

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
July 26, 2018

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 - X
Michael Glenn - *
Ann Bellis - *
James Moretz - *
Christopher Lilley - X
Nathan Cohen - *
Rodney Bullock - *
Hunt McKinnon - X
Sharon Evans - *

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

VOTING MEMBERS: Glenn, Bellis, Moretz, Cohen, Bullock, Evans.

OTHERS PRESENT:

Ms. Elizabeth Blount, Planer II
Mr. Donald Phillips, Assistant City Attorney
Mr. Kelvin Thomas, Communication Technician
Ms. Corinne Becker, Secretary
Ms. Cathy Meyer, Civil Engineer II
Ms. Sharon Gray, Notary

MINUTES

Mr. Moretz made a motion to approve the June 28, 2018 minutes as presented, Mr. Bullock 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.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY MICHELLE BROWN

The applicant, Michelle Brown, desires a special use permit to operate a tutoring service pursuant to Appendix A,

Use (15)a. of the Greenville City Code. The proposed use is located at 650 E. Firetower Rd, Suite B. The property is further identified as being tax parcel number 42403.

Sharon Gray swore in all of those wishing to speak on the issue.

Ms. Blount delineated the property. The request is to operate a tutoring service and retail store. The tutoring service is a personal service not otherwise listed in the table of uses, which is what triggered a special use permit. The retail portion is permitted outright. The subject property contains a 34,510 square foot multi-tenant commercial building within a planned center. The building has approximately 424 feet of frontage along E. Firetower Road and 125 feet of frontage along Bayswater Road. The proposed use will occupy 4,250 square feet of the building for tutoring and retail of educational material.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: R6S (Residential Single Family)

South: CG (General Commercial)

East: CG (General Commercial)

West: CG (General Commercial), RA20 (Residential Agricultural) and R6 (Residential)

Surrounding Development:

North: Sheffield Subdivision

South: AA Self Storage, Morgan Printers, and ACR Supply Co

East: Vacant Lots

West: A vacant lot, a single family home and Dudley Grant's Townhomes

Comprehensive Plan:

The property is located within the Commercial 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 owners on July 12, 2018. Notice of the public hearing was published in the Daily Reflector on July 16 and July 23, 2018.

Related Zoning Ordinance Regulations:

Definition:

Service; personal. Labor of a physical, communicative, individualized or domestic nature that directly benefits an individual.

Staff Recommended Conditions:

The proposed request may not evolve into a child care facility without amending the current Special Use Permit.

Children receiving tutoring shall be supervised at all times.

Other Comments:

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

Applicant shall submit plans to the City of Greenville Inspections Department showing existing conditions of space(s) and new floor plan for the proposed space(s).

Applicant shall obtain building permits for any work done in proposed location.

With no questions from commission members, Chairman Johnson opened the public hearing.

Ms. Michelle Brown, applicant, spoke in favor of the request. She stated that in addition to the retail portion, she will have students come to appointments with a teacher. They will be supervised at all times and it will be either one or two small ratios of student to teacher. After meeting with a teacher for an hour they'll be returned to their parents.

Mr. Moretz asked how many students would be in the building at one time.

Ms. Brown stated that there would be no more than ten.

Ms. Bellis asked the ages of the students.

Ms. Brown stated they will be from Kindergarten through 12th Grade so, 5 through 17.

Ms. Evans asked if supervision was already in place.

Ms. Brown stated that it was.

Mr. Bullock asked if there was a student to instructor ratio.

Ms. Brown stated that it was one to four.

Mr. John Day, commercial leasing agent in Greenville, spoke in favor of the request. He works with the Rosemyer Corporation that owns the center and he leased this property to Ms. Brown. The owners feel that a tutoring center will be a nice addition to the shopping center, as it gives parents an opportunity to drop children off, stay and do some shopping or leave and return to pick them up. The shopping center contains approximately 31,000 SF and has 3.67 Acres. There are roughly 142 parking spaces. There is adequate parking for employees and visitors.

No one spoke in opposition to the request.

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

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

Chairman Johnson read the required findings criteria. No objections.

Ms. Bellis made a motion to adopt the finding of facts, Mr. Bullock seconded and it passed unanimously.

Mr. Bullock made a motion to approve the petition as presented, Mr. Moretz seconded the motion and it passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY PATRICIA COX

The applicant, Patricia Cox, desires a special use permit to operate a church pursuant to Appendix A, Use (8) of the Greenville City Code. The proposed use is located at 604 Albemarle Ave. The property is further identified as being tax parcel number 01396.

Sharon Gray swore in all of those wishing to speak on the issue.

Ms. Blount delineated the property. This is a special use permit to operate a church in an Unoffensive Industry zoning district. The property is located in the northern portion of the city. The proposed use is located at 604 Albemarle Ave. The location contains a 2,508 two-story square foot two-story commercial building and has approximately 54 feet of frontage along Albemarle Avenue with a total lot area of 0.14 acres. The proposed use will only occupy the first story.

Zoning of Property: IU (Unoffensive Industry)

Surrounding Zoning:

North: IU (Unoffensive Industry) and R6 (Residential)

South: CD (Downtown Commercial) and IU (Unoffensive Industry)

East: IU (Unoffensive Industry) and CDF (Downtown Commercial Fringe)

West: R6S (Residential Single Family)

Surrounding Development:

North: Hair salon and vacant lots

South: Quality Cutz Barber Shop, vacant lots and Joy's Community Building

East: Best Service Center Auto Repair, Eat to Live Restaurant, and Space Clubhouse

West: Duplex Residential homes

Comprehensive Plan:

The property is located within the Uptown Edge character type as designated by the Horizon 2026 Plan. This character type allows for adapt and reuse of existing buildings for non-industrial uses. Although office and institutional/civic development is preferred in this area, the subject church will occupy an existing commercial type structure and is limited to a three-year interval at the end of which a review of the compatibility of the church with the surrounding industrial area can be determined. Therefore the request is in general compliance with the Future Land Use Plan.

Notice:

Notice was mailed to the adjoining property owners on July 12, 2018. Notice of the public hearing was published in the Daily Reflector on July 16 and July 23, 2018.

Related Zoning Ordinance Regulations:

Definition:

Church or place of worship. A building in which persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship and holding a certificate of nonprofit organization from the Secretary of State.

Applicant shall submit plans to the City of Greenville Inspections Department showing existing conditions of space(s), new floor plan for the proposed space(s) and egress from building.

Applicant shall obtain building permits for any work done in proposed location.

Staff Recommended Conditions:

A parking plan approval will be obtained prior to the approval of any permits.

The church shall obtain a certificate of non-profit organizations from the Secretary of State. The applicant may be covered under another church but applicant can provide that information.

Other Comments:

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

Applicant shall submit plans to the City of Greenville Inspections Department showing existing conditions of space(s) and new floor plan for the proposed space(s).

Applicant shall obtain a change of use and building permits for any work done in proposed location.

Mr. Moretz asked what the three year interval meant.

Ms. Blount stated that churches located in IU zoning districts can only be there for three years and must renew or they'll need to start the process over again. That is what happened here.

Mr. Glenn asked if they have to fill out an application and pay a fee.

Ms. Blount stated that there is a renewal fee they have to pay as well as the application.

Mr. Moretz asked if they had been in business at this location previously.

Ms. Blount stated that yes, they had a special use permit in 2006. They were sent a notice that they had to renew, but the person who received it had a disability and didn't convey the information to the people it needed to go to, therefore it lapsed. When they applied for a sign permit, they were notified that they had to apply for a special use permit first.

Mr. Moretz asked what the previous restrictions were and whether they are currently being followed.

Ms. Blount stated that there were none.

Mr. Bullock asked if one of the current stipulations will be a parking plan.

Ms. Blount stated that it is and that a change of use permit will make it officially a place of assembly.

With no questions from commission members, Chairman Johnson opened the public hearing.

Ms. Patricia Cox, applicant and Pastor of Greater New Birth Deliverance Ministry, stated that they are opening a church so they may better enhance the community.

Ms. Bellis asked if she uses only the first floor and if she uses the entire first floor, including the addition in the back.

Ms. Cox stated that is correct.

Ms. Bellis asked about the windows that have been filled with cinder blocks in the back, some of which are not stable. Is there a plan to repair the blocks?

Ms. Cox stated that the cinder blocks are part of the second floor and not a part of the first floor of the building that they are using.

Mr. Moretz asked is the church will ever have access to the second level.

Ms. Cox stated that this is not their plan.

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

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

Chairman Johnson read the required findings criteria. No objections.

Mr. Bullock made a motion to adopt the finding of facts with the recommended conditions, Ms. Evans seconded and it passed unanimously.

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

With no further business, Mr. Moretz made a motion to adjourn, Ms. Evans seconded and it passed unanimously. The meeting adjourned at 6:24 pm.

Respectfully submitted,

Elizabeth Blount
Planner II