

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT  
April 27, 2017

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

Justin Mullarkey-*	
Bill Johnson, Co-Chair *	Claye Frank *
Kevin Faison *	Thomas Taft, Jr. *
Michael Glenn *	Rodney Bullock *
Rich Winkler *	Jim Watts *
James Moretz *	Brad Guth X

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

VOTING MEMBERS: Mullarkey, Johnson, Frank, Faison, Taft, Watts, Moretz

OTHERS PRESENT:

Ms. Elizabeth Blount, Planner II	Ms. Cathy Meyer, Civil Engineer
Mr. Donald Phillips, Assistant City Attorney	Mr. Ben Griffith, Community Development Director
Mr. Thomas Weitnauer, Chief Planner	Ms. Amy Nunez, Secretary
Mr. Kelvin Thomas, Communications Technician	

Attorney Phillips stated that Justin Mullarkey resigned as Chairman of the Board. Pursuant to the Board of Adjustment’s Rules and procedures Sec 3-2, in the absence of the Chairman the Vice Chairman shall serve as the Acting Chairman. The Acting Chair tonight will be Bill Johnson.

**MINUTES**

Mr. Mullarkey made a motion to approve the March 23, 2017 minutes as presented, Mr. Frank seconded and the motion passed unanimously.

Ms. Blount stated that the applicant for item #3 on the agenda has asked for a continuance in the email left at your seats. Staff and the applicant are currently looking at a special use permit that possibly has permitted the property from 1980.

**Motion made by Mr. Taft, seconded by Mr. Faison, to continue item #3. Motion passed unanimously.**

Ms. Blount stated that Staff would like to withdrawal item #5 at this time.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT MARIO VILLEDA SALINAS AND CRISTINA ROJO –APPROVED**

The applicants, Mario Villeda Salinas and Cristina Rojo, desire to amend a special use permit to place a mobile home on a lot pursuant to Appendix A, Use (2)g. of the Greenville City Code. The proposed use is located at 1640 Sandstone Court. The property is further identified as being tax parcel number 46783.

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. 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.

Ms. Blount delineated the area on a map. She stated the property is located in the western portion of the City's ETJ (Extra Territorial Jurisdiction). The property is a .46 acre lot within Sandstone Subdivision which is a private lot mobile home community.

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

**Surrounding Zoning:**

- North: RA20 (Residential Agricultural)
- South: RA20 (Residential Agricultural)
- East: RA20 (Residential Agricultural)
- West: RA20 (Residential Agricultural)

**Surrounding Development:**

- North: Mobile Homes
- South: Mobile Homes
- East: Vacant
- West: Mobile Homes

**Description of Property:**

The subject property is a .46 acre lot within Sandstone Subdivision. Sandstone Subdivision is a private lot mobile home community.

**Comprehensive Plan:**

The property is located within the Traditional Neighborhood-Low to Medium Density 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 low to medium density residential development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on April 13, 2017. Notice of the public hearing was published in the Daily Reflector on April 17 and April 24 2017.

**Related Zoning Ordinance Regulations:**

**Definition:**

*Mobile home.* A manufactured building designed to be used as a single family dwelling unit which has been constructed and labeled indicating compliance with the HUD administered National Manufactured Housing Construction and Safety Standards Act of 1974.

**Specific Criteria:**

- (N) *Mobile home.*
- (1) No mobile home established (new setup) or relocated within the city planning and zoning jurisdiction shall be occupied until the mobile home has been inspected and approved for compliance with the Minimum Housing Code set forth under Title 9, Chapter 1, Article F of the City Code when the Building Inspector makes a finding of noncompliance with the Minimum Housing Code.
- (2) Mobile homes shall, upon installation, have either a permanent, continuous masonry foundation, or a continuous and opaque skirt consisting of vinyl, fiberglass or other similar solid nonmetal material. The skirt for a mobile home shall be attached to weather resistant material when required for support.

**Staff Comments:**

The subject property is located within the 100 year floodplain. The structure must be elevated to 2 foot above the base flood elevation of 25 feet (NAVD 1988). A building permit and final elevation certificate is required. A floodplain development permit will be issued in conjunction with the building permit.

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.

Mr. Taft asked who verifies that the property will be two feet above flood elevation.

Ms. Blount stated the City's flood surveyor.

Vice-Chair Johnson opened the public hearing.

Mr. Mario Villeda Salinas and Ms. Cristina Rojo, applicants, spoke in favor of the request via an interpreter. They stated they want to put a double wide mobile home on the property.

Mr. Winkler asked if it would be for residential use as their primary home.

Ms. Rojo stated yes.

Vice-Chair Johnson asked who owns the property.

Mr. Salinas stated they do.

No one spoke in opposition of the request.

Vice-Chair Johnson asked for Staff Recommendation.

Ms. Blount stated Staff has no objections to the request.

Vice Chair Johnson closed the public hearing and opened for board discussion.

No board discussion made.

Vice-Chair Johnson read the required findings criteria. No objections.

**Mr. Watts made a motion to adopt the findings of facts, Mr. Frank seconded and the motion passed unanimously.**

**Mr. Moretz 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 DAVID AND SHERRY WEST-APPROVED**

The applicants, David and Sherry West, desire a special use permit to operate a restaurant with regulated outdoor activities pursuant to Appendix A, Use (10)j. of the Greenville City Code. The proposed use is located at 4601 E. 10<sup>th</sup> Street. The property is further identified as being tax parcel number 28333.

Ms. Blount delineated the area on a map. She stated that the property is located in the eastern portion of the City's ETJ (Extra Territorial Jurisdiction). The property is a 0.48 acre lot with 135 feet of frontage along E. 10<sup>th</sup> Street and contains a 2,200 square foot multi-unit commercial building. A barber shop occupies one of the units.

**Zoning of Property:** CN (Neighborhood Commercial)

**Surrounding Zoning:**

North: RA20 (Residential Agricultural)  
South: CG (General Commercial) & CH (Heavy Commercial)  
East: RA20 (Residential Agricultural)  
West: CG (General Commercial)

**Surrounding Development:**

North: Vacant  
South: Walmart, Vacant, Single Family Residence  
East: Mobile Homes, Single Family Residences  
West: Vacant, Aldi Grocery Store

**Description of Property:**

The subject property is a 0.48 acre lot with 135 feet of frontage along E. Tenth Street and contains a 2,200 square foot multi-unit commercial building.

**Comprehensive Plan:**

The property is located within the Traditional Neighborhood – Medium to High Density character type as designated by the Horizons 2026 Greenville Community Plan. Although single family and multi-family residential is preferred in this area, the subject property will occupy an existing commercial type structure which aligns with the intent of allowing neighborhood scale commercial within the neighborhood to promote a walkable community. The proposed use is not in general compliance with the Future Land Use Plan.

**Notice:**

Notice was mailed to the adjoining property owners on April 13 2017. Notice of the public hearing was published in the Daily Reflector on April 17 and April 24, 2017.

**Staff Recommend Conditions:**

Activity area shall be limited to restaurant use only and there shall be no live outdoor music, floor show, or dancing associated with any outdoor activity area.

Outdoor amplified sound, including music, shall be allowed, provided (i) any sound transmission device, system, and/or speaker shall be oriented in a manner that directs all mechanical and/or amplified sound toward the restaurant building and away from any abutting property lines, and (ii) no amplified sound shall be audible from any point located on any property outside of the subject property. Outdoor amplified sound is defined as any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside through open door(s) or window(s) or other openings in the building.

Measurement standards shall be by human auditory senses.

Exterior lighting associated with the outdoor activity area shall be directed away from all public and/or private streets, and away from adjoining properties. No exterior lighting shall shine directly into a residential dwelling or premises.

Use of the outdoor activity area shall cease at 10:00 pm each night of the week.

Outdoor activity area and all associated business grounds shall be kept free of debris and cleaned immediately upon closing.

Site plan approval is required prior to operation of any outdoor activity area.

**Other Comments:**

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

**Staff Recommendation:**

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

Mr. Mullarkey asked if the 10pm time was daily and if Staff would be flexible with the 10pm hour during the summer time.

Ms. Blount stated it is daily and that the applicant stated they would close the facility at 9pm.

Vice-Chair Johnson opened the public hearing.

Mr. David West and Ms. Sherry West, applicants, spoke in favor of the request.

Ms. West stated this would be a family friendly Pelican Snowballs establishment. Any activities would be for children outside.

Mr. Watts asked if the facility would be inspected by the health department.

Ms. West stated they are only inspected by the State Agricultural Department because they are only serving sugar water.

Mr. Watts asked what is on their menu.

Ms. West stated 120 flavors of snow cones.

Mr. Frank stated that the application was confusing because it said fast food.

No one spoke in opposition of the request.

Vice-Chair Johnson asked for Staff Recommendation.

Ms. Blount addressed Mr. Frank's comment regarding fast food. The ordinance does not have anything geared toward snowballs, therefore the closest relatable item was a restaurant.

Ms. Blount stated Staff has no objections to the request with the recommended conditions.

Vice Chair Johnson closed the public hearing and opened for board discussion.

No board discussion made.

Vice-Chair Johnson read the required findings criteria. No objections.

**Mr. Watts made a motion to adopt the findings of facts, Mr. Mullarkey seconded and the motion passed unanimously.**

**Mr. Moretz made a motion to approve the petition with the recommended Staff conditions, Mr. Faison seconded and the motion passed unanimously.**

## **ELECTION OF CHAIR**

Attorney Phillips stated that the Rules of Procedures 3-1 state: *The Chairman shall be elected by majority vote of the full membership of the Board. The Board member having seniority will be given first consideration for nomination.*

*Should that person decline said nomination, the nominees will then be chosen from the remaining regular Board members. The term of office shall be for one (1) year and begin on **June 1** or until a successor is elected; and he/she shall be eligible for re-election. Subject to these rules, the Chairman shall decide upon all points of order and procedure, unless directed otherwise by a majority of the Board in session at the time. The Chairman shall appoint any committees found necessary to investigate any matter before the Board. The Chairman shall have a vote on all matters before the Board. There currently is a vacancy for Chair. The procedure of the elections for are:*

1- Open for nominations. Nominations do not require a second. 2- If no further nominations made, close the nominations by declaration of the Chair or vote by the Commission. 3- Vote in order of the nominations given. The first nominee to receive a majority vote is elected. All present members will vote.

Mr. Frank, as seniority member, declined consideration for nomination.

**Mr. Frank nominated Mr. Bill Johnson. No other nominations made. A unanimous vote as made for Mr. Bill Johnson to serve as Chair.**

Attorney Phillips stated that the Rules of Procedures 3-2 state: *A Vice Chairman shall be elected by the Board from among its regular members in the same manner and for the same terms as the Chairman. The Vice Chairman shall serve as Acting Chairman in the absence of the Chairman, and at such times, shall have the same powers and duties as the Chairman. Since Mr. Johnson is now Chair, there is a vacancy for Vice-Chair. The procedure of the elections is the same as for Chair with the exception of the seniority section.*



**Mr. Frank nominated Mr. Rich Winkler. No other nominations made. A unanimous vote was made for Mr. Rich Winkler to serve as Vice-Chair.**

**With no further business, Mr. Frank made a motion to adjourn, Mr. Moretz seconded, and the motion was passed unanimously. Meeting adjourned at 6:33 p.m.**

Respectfully Submitted,

Elizabeth Blount  
Planner II