

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.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY MOTAHAR ABDUH

The applicant, Motahar Abduh, desires a special use permit to a Tobacco Shop Class 2 pursuant to Appendix A, Use (10) gg. of the Greenville City Code. The proposed use is located at 917 Red Banks Rd. The property is further identified as being tax parcel number 38261.

Ms. Blount delineated the property. Ms. Blount provided photos of the front and back of the building as well as aerials of the shopping center.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: CG (General Commercial)
South: CG (General Commercial)
East: CG (General Commercial)
West: CG (General Commercial)

Surrounding Development:

North: Paris Fashions, Fabric and Drapery Designs, At Barre, Ltd, Edible Arrangements, Lautares Jewelers, and Salon Blonde
South: AR Workshop, Clean EatZ, Pink Nail Salon and Its Sew Wright monogramming and fine gifts
East: Electronic Solutions and Once Upon a Child
West: Pacific Harmony and My Sister's Attic

Description of Property:

The property is located within a multiple unit commercial building interior to the Arlington Village Shopping Center. The applicant's unit contains 2,700 square feet.

Comprehensive Plan:

The property is located within the Mixed Use High Intensity character type as designated by the Horizon 2026 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 November 1, 2018. Notice of the public hearing was published in the Daily Reflector on November 5 and November 12, 2018.

Related Zoning Ordinance Regulations:

Definition:

Tobacco Shop (Class 2). An establishment that entails the retail sales of any of the following tobacco smoking apparatus: water pipes; hookah pipes; bowls; water bong; or similar products.

Specific Criteria

Section 9-4-103(CC)

(CC) Tobacco Shop (Class 2)

No tobacco shop (class 2) shall be located within a one-half mile (2,640 foot) radius of an existing or approved tobacco shop (class 1) or tobacco shop (class 2).

No tobacco shop (class 2) shall be located within a 500-foot radius of the following:

An existing conforming use single-family dwelling located in any district;

Any single-family residential zoning district; and

An existing or approved school, church, park or multi-family use.

The measurements associated with divisions (BB)(1) and (2) above shall be made from the exterior wall of the proposed tobacco shop (class 2) to the nearest exterior wall of any existing or approved tobacco shop (class 1 or 2), existing conforming use single-family dwelling located in any district, or existing or approved school, church or multi-family use. The measurement shall be made from the exterior wall of the proposed tobacco shop (class 2) to the nearest property line of any single-family residential zoning district or park.

No tobacco shop (class 2) shall be located within any certified redevelopment area.

Ms. Blount stated that the major difference between a Class 1 and Class 2 Tobacco Shop was a Class 2 can sale water pipes, hookah pipes, bowls, water bong or similar products and a Class 1 cannot.

Staff Recommended Conditions:

Shall not operate or evolve as a hookah café without the issuance of a change of use or a Special Use Permit for such use.

No loitering permitted outside of business.

Other Comments:

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

Additional uses/changes will require submittal(s) for review and approval so that additional building code

requirements can be met for additional uses/changes.

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.

Before the applicant and all others spoke Attorney Phillips briefed the board and the public about the type of evidentiary testimony that would be admissible and that those wishing to speak should have legal standing in the case being heard. They should also have the ability to appeal the board's decision because they will suffer special damages based on that decision.

Mr. McKinnon asked if traffic and parking testimony could be considered by the boards.

Mr. Phillips said as long as its factual and not opinion base.

Chairman Johnson opened the public hearing

The applicant, Mr. Motahar Abduh, spoke in favor of the request. He stated that he intended to open a convenience and variety store and was informed that if he wanted to sell tobacco products that exceeded 20% of the inventory and if Tobacco Company advertisement exceeds 40% in my windows then he would need to apply for a Special Use Permit for a Tobacco Shop. He chose to apply for it because he also liked the territory protection it provided by not letting another Tobacco store open up within half a mile of his store. His customers would be his neighbors and their customers. He wouldn't do advertisement so he would will rely on word of mouth and didn't see any other increase in traffic or parking.

Mr. McKinnon asked why wouldn't there be additional traffic and parking, the application says 100 to 150 customers per day.

Mr. Abduh said that he hoped those customers would be already there shopping in the shopping center.

Ms. Bellis asked for the hours of operation.

Mr. Abduh replied he was planning on 9am to 8pm but he hadn't open yet so he would see what the times of operation was of the business around him because again his customer will be their customers.

Mr. Moretz asked if there were any current restrictions with the building regarding his type of business.

Mr. Abduh replied no.

Attorney Jack Brock, legal representative for the Arlington Village Property Owners Association and various business owners in the area, spoke in opposition of the request. Mr. Brock said that the applicant was a nice guy but the owners had concerns about the opening of the Tobacco Shop Class 2.

Mr. Brock deposed the following Arlington Village Business Owners

Scot Muller – Owner of Clean Eats

Ron Schneider – Electronic Solutions

Lauren Dishman – Monkees Women's Clothing Store

Burt and Tammy Wright – Its Sew Wright

Mr. Muller, business owner, spoke in opposition of the request. He spoke about how bad the parking lot was on Taco Tuesdays and how hard it was to navigate through the shopping center during that time. He also spoke about how he believed that no one that shops in the center will patronize this type of business. Mr. Muller also provided a petition signed by the store owners in Arlington Village.

Mr. Phillips informed the board that the petition was not competent evidence for the board to consider.

Ms. Dishman, business owner, spoke in opposition of the request. She stated that she didn't think the proposed business would generate customers from her clientele and that she had safety concerns for herself and staff based on past experience with a previous Tobacco Shop in the shopping center.

Mr. Schneider, business owner, spoke in opposition of the request. He stated that parking and delivery is already restrictive in the shopping center and there could be safety issues raised by this type of business. Mr. Schneider also stated that in order for the business to survive it would have to have enough volume of business and he didn't think that he can do that if he relied on the customers that are already there.

Mr. Brock presented a photo that showed the parking and delivery in front and behind the stores. And how delivery trucks will have a hard time getting there.

Mr. Glenn asked about the previous business that was located beside the proposed business.

Mr. Schneider replied Global Kids. He stated they did a lot of mail order and little foot traffic and that most of her traffic was from the post office delivery trucks. It went into foreclosure and had been vacant for a little over a year.

Mr. Cohen asked how many vacant shops are there now.

Mr. Schneider replied about 2 or 3 they go pretty quickly.

Mr. Bullock asked about overflow parking that isn't assigned to any particular business and if they would suffice if there happened to be an influx of business for those that wish to patronize the shops during busy times like lunch time or holiday season.

Mr. Schneider stated that is correct those space are available if there happens to be an influx of business.

Mr. Bullock said that the overflow parking seemed to be a contingency plan during the busy times and seasons.

Chairman Johnson asked about the alley way and the ramps behind the business and how trash trucks can navigate behind them

Mr. Schneider stated that it was tight and the ramps prevented water from getting into the back of the business.

Mr. Moretz asked if the ramps were attached to the back of the business.

Mr. Schneider replied yes.

Ms. Wright stated that parking is a big issue but for her, safety is more of a concern. Ms. Wrights stated

that her customers were all women and she had events at her business at night and the young college girls she hired and her customers wouldn't feel safe with the clientele the applicant's business will attract. There had been businesses that were in the center before that had events that had alcohol and the business owners would have to call the police because the patrons would be there late and leave bottles in the parking lot.

Ms. Bellis asked were there businesses in Arlington Village that already sell alcohol.

Ms. Wright stated yes there are restaurants that sell alcohol but there aren't in Arlington Village.

Mr. McKinnon asked if there was a lease agreement that promised each business a certain amount of parking spaces.

Ms. Dishman stated there are no assigned spaces and employees have to park in overflow sometimes.

Mr. Glenn asked how this business parking would be different from any other retail business.

Mr. Brock stated this would be a high volume business and it could make parking a big issues.

Mr. Wright spoke about his clientele being women with children and when it's time for them to shop anything that give them pause they won't get out of their cars. Mr. Wright said our competition is not any other brick and mortar but Amazon and if parking is an issues then they will shop online.

Mr. Glenn asked would you feel different if this was a Class 1 and just a convenience store.

Mr. Wright, business owner, spoke in opposition to the request. He replied that Mr. Abduh should be able to do what he wants but he doesn't think it would work in that location right off the street. We would patronize him but this space is not suited for this type of business and the type of products that will attract that clientele. But as long as it doesn't affect my business.

Mr. Muller stated that any person that will buy bongos and water pipes will not shop at any of the business in Arlington. If this business didn't sell the Class 2 products they will support but the products will generate a different clientele that doesn't fit Arlington Village.

Chairman Johnson asked if it would be great day if 150 new customers came into his business.

Mr. Wright said it would be a great day.

Mr. Muller stated yes.

Mr. Brock stated that the petitioner had failed to meet the burden of proof. He had failed to show that the proposed business wouldn't adversely affect the current use of the existing property owners. His business plan doesn't mesh with the current business in Arlington Village. The Property Owners Association ask that the board deny the petition based on it being unsafe to the current business and their clientele, It will increase traffic and create parking issues and it would be detrimental to public welfare or to the other business.

Mr. Abduh spoke in rebuttal. He replied that the spot is a retail unit and will always be used as a retail unit. He will use that same spaces as it used. Whether he got the Class 2 or not it is still going to be a convenience store and he hoped to be a part of Arlington Village. He was advised by the head of the association that if he wanted his business to succeed he needed to know that most of the people that shop

in Arlington Village are women. He had no plan whatsoever to sell pipe tobacco and water pipes. The only reason that he applied for the Class 2 was to get the protected territory. Because he wanted to be a part of the village. He has invested in it and he shared their concerns. He cared about safety, what bothered them will bother him.

Chair Johnson asked the applicant about his profession.

Mr. Abduh replied that he used to operate a Tobacco Store in Goldsboro, sold it and then he opened a clothing store then he retired. He was planning on leasing this unit to have extra income but he didn't get the right tenant. It's been on the market for a year so he decided to open it because he already paid for it.

Chairman Johnson asked if the applicant's business plan projected 150 customers from the customers that already come to the village. They don't think you will, what happens if it its only 10-20% of the 150.

Mr. Abduh replied that is because they think he will sell those things that are under the Class two. But once they see the store they will change their perspective. The business won't be anything that they think of in Class two. It will be a decent and clean convenience store.

Mr. McKinnon replied that it sounds like you're not asking for the things that are on your application

Mr. Abduh replied I asked for the Class two was because of the inventory not because I want to sell the pipe tobacco or glass or anything like that.

Mr. Moretz asked if we restricted your Class two to no pipes or selling of self-smoking products are you ok with that.

Mr. Abduh replied yes I am okay with that. There will be no smoking in the store my family will be there, there will be no smoking around them.

Mr. Moretz replied so the only reason you are here is because of the 20% inventory.

Mr. Abduh reiterated that is the reason and also included that the 40 % advertisement and the half mile protection are the primary reasons for asking for the Class two. If you want to restrict the water pipes and all these things I am fine with it.

Mr. Bullock asked are you saying no other business like yours can open up with a half of a mile

Mr. Abduh replied yes if you have a Class two no other Class two can open you within a half mile of the store. It protects against competition.

Mr. Glenn asked so no matter what the outcome is you are going to open a convenience store.

Mr. Abduh replied yes even if he got the Class two it won't be anything like a Class two. He wants his neighbors to see it and know this is place that they can shop and their wives can shop. Like the business that exist now.

Mr. Joyner asked can you explain the 40 % advertisement.

Mr. Abduh yes in order to sell the tobacco company product at a buy down or rebate he would sign a contract with them to let them tag my windows with their advertisement. But recently found out that he didn't have to do that in order to get the rate. So he would probably choose to keep his windows clean.

Mr. Joyner asked so is this Special Use Permit even right for you tonight.

Mr. Abduh said yes because if you exceed that 40 % of advertisement or tobacco then you will be in violation.

Mr. McKinnon stated that it appears that you are no longer asking for what is in the application.

Mr. Glenn replied that it appears that his intent is to protect his territory.

In rebuttal

Mr. Orman Whichard owner of Its Sew Wright unit stated that he didn't understand why a Special Use Permit is being issued for a use that we are trying to do away with, which is smoking. Pitt County has had bad publicity as Tobacco County and that there are rules about smoking on the premises. It seemed illogical.

Mr. Brock stated that people don't always tell the truth but if you issue this permit he will be able to sell everything in the product line allowed under the Class two use.

Ms. Blount asked before I give staff recommendation are there any question for staff.

Mr. Godley asked if the units in Arlington Village are owned like condominiums.

Ms. Blount replied yes they are.

Mr. Glenn asked does a convenience store have parking requirement that is different from other retail user.

Ms. Blount replied that it is the same as a retail however this is located in a shopping center and for shopping center the parking is one space per 200 sq. ft. of retail floor area.

Mr. McKinnon asked how much space is in this building.

Ms. Blount said 2700 sq. ft.

Ms. Blount delineated the parking area of the shopping center labelling them A, B, C, D. She provided an aerial of the businesses and the parking around it.

A had 58 parking spaces

B had 11 parking spaces

C has 30 parking spaces

D had 29 parking spaces

Ms. Bellis asked if the board could make the condition for no signs in the windows as it would be compatible with this shopping center.

Ms. Blount replied that the board is within its right to make any reasonable accommodation or conditions.

Ms. Moretz asked could we also restrict the Class within the Class itself as to the item that could be sold.

Ms. Blount replied that the request is for a Tobacco Shop Class two but if the board speaks to the

applicant and he agrees to the restriction then that could be a condition.

Mr. Glenn asked to my understanding Special Use Permit can be given and taken away, would that be complaint driven, how does a Special Use Permit get reviewed or called back before this board.

Ms. Blount replied that is correct, the same reasons that we are making these decisions, it has to be based on the evidence. So if there is evidence that the use is in violation it could be brought before the board for a rehearing. In the rehearing you can ask for it to be revoked or add additional conditions. But just like the ruling tonight it is based in evidence not opinion.

Mr. Bullock asked for staff recommended conditions.

Ms. Blount stated that the business not turn itself into a Hookah Lounge and no loitering outside the business.

Mr. Moretz stated that it appears that the purpose of the request is for inventory purposes and since the majority of the opposition has an issue with the product line if the board could remove some of the items.

Mr. Philipps stated that the board is Quasi-Judicial so you are basically sitting in black robe taking in evidence and listening to facts presented to you as oppose to speculation and opinion.

Mr. Godley asked what liability and or tort will there be if illicit drugs were found on the property.

Mr. Philipps replied any compliant that is evidence driven can bring the permit back to the board for review and as far as a liability that is too much of an open ended question for him to comment on.

Ms. Bellis stated that like bars that have a review process and we review this.

Mr. Philipps you have that discretion based on the guidelines and criteria.

Mr. Moretz asked if the board could limit the Class two.

Mr. Philipps stated yes you can to an extent, it will have to be by consent.

Mr. Moretz asked if the board could limit the Special Use Permit to just the current owner if it changes ownership or have a leaser.

Ms. Blount no that is against State Statue and the permit is tied to the land and not the owner.

Ms. Moretz stated that I think we could satisfy all parties if we added the right conditions to the permit.

Mr. McKinnon replied that he thought the application was quite clear and the board had two choice: to approve or not approve and have him come back in December.

Ms. Evans stated that the board did have the right to put conditions on the request and make applicable for both sides of the aisle. The board could include a 6 month review and have the applicant come back then.

Mr. Atkinson interjected that he was concerned about the review process and that it could start a precedents that the board may not want to continue.

Mr. Moretz asked what was the rational for him to return in December.

Mr. McKinnon replied because the testimony didn't agree with the Special Use Permit request.

Mr. Godley stated the board should be cautious about not being too grandiose in the conditions that they end up being too restrictive and un-enforceable.

Mr. McKinnon objected to the criteria of Health and Safety under the concern of increase vehicular traffic the proposed business would create.

The objection failed on a vote of 5 to 1 (Mr. McKinnon objected)

Mr. McKinnon made a motion to approve the finding of facts with the stated conditions, Mr. Bullock seconded and it passed unanimously.

Mr. Moretz made a motion to approve the petition with the conditions that the applicant not sell Hookah Pipes, water pipes and bongs but have the territory protection and be allowed to have the 40% advertisement allowance.

The applicant consented.

Mr. Glenn seconded the motioned and the motion passed.

Mr. Moretz made a motion to approve the petition with the stated condition, Mr. Bullock seconded the motion and it passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY CAMPING WORLD PROPERTY, INC.

The applicant, Camping World Property, Inc., desires a special use permit to operate an automobile, truck, recreational vehicle, motorcycle and boat sales and service pursuant to Appendix A, Use (11)f. of the Greenville City Code. The proposed use is located at 111 Red Banks Rd. The property is further identified as being tax parcel number 37011.

Ms. Blount delineated the property located in the southern portion of the city. It is the former Overton's store and provided copies of the purchase agreement to the board.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: CG (General Commercial)

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

East: CG (General Commercial)

West: R6S (Residential Single Family) and R15S (Residential Single Family)

Surrounding Development:

North: Great Harvest Bread, Tan-n-Bed, Pool Pro, Artisans

South: Audi of Greenville Car Dealership, Carolina Ice Zone, University Inn & Suites Motel

East: DPI Printing, Frames by James, Salon Exposure, The Met Deli, Sappari, Stein Mart, Sound Feet
West: Lakewood Pines Subdivision and University Commons Shopping Center

Description of Property:

The property is 10 acres in size and contains 96,707 square feet of commercial and warehouse space.

Comprehensive Plan:

The property is located within the Commercial character type as designated by the Horizon 2026 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 November 1, 2018. Notice of the public hearing was published in the Daily Reflector on November 5 and November 12, 2018.

Related Zoning Ordinance Regulations:

Definition:

Automobile, truck, recreational vehicle, motorcycle and boat sales. Establishments engaged in the retail and/or wholesale of new and/or used automobiles, trucks, recreational vehicles and campers, motorcycles and motor boats including other watercraft, trailers, marine supplies and outboard motors, collectively referred to as vehicles for purposes of this definition. These establishments frequently maintain repair departments (see also major and minor repair) and carry stocks of replacement parts and accessories. For purposes of interpretation, the concurrent display for sale of not more than any five such vehicles upon a lot containing a legal nonresidential principal use may be considered an accessory use in accordance with applicable conditions set forth by definition. Specifically, the concurrent display for sale of not more than any five such vehicles upon any lot containing a legal vehicle-related major or minor repair establishment, or a bank, savings and loan or other lending institution engaged in the repossession of vehicles shall be considered an accessory use to the principal use.

Staff Recommended Conditions:

Site plan approval required prior to occupancy to ensure adequate parking. Parking spaces for retail and recreational vehicle sales must be delineated on the plan.

Shall not operate or evolve into a junk yard or graveyard.

Recreational vehicles shall not be parked within the setbacks or bufferyard nor obstruct view of traffic.

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. Moretz asked about the City Of Greenville lighting plans for the street.

Ms. Blount stated that any lighting plans will be address in the site plan review however Evans is a State owned road.

Michele Clemmons of the East Group, representative for the applicant, spoke in favor of the request. She worked with Overton's to develop the site. She stated that the gate in questioned is a manned gate. The main reason for the Special Use Permit is so they can park Campers on the side of the building facing Evans Street. Maintenance on vehicles will be done in the warehouse space. Washing of the vehicles will be done under the canopy. There is very little renovation being done on the inside and the ramp in the back is being flatten to be able to accommodate the recreational vehicles.

Michael Overton, real estate agent and owner of Overton's, spoke in favor of the request. He spoke about his family's ownership of the building and how he was glad to see Camping World use the building.

Mr. Moretz asked if Overton's products were being sold in the business.

Mr. Overton replied that Gander products are being sold.

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

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

With no further business, Mr. Moretz made a motion to adjourn, Ms. Bellis seconded and it passed unanimously.

Meeting adjourn at 8:21 pm.

Respectfully Submitted

**Elizabeth Blount
Planner II**