 to 0**

**ELECTION OF CHAIR AND VICE-CHAIR:**

Mr. McGirt discussed the rules for nominations and voting for Chair and Vice-Chair.

Mr. Glenn asked for nominations for Chair. Mrs. Bellis nominated Michael Glenn, and hearing no other nominations, Mr. Glenn then closed the nominations and called for a vote.

**Mrs. Smith conducted a roll call vote, which was unanimous. Mr. Glenn accepted the roll of Chair. Vote: 7 to 0**

Mr. Glenn asked for nominations for Vice-Chair. Mrs. Evans nominated Rodney Bullock as Vice-Chair. Hearing no other nominations Mr. Glenn closed the nominations and called for a vote.

**Mrs. Smith conducted a roll call vote, which was unanimous. Mr. Bullock accepted the roll of Vice-Chair. Vote: 7 to 0**

**Chair – Michael Glenn**

**Vice Chair – Rodney Bullock**

**DECISION CONCERNING BOA MEETINGS DURING COVID-19**

Mr. Glenn asked Mr. McGirt to direct the conversation concerning meeting procedures during the covid-19 pandemic. Mr. McGirt stated that City Council would be taking up the issue at their August 13, 2020 meeting, and is expect to pass a resolution directing all boards and commissions to meet virtually until further notice. Mr. McGirt said there were options, however the council directive would override and contrary decisions. He also stated that should an applicant demand a face to face meeting, the BOA would have to accommodate the request. Mr. McGirt recommended the board move to meet remotely for the August 2, 2020 meeting, and continue the discussion about meetings after City Council makes their decision.

Mr. Glenn asked if this had to be added to the agenda every month, or could the board move to meet remotely until further notice.

Mr. McGirt replied that the board could make a motion to meet remotely until further notice. His intent was to make the board aware of a possible policy change due to the City Council resolution should the council resolution pass.

Mrs. Evans said that she advocated for the virtual meetings due to the rise in covid-19 numbers, and that her field is in public health. She strongly encouraged the board to continue with virtual meetings until the pandemic is under control. Mrs. Evans also said she felt certain City Council would pass the resolution as she has been consulting with them about the pandemic.

**Mrs. Evans, seconded by Mr. Bullock, made a motion to hold future BOA meetings virtually until further notice. A roll call vote was taken and the motion passed unanimously.**

**Mr. Bullock, seconded by Mr. Lilley, moved to adjourn.**

Meeting adjourned at 8:06PM

Respectfully submitted

Elizabeth Blount

Lead Planner