

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT  
DECEMBER 21, 2017

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

Bill Johnson, Chairman - \*

Rich Winkler - \*

Thomas Taft Jr. – X

Kevin Faison - \*

Michael Glenn - \*

Rodney Bullock – X

Ann Bellis - \*

Hunt McKinnon - \*

James Moretz - \*

Dillon Godley - \*

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

VOTING MEMBERS: Johnson, Winkler, Glen, Moretz, Bellis, McKinnon, and Godley.

OTHERS PRESENT:

Ms. Elizabeth Blount, Planer II

Ms. Amy Nunez, Secretary

Mr. Donald Phillips, Assistant City Attorney

Mr. Scott Godefroy, City Engineer

Council Member Mr. Rick Smiley

Mr. Brock Letchworth, Communication Manager

Chairman Johnson stated a change to the agenda was needed. A request to move item #3 to #1 was needed.

**Motion made by Mr. McKinnon to move item #3 to #1, seconded by Mr. Moretz and the motion passed unanimously.**

Ms. Blount stated that the first special use for the applicant 4JP11, LLC was granted in January 2015. Notice of this hearing was mailed to 179 abutting property owners of the original parcel. Neighbors from the additional parcel, which is part of the current special request, did not receive notice. Therefore to provide proper written notice to all property owners abutting all parcels of this application, staff requests to move it to the next BOA meeting.

**Motion made by Mr. McKinnon, seconded by Mr. Winkler, to move the request to the next BOA meeting 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.

Ms. Blount stated for the record that an email was received from John Paul High School (applicant 4JPII, LLC) consenting to continue their request to the next meeting.

Attorney Phillips stated that although Mr. Faison has arrived, he will not vote but all others will.

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

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY CLIFTON AND SHARON WILLIAMS-APPROVED**

The applicants, Clifton and Sharon Williams, desire 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 1063 Benjamin Drive. The property is further identified as being tax parcel number 45890.

Ms. Blount delineated the property. The property is located in the northwestern section of the City ETJ. It is a 0.48 acre vacant lot.

**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: Mobile Homes

West: Mobile 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 residential development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owner on December 7, 2017. Notice of the public hearing was published in the Daily Reflector on December 11 and December 18, 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 homes 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 non-metal material. The skirt for a mobile home shall be attached to weather resistant material when required for support.

**Staff 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.

Chairman Johnson opened the public hearing.

Ms. Sharon Williams spoke in favor of the request. She stated she wants to place a single wide mobile home on this lot for her son.

Mr. Winkler asked if it would be for a primary residence.

Ms. Williams stated yes.

Chairman Johnson asked if all the other lots were also mobile homes.

Ms. Williams stated yes.

No one spoke in opposition to the request.

Mr. Winkler asked why a special use permit was needed for this request.

Ms. Blount stated that the table of uses states a special use permit is required for a mobile home in RA20.

Chairman Johnson asked for the staff recommendation.

Ms. Blount stated staff had no objection.

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

No discussion was made.

Chairman Johnson read the findings criteria. No objections.

**Mr. Winkler made a motion to adopt the finding of facts, Mr. McKinnon seconded and it passed unanimously.**

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

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY JESSICA GARDNER-APPROVED**

The applicant, Jessica Gardner, desires a special use permit to operate a pet grooming, animal boarding and pet daycare service pursuant to Appendix A, Use (15)a and (5)h. of the Greenville City Code. The proposed use is located at 732 SW Greenville Boulevard, Suites 101-107. The property is further identified as being tax parcel number 37460.

Ms. Blount delineated the property. The property will use Suites A, B, C and D at 732 SW Greenville Boulevard. It is located in the southern portion of the City jurisdiction. The property is located within a 12.62 acre shopping center which has approximately 937 feet of frontage along SW Greenville Boulevard. The proposed use will occupy a 2,000 square foot multi-unit building.

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

**Surrounding Zoning:**

North: R6S (Residential Single Family)

South: CH (Heavy Commercial) and CG (General Commercial)

East: CH (Heavy Commercial)

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

**Surrounding Development:**

North: World's Coolest Comics, Sharper Edge, and Greenville Grande Theatre

South: Greenville Nissan Dealership, vacant lot, and Barbour/Hendrick Honda Dealership

East: City of Greenville Police Substation, A Start Nails, Star II Tobacco Shop

West: Leonard Building and Truck Accessories, and Play It Again Sports

**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 development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owner on December 7, 2017. Notice of the public hearing was published in the Daily Reflector on December 11 and December 18, 2017.

**Related Zoning Ordinance Regulations:**

**Definition:** *Animal boarding; outside facility.* Any facility for the purpose of boarding domesticated animals on a commercial basis or as an accessory use to district uses. This definition does not include livestock sales, pavilions, auditoriums, yards, distribution facilities, transshipment facilities or slaughterhouses.

***Kennel:*** A use of land or buildings for the keeping of four or more dogs.

**Specific Criteria:**

(N) *Stables and/or kennels.*

1. Shall be located no closer than 100 feet to any existing dwelling or residential district; and
2. Shall otherwise meet the minimum dimensional standards and setbacks within the applicable district, except as provided under subsection (J)(1) above.

**Staff Recommended Conditions:**

Waste should be properly disposed by a certified environmental waste company that handles animal waste and not be placed in a dumpster for weekly collection.

Any outside play area shall be completely enclosed by a four-foot or higher visual screen and contain a latching gate. All outside play activities must be monitored by staff at all times.

No more than three animals shall be in any outdoor area of the subject property at one time.

Animals for overnight boarding shall be housed within indoor quarters at night.

Pet grooming, animal boarding and pet daycare shall comply with all applicable state laws and city ordinances.

**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. Bellis asked if the permit was for all four units.

Ms. Blount stated yes.

Chairman Johnson opened the public hearing.

Ms. Jessica Gardner spoke in favor of the request. She stated she is the owner of the business and currently has a pet grooming business. She wants to add to her business by adding daycare and boarding. At the back of the building she will add a PVC fence to enclose an area for bathroom relief. She will have inside potty stations.

Ms. Bellis asked if the area would be hosed down regularly.

Ms. Gardner stated yes and that it will have a vacuum system that purifies the air and a drainage system.

Mr. Moretz asked for what type of animals.

Ms. Gardner stated only for dogs now. She also stated the pet suites are moveable.

Mr. Godley asked about noise reduction.

Ms. Gardner stated hanging walls and ceiling will be placed that reduces noise and will not cause a nuisance.

Chairman Johnson asked the applicant if she understood and would comply with staff's recommended conditions.

Ms. Gardner stated yes.

No one spoke in opposition to the request.

Chairman Johnson asked for the staff recommendation.

Ms. Blount stated staff had no objection to the application with the recommended conditions.

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

No discussion was made.

Chairman Johnson read the required findings criteria. No objections.

**Mr. McKinnon made a motion to adopt the finding of facts, Mr. Godley seconded and it passed unanimously.**

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

### **DECISION AND ORDER OF THE ADMINISTRATIVE APPEAL FROM NOVEMBER 30, 2017 HEARING**

Attorney Phillips stated that at the last meeting on November 30, 2017, the Board voted 5-2 to reverse the decision of the administrative officer concerning the requirement under City Code 9-4-281 to install a sidewalk at the property located at 1000 Staton Road Greenville North Carolina 27835. The Board then instructed Attorney Phillips, as counsel to the Board, to prepare a proposed written decision and order as required by the North Carolina General Statute 168-388 including findings of facts and conclusions of all reducing the Board's decision to writing for consideration at the next meeting, which is tonight. He stated he prepared and distributed copies of the order to the Board members upon administrative appeal. Ultimately the Board's decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to applicable standards. He has presented them with the proposed decision and order for the Board's consideration and review. The Board may adopt it in total or modify it as needed.

For purposes for the vote on tonight's order to reduce the decision to writing, the voting members are: Mr. Johnson, Mr. Winkler, Mr. Faison, Mr. Glenn, Ms. Bellis and Mr. McKinnon.

Chairman Johnson opened up board discussion for the findings of facts.

**Mr. Glenn made a motion to accept the findings of facts, Mr. Winkler seconded and the motion passed unanimously.**

**Mr. Winkler made a motion to adopt the decision and the written order as presented, Chairman Johnson seconded and the motion passed unanimously.**

Attorney Phillips stated that Thomas Taft Jr., who was present at the appeal hearing, informed him that he too adopted the order as presented.

Mr. Winkler asked about the City appeal.

Attorney Phillips stated that if the decision is appealed, it would go before City Council for their approval to do so. The City would be the appellant to file a petition in Superior Court. The decision would be 30 days after the decision is reduced to writing is signed.

Ms. Bellis asked if photographs could be submitted with the advanced meeting packets.

Ms. Blount stated she would include them.

**With no further business, Mr. Winkler made a motion to adjourn, Mr. Moretz seconded and it passed unanimously. The meeting adjourned at 6:29 pm.**

Respectfully submitted,

Elizabeth Blount  
Planner II