

MINUTES ADOPTED BY THE GREENVILLE BOARD OF ADJUSTMENT

January 23rd, 2020

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

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

Bill Johnson - Chairman - * Nathan Cohen-*

Christopher Lilley- * Michael Glenn- *

Rodney Bullock - * Ann Bellis - *

Hunt McKinnon - * James Moretz- X

Dillion Godley-* Sharon Evans-*

Stephen Atkinson –*

VOTING MEMBERS on item one are: Johnson, Bellis, Cohen, Glenn, Evans and Atkinson

VOTING MEMBERS on item two are Johnson, Bellis, Glenn, Evans, McKinnon and Lilley

OTHERS PRESENT: Ms. Elizabeth Blount, Lead Planner; Mr. Donald Phillips, Assistant City Attorney
Ms. Camillia Smith, Secretary, Notary; Kelvin Thomas, Communication Specialist

MINUTES

Mr. McKinnon made a motion to approve the October 26th 2019 minutes, Mr. Lilley seconded the motion. 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. [f 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.

OLD BUSINESS

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY Q TOBACCO INC

The applicant, Q Tobacco, desires a special use permit to operate a Tobacco Shop Class 1 pursuant to Appendix A, Use 10(ff). of the Greenville City Code. The proposed use is located at 1311 W Arlington Blvd Suite 104. The property is further identified as being tax parcel numbers 14287.

Zoning of Property: CH (Heavy Commercial)

Surrounding Zoning:

North: OR (Office Residential) and CH (Heavy Commercial)
South: OR (Office Residential) and R6 (Residential)
East: CH (Heavy Commercial)
West: OR (Office Residential)

Surrounding Development:

North: McDonald's, Capital Bank and a vacant lot
South: Pirate's Cove Car Wash and Value Max Cars Dealership
East: Kangaroo Convenience Store
West: Vacant lot and Meridian Park Apartments

Description of Property:

The subject property is approximately 1 acre in size and contains a 7,000 square foot multi-tenant commercial building. The building currently houses a barbershop, nail shop, beauty salon, financial management company and a nutrition shop. The property has approximately 217 feet of frontage along W. Arlington Blvd. The property is located less than half a mile from the intersection of two major thoroughfares (roads that are the principal traffic carriers of the city), a gateway corridor and a connector transportation corridor.

Comprehensive Plan:

The property is located within the Commercial character type as designated by the Horizon 2026 Plan. The proposed use complies with the Future Land Use Plan, which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on January 9, 2020. Notice of the public hearing was published in the Daily Reflector on January 13 and January 20, 2020.

Related Zoning Ordinance Regulations:

Definition:

Tobacco Shop (Class 1). An establishment that, as a substantial portion of the use, entails the retail sales of tobacco products including, but not limited to, cigarettes, cigars, chewing tobacco, shisha, unformed or loose tobacco, and/or similar products. For the purpose of this definition, a substantial portion of the use is established if:

- (1) At least 20% of the establishment's floor area open and accessible to customers is used for the display and/or stocking of tobacco products as provided herein; or
- (2) At least 40% of the sign area of the establishment's on-site signage that is visible from public rights-of-way advertises tobacco products as provided herein.

Specific Criteria

Section 9-4-103(BB)

Tobacco Shop (Class 1)

- (1) No tobacco shop (class 1) shall be located within a 500-foot radius of an existing or approved school. This measurement shall be made from the exterior wall of the proposed tobacco shop (class 1) to the nearest exterior wall of any existing or approved school.
- (2) No tobacco shop (class 1) shall be located within any certified redevelopment area.

Staff Recommended Conditions:

No retail sales of any smoking apparatus to include but not be limited to water pipes, hookah pipes, bowls, water bongos or similar products.

No sign or lights around the building or windows may contain or be illuminated by flashing or intermittent lights or lights of changing degrees of intensity or color

Advertisement shall not cover more than 25% of the windows nor doors.

No advertisement shall be located on the backside of the unit unless it is included in the permitted wall signage allowance.

No loitering or outdoor activities permitted.

The establishment shall not operate or evolve into a hookah café or a tobacco shop (class 2).

No smoking permitted on the premises.

Must comply with all federal, state and local laws.

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.

Ms. Blount delineated the property located in the Commercial character type and provided a definition of a Class 1 Tobacco Shop.

Chairman Johnson opened the public hearing.

Mr. Mike Baldwin, representative of Q Tobacco, spoke in favor of the request, stating Mr. Farooq is familiar with the Tobacco business and the use will fit well in the area.

Mr. Johnson asked what would he sell, what are the hours of operation?

Mr. Farooq, the applicant, replied that hours of operation will be from 9 am until 9:00 pm. He will sell cigarettes, cigar, and tobacco that you roll up. He will be a convenience store owner and this will be his first tobacco shop. He took this space to save it from anyone opening up anything else and to save the area.

Mr. Godley asked if the applicant intended to sell Juul products and Vap pens.

Mr. Farooq stated that anything that the state allows him to carry, he will abide by that. Whatever the city says that he can do. If those items are Class 2 products, he will not sell them.

Mr. Godley asked is that correct Ms. Blount.

Ms. Blount replied Juul pens are considered a smoking apparatus.

No one spoke in opposition.

Chairman Johnson asked for staff recommendation.

Ms. Blount gave the staff recommendation of approval with the recommended conditions

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

No board discussion.

Chairman Johnson read the criteria and the board's silence was a vote in favor of the criteria.

Mr. Bullock made a motion to adopt the Finding of Facts with the recommended conditions, Ms. Bellis seconded the motion and it passed unanimously.

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

NEW BUSINESS

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY YVONNE JONES AND SHONYA MCMILLAR CRUMBLE

The applicant, Yvonne Jones and Shonya McMillar , desire to renew a special use permit to operate a church pursuant to Section 9-4-78(f)(8)o. of the Greenville City Code. The proposed use is located at 2402- A Hungate Drive. The property is further identified as being tax parcel numbers 36617.

Zoning of Property: IU (Unoffensive Industry)

Surrounding Zoning:

North: IU (Unoffensive Industry)
South: IU (Unoffensive Industry)
East: IU (Unoffensive Industry)
West: IU (Unoffensive Industry)

Surrounding Development:

North: The Door Store
South: Fastenal Company, Overton's and Gander Mountain
East: Superior Design and Fabrication LLC
West: UPS

Description of Property:

The property contains an 8,800 square foot commercial building divided into 3 units and has approximately 187 feet of frontage along United Drive with a total lot area of 29,720 square feet. The applicant will be occupying unit A of the building.

Comprehensive Plan:

The property is located within the Industrial/Logistics character type as designated by the Horizon 2026 Greenville Community Plan. This character type allows for warehouses, light manufacturing operations and related office uses. Although light manufacturing is preferred in this area, the subject church will continue to occupy the 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. There have been no issues with the church at its current location and there have been no new industrial uses; therefore, the request is in general compliance with the Future Land Use Plan.

Notice:

Notice was mailed to the adjoining property owners on January 9, 2020. Notice of the public hearing was published in the Daily Reflector on January 13 and January 20, 2020.

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.

Specific Criteria

Section 9-4-85(DD)

Church or place of worship. The special use permit shall be valid for 36 months from the date of the order granting the permit. From and after 36 months, the permit shall be considered void and of no effect and any reuse or continuance of use under this section shall be subject to reapplication and special use permit approval in accordance with current requirements.

Section 9-4-104 (A)

Shall be subject to the bufferyard regulations; however, no principal or accessory structure shall be located within 20 feet of any adjoining property zoned R-6, R-6A, R-6MH, R-6S, R-9, R-9S, R-15S, MR, MRS, RA-20 or PUD.

Other Comments:

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

Church must be a religious body organized to sustain public worship and hold a certificate of nonprofit organization from the Secretary of State.

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. Blount delineated the property located and reminded the board of the 3 year renewal on Special Use Permit for church that operate in the IU (Unoffensive Industry) zoning district according to the Greenville City Code. The original permit was granted back in 2016. The church has been in compliance and have had no known issues or complaints.

Chairman Johnson opened the public hearing.

Ms. Yvonne Jones, church representative, spoke in favor of the request. She stated the congregation enjoyed the space and how the church is a blessing to the neighborhood. Ms. Jones stated they are thankful to be in a good building where their AV equipment is away from the elements. The church interacts with the other businesses and look out for each other.

Ms. Bellis asked how many members the church had.

Ms. Jones stated there were over 75 on the roll and 45 active.

No one spoke in opposition.

Chairman Johnson asked for staff recommendation.

Ms. Blount gave the staff recommendation of approval with the recommended conditions.

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

No board discussion.

Chairman Johnson read the criteria and the board's silence was a vote in favor of the criteria.

Mr. McKinnon made a motion to adopt the Finding of Facts with the recommended conditions, Mr. Bullock seconded the motion and it passed unanimously.

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

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY DONALD BEST

The applicant, Donald Best and Sutton Realty, 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 924 Mizell Street. The property is further identified as being tax parcel numbers 41005.

Zoning of Property: RA20 (Residential Agricultural)

Surrounding Zoning:

North: RA20 (Residential Agricultural)
South: RA20 (Residential Agricultural)
East: R6MH (Residential - Mobile Home)
West: RA20 (Residential Agricultural)

Surrounding Development:

North: Residential Mobile Homes
South: Residential Mobile Homes
East: Residential Mobile Homes
West: Residential Mobile Homes

Description of Property:

The subject property is a 0.40-acre lot with 116 feet of frontage along Mizell Street. The property is located within the 0.2% (500 year) annual chance of flooding floodplain, which does not require floodplain regulation.

Comprehensive Plan:

The property is located within the Low-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 single family detached residential.

Notice:

Notice was mailed to the adjoining property owners on January 9, 2020. Notice of the public hearing was published in the Daily Reflector on January 13 and January 20, 2020.

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 home 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 nonmetal 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.

Ms. Blount delineated the property located in the northern portion of the city informed the board that the subject property is in the .2% also known as the 500 year annual flood plain and doesn't require a flood plain regulation.

Chairman Johnson opened the public hearing.

Mr. Donald Best, applicant, spoke in favor of the request, stating that he intends for this to be his residence.

No one spoke in opposition.

Chairman Johnson asked for staff recommendation.

Ms. Blount gave the staff recommendation of approval with the recommended conditions

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

No board discussion.

Chairman Johnson read the criteria and the board's silence was a vote in favor of the criteria.

Mr. Bullock made a motion to adopt the Finding of Facts with the recommended conditions, Mr. Lilley seconded the motion and it passed unanimously.

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

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

Meeting adjourned at 6:31 pm

Respectfully submitted

Elizabeth Blount

Lead Planner