

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
October 26, 2017

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

Bill Johnson, Chair *	Ann Bellis *
Kevin Faison *	Thomas Taft, Jr. X
Michael Glenn X	Rodney Bullock *
Rich Winkler X	James Moretz *
Hunt McKinnon *	

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

VOTING MEMBERS: Johnson, Faison, Bullock, Moretz, Bellis, McKinnon

OTHERS PRESENT:

Ms. Elizabeth Blount, Planner II	Mr. Donald Phillips, Assistant City Attorney
Ms. Carol Barwick, Acting Secretary	Mr. Kelvin Thomas, Communications Technician
Ms. Cathy Meyer, Civil Engineer II	

MINUTES

Mr. Faison made a motion to approve the September 28, 2017 minutes as presented, Mr. Moretz seconded and the 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. 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.

Secretary swore in staff and all those speaking for or against.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY HARRY AND GWENDOLYN D. THOMAS-CONTINUED

The applicants, Harry & Gwendolyn D. Thomas, desire a special use permit to operate a home occupation child day care pursuant to Appendix A, Use (3)a. of the Greenville City Code. The proposed use is located at 2620 Camille Drive. The property is further identified as being tax parcel number 69775.

Ms. Blount delineated the area on a map and stated the property is located in the southwestern section of the City's jurisdiction. The subject property is located in the Charleston Village Subdivision, is 0.23 acres in size, contains a 1,611 square foot single family residence, and has 80 feet of frontage along Camille Drive.

Zoning of Property: R9S (Residential Single Family)

Surrounding Zoning:

North: R9S (Residential Single Family)
South: R9S (Residential Single Family) and RA20 (Residential Agricultural)
East: R9S (Residential Single Family)
West: R9S (Residential Single Family)

Surrounding Development:

North: Single Family Homes
South: Single Family Homes
East: Single Family Homes
West: Single Family Homes

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 October 12, 2017. Notice of the public hearing was published in the Daily Reflector on October 16 and 23, 2017.

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 family child care homes.

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

An outdoor play area shall be provide at a ratio of not less than one hundred (100) 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 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.

Chairman Johnson opened the public hearing.

Ms. Gwendolyn Thomas, applicant, spoke in favor of the request. She stated she is in the process of obtaining a NC license to run a home day care. She stated that the State allows up to 8 children.

Mr. Faison asked if the yard was fenced.

Ms. Thomas stated yes.

Mr. Faison asked if her driveway holds four cars.

Ms. Thomas stated yes.

Chairman Johnson asked if she understood the staff conditions that would come with the special use permit.

Ms. Thomas stated yes.

Ms. Bellis asked how many children she was anticipating and if they were preschoolers or after schoolers.

Ms. Thomas stated four and all preschoolers.

Mr. Harry Thomas, husband of the applicant, spoke in favor. He said his wife's heart is in this.

Ms. Alice Spooner, resident of 2700 Camille Drive, spoke against the request. She stated she purchased her home in this development because of the restrictive guidelines. She stated the rules state that the properties are for residential use only, there shall be no business activity, and that all bylaws are binding until December 31, 2035. She doesn't oppose child care but does oppose businesses in her neighborhood.

Mr. Brian Richardson, resident of 800 Fox Chase Lane, spoke against the request. Allowing a business will make the neighborhood no longer residential only and create problems that currently do not exist.

Mr. Scott Barker, resident of 2005 Charterhouse Lane, spoke against the request. His concern is safety. The request is near the entrance to the subdivision where many cars pass to enter/exit the 200+ homes in the neighborhood.

Ms. Thomas stated that she already cares for two children from a near neighborhood. She would like to provide a service where the parent would be able to drop off/pick up their child in or near where they live. During the day there is not much traffic, only during peak morning/afternoon rush. Her hours of operation are 6:30 am to 6:00 pm. Her neighbor across the street is a State Trooper. There has not been an accident with a child in the neighborhood. She stated she should not be penalized for living near the main entrance. She has been in child care since 1997. She is taking all precautions and does not foresee any safety issues.

Mr. Bullock asked for the hours of operations and average drop of time.

Ms. Thomas stated 6:30 am to 6:00 pm. The average drop of time is 8:30-9:00 am.

Ms. Bellis appreciated the neighbors' comments. She stated she drove out to the site today around 11:00 am and saw only two cars. She would not object to four children since many families have four children.

Chairman Johnson asked for staff recommendation.

Ms. Blount stated staff has no objection to the request with the stated staff recommended conditions. She also commented on the applicant's comment regarding the State allowing 8 children. The rule allows 5 preschool and 3 after school children. Since the applicant stated she will not be doing afterschool child care, then she is only allowed up to five preschool children. The applicant will not be able to go over 5 according to the City Of Greenville ordinance.

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

Mr. Moretz asked for legal clarification regarding City requirements and the land development restrictions.

Attorney Phillips recommended to table the request until the land restrictions can be researched.

Chairman Johnson read the required findings criteria. No objections.

Mr. Moretz made a motion to table the request until the legal ramifications of the land restrictions have been vetted. (no second or vote made)

Chairman Johnson asked if the restrictions were HOA or City code.

Attorney Phillips stated they are restricted covenants that run with the property.

Mr. Faison stated that it is two separate governing bodies. Historically the Board follows City protocols and it's up to the tenant and the community to follow the restricted covenants. She may receive an approved permit but will need to deal with the community and its restrictions.

Attorney Phillips suggested to table the request to verify the existence of the restricted covenant independent of the public hearing and return to clarify the issues.

Mr. Moretz made a motion to the delay the vote until the next meeting to get clarification on the covenants restrictions to insure that the Board is within code to do so. Mr. Faison seconded and the motion passed unanimously.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY SARAH BATEMAN-
APPROVED**

The applicant, Sarah Bateman, desires a special use permit to operate a personal service otherwise not listed (cosmetic tattooing) pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at

103 2B E. Victoria Court. The property is further identified as being tax parcel number 57367.

Ms. Blount delineated the area on a map and stated the property is in the southern portion of the City's jurisdiction. The subject property is located within a 4,752 square foot multi-unit office building interior to Bedford Park Office Center.

Zoning of Property: OR (Office Residential)

Surrounding Zoning:

North: R9S (Residential Single Family)

South: OR (Office Residential)

East: OR (Office Residential)

West: OR (Office Residential)

Surrounding Development:

North: Single Family Home

South: Pinnacle Office Building, Jeff's Hair Design

East: Supreme Choice Health Care Van Der Have Family Law, Just in Tyme Hair Salon,
Monday & Monday, CPAs

West: Balanced Meridian, Mills Hair Studio, Seagate Wealth Management

Comprehensive Plan:

The property is located within the High Density Residential character type as designated by the Horizon Plan. The proposed use is in compliance with the Future Land Use Plan which recommends office development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on October 12, 2017. Notice of the public hearing was published in the Daily Reflector on October 16 and 23, 2017.

Staff Recommended Conditions:

Must obtain a permit from the Department of Public Health as required by NCGS §130A-283, and comply with any other health department requirements including but not limited to sanitation, first aid, vaccinations, health certifications, disposal of needles and other bio hazard waste material.

Must comply with NCGS §130A-283 and 15A NCAC 18A.3200 et seq. (tattoo regulations)

Services shall be limited to cosmetic tattooing/permanent makeup only and shall not include body art, body

piercing services or other types of tattoos.

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.

Chairman Johnson opened the public hearing.

Ms. Sarah Bateman, applicant, spoke in favor of the request. She is a NC licensed cosmetologist. She has been trained in permanent makeup/cosmetics tattooing. Cosmetic tattooing is governed under the NC Department of Health and Human Services. She choose the location for the professional environment and the adjoining target market surrounding the area.

Chairman Johnson asked for a description of the work.

Ms. Bateman stated it is tattooing. They tattoo eyeliner, eyebrows and lips. There is an occasional breast augmentation tattooing for cancer patients. The ink used is different than body art. It is more organic and there are regulations. The needle used is completely different from body art tattooing. The work is done more manually versus machine.

Mr. Faison asked if she also did hair pigmentation.

Ms. Bateman stated that it is included in microblading for hair loss.

Ms. Bellis asked if she would be providing other services that do not need a special use.

Ms. Bateman stated no.

Mr. Bullock asked if she would offer cosmetology art services at this location.

Ms. Bateman stated no. She owns a spa business in Winterville where she does hair.

Mr. Faison asked if she was the cosmetic artist or someone else.

Ms. Bateman stated her. Per the regulations, she would be allowed to have two people at this location.

Mr. Moretz asked if it would be by appointment only or walk-ins.

Ms. Bateman stated by appointment only.
No one spoke in opposition of the request.

Chairman Johnson asked for staff recommendation.

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

Ms. Bateman asked if the cosmetic tattooing could include the breast augmentation.

Ms. Blount stated the recommended condition stated body art. If breast augmentation is not considered body art then it would be encompassed in the permit.

Mr. Moretz asked the applicant how it is described by the State.

Ms. Bateman stated that it is still tattooing. But to determine what body art is and what is cosmetic, she would consider it cosmetic because it is not applying a character or words.

Mr. Bullock stated it has to do with the needles being used. The needles being used are for cosmetic use and not body art.

Ms. Bellis stated that cosmetic is not limited to the face.

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

Chairman Johnson read the required findings criteria. No objections.

Ms. Bellis made a motion to adopt the findings of facts, Mr. Faison seconded and the motion passed unanimously.

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

With no further business, Mr. McKinnon made a motion to adjourn, Mr. Moretz seconded, and the motion was passed unanimously. Meeting adjourned at 6:47 p.m.

Respectfully Submitted,

Elizabeth Blount
Planner II