

MINUTES ADOPTED BY THE CITY OF GREENVILLE BOARD OF ADJUSTMENT
January 24th 2019

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 - *	
Nathan Cohen - *	Christopher Lilley - *
Michael Glenn – X	Rodney Bullock - *
Ann Bellis - *	Hunt McKinnon - *
James Moretz - *	Dillon Godley-*
Sharon Evans-*	Stephen Atkinson -*

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

VOTING MEMBERS: Johnson, Evans, Bellis, Lilley, Moretz, McKinnon, and Bullock

OTHERS PRESENT:

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

MINUTES

Mr. Moretz made a motion to approve the December 27th, 2018 minutes as presented, Ms. Evans 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.

The notary swore in staff and all those speaking for and against the request.

PUBLIC HEARING ON A REQUEST FOR A VARIANCE BY RICHARD BARNES

The applicant, Richard Barnes, desires a variance from the extension or enlargement of nonconforming situations, found in Section 9-4-29 of the Zoning Ordinance in the Greenville City Code. The subject properties are located at 1712 and 1714 S. Greene Street. The property is further identified as being tax parcel number 06517.

Ms. Blount delineated the property, using photos she highlighted the location of the homes on subject property.

Location: The proposed use is located at 1712 and 1714 S. Greene Street. The property is further identified as being tax parcel number 06517.

Zoning of Property: R6 (Residential)

Surrounding Zoning:

North: R6 (Residential)

South: R6 (Residential)

East: R6 (Residential)

West: R6 (Residential)

Surrounding Development:

North: Single family dwellings and a vacant lot

South: Single family dwellings

East: Single family dwellings

West: Single family dwellings

Description of Property:

The subject property is 0.25 acres in size and has approximately 100 feet of frontage along S Greene Street. The applicant wishes to divide the nonconforming lot into two lots with both lots being less than the required dimensional standards for the R6 zoning district. The property use will remain residential.

Comprehensive Plan:

The property is located within the Traditional Neighborhood, Medium to High 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 residential development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on January 10, 2019. Notice of the public hearing was published in the Daily Reflector on January 14 and January 21, 2019.

Staff Comments:

Pertinent facts regarding the application:

The property owner inquired about subdividing the lot in November 2018. Staff initially informed the applicant that a variance would be required. After researching the ordinance, staff retracted the statement due to Section 9-4-33 Nonconforming lots

(A) Any single nonconforming lot of record existing as of the effective date of this chapter that has 80% or more of the minimum required lot area, lot width and/or frontage for the district where the property is located, may be used as a building site,...

Upon plat review and an interpretation from the Director of Community Development, it was noted that Section 9-4-33 of the ordinance referenced a building site and not an existing structure. Therefore, the variance request was needed for legal documentation for the property to be in compliance.

Staff investigated the title deed of the property. The property has been one lot since 1937. The houses were built in 1955. The subdivision regulations were first adopted by the City of Greenville in 1954. Only three of the eighteen parcels on the block of the proposed use are in compliance to the current dimensional standards. The proposed use is the only parcel with two homes on one lot.

The Applicant is seeking relief of

SEC. 9-4-29 EXTENSION OR ENLARGEMENT OF NONCONFORMING SITUATIONS

(A) Except as specifically provided in this section, the extent of the nonconformity of a nonconforming situation shall not be increased. In particular, the following activities shall be prohibited:

- (1) *Nonconforming uses.* An increase in the total amount of space devoted to a nonconforming use; extensions throughout any portion of a building by a nonconforming use; and an increase in volume, intensity or frequency by a nonconforming use.

SEC. 9-4-94 SCHEDULE OF DEVELOPMENT STANDARDS BY ZONING DISTRICT

(F) *R-6 District.*

- (1) Lot area (net).
 - (a) Single-family: 6,000 square feet.
 - (b) Two-family attached: 6,000 square feet.
 - (c) Multi-family: Per Article I.
 - (d) All other uses: 6,000 square feet.
- (2) Lot width (at the MBL).
 - (a) Single-family: 60 feet.
 - (b) Two-family attached: 60 feet.
 - (c) Multi-family: Per Article I.
 - (d) All other uses: 60 feet.

Staff Recommended Conditions:

A final plat shall be recorded with the Register of Deeds.

Staff Recommendation:

Planning staff recommends approval of the request. Although the request will increase the number of nonconforming lots, the property would be in harmony with the general purpose and intent of the ordinance, with the existing properties and would preserve the spirit of the ordinance and neighborhood.

Variance Criteria:

The Board must find in favor of the applicant on each criteria in order to grant the requested variance

Chairman Johnson opened the public hearing.

Mr. Richard Barnes, applicant, spoke in favor of the request. He stated that he made this request to be able to sell the second home on the lot. He had the survey done and now it's imperative that he sell the home after falling on some hardship. He understood the need to be in harmony with the ordinance.

Mr. McKinnon asked if he intended to sell it.

Mr. Barnes replied yes. He had lost his job and had the opportunity to sell the home at 1712 Greene Street. He needed each home to be on its own lot.

Mr. Johnson asked if he had to subdivide in order to sell it.

Mr. Barnes replied yes.

No one spoke in opposition

Chairman Johnson closed the public hearing.

VARIANCE REQUESTS

(Requires 4/5ths majority vote)

1. **Conditions and Specifications.**

That the application filed as Request # _____ meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a variance application.

VOTE: Unanimously Passed

2. **Notice.**

That those persons owning property adjacent parcels of the proposed development or use, as listed on the current tax records, were served notice of the public hearing by mail in accordance with applicable requirements; and that notice of a public hearing to consider the special use permit was published on January 14, 2019 and January 21, 2019 in The Daily Reflector, a newspaper having general circulation in the area, as required by law.

VOTE: Unanimously Passed

3. **Unnecessary Hardship.**

That the applicant would suffer an unnecessary hardship if a strict application of the ordinance is applied. Not necessary to show that in the absence of the variance, no reasonable use could occur.

VOTE: Unanimously Passed

4. Unique Circumstances.

That the hardship of which the applicant complains results from unique circumstances related to the applicant's land – location, size, topography. It is not a unique circumstance if the hardship is caused by the personal actions of the applicant or is a hardship common to others in the development or the general public is not a basis for granting a variance.

VOTE: Unanimously Passed

5. General Purpose of the Ordinance.

That if granted, the variance would be in harmony with the general purpose and intent of the Zoning Ordinance and would preserve its spirit.

VOTE: Unanimously Passed

6. Safety and Welfare.

That the granting of the variance secures the public safety and welfare and does substantial justice.

VOTE: Unanimously Passed

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

Meeting adjourn at 6:17 pm.

Respectfully Submitted

**Elizabeth Blount
Planner II**