

# MINUTES ADOPTED BY THE GREENVILLE BOARD OF ADJUSTMENT

October 24, 2019

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 - X	Ann Bellis - *
Hunt McKinnon - *	James Moretz- *
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, Moretz, 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 September 26<sup>th</sup> 2019 minutes, Mr. Moretz 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. [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.

## **OLD BUSINESS**

### **DECISION AND ORDER OF THE SPECIAL USE PERMIT FROM SEPTEMBER 3<sup>RD</sup> 2019 HEARING**

The applicant, Inkville Tattoos, desires a special use permit to operate a personal service not otherwise listed (tattoo and piercing studio) pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 714 SE Greenville Blvd (Greenville Mall). The property is further identified as being tax parcel number 04188.

The board had time to review the decision and order drafted by Attorney Philips.

**Motion made to approve the order by Mr. Glenn and seconded by Mr. Atkinson. Motion approved unanimously.**

## **NEW BUSINESS**

### **PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY A SMALL MIRACLE, LLC**

The applicant, A Small Miracle, desires a special use permit to operate a mental health, emotional or physical rehabilitation day program facility pursuant to Appendix A, Use (ff)(1). of the Greenville City Code. The proposed use is located at 2406 S Charles Boulevard. The property is further identified as being tax parcel numbers 33087 and 53344.

Ms. Blount delineated the property which is located in southeastern portion of the city.

**Zoning of Property:** OR (Office Residential)

#### **Surrounding Zoning:**

North: OR (Office Residential)

South: OR (Office Residential) and RA20 (Residential Agricultural)

East: OR (Office Residential)

West: OR (Office Residential)

#### **Surrounding Development:**

North: Williams Family Chiropractic, Briley & Sons Insurance, Carolina Properties, Hugh D. Cox, Attorney's office, and a vacant unit

South: Cheyenne Court

East: Carolina GSE, The Arc and Estilo & Glamour Hair Salon

West: Charles Center Office Suites & Fire/Recuse Station No. 3

#### **Description of Property:**

The subject property is .58 acres in size with approximately 127 feet of frontage along Charles Boulevard. Property contains 6,552 square foot office multi-unit office building. The applicant currently occupies the building but is expanding their services to the adult population.

#### **Comprehensive Plan:**

The property is located within the High Density Residential character types as designated by the Horizon 2026 Greenville Community Plan. The proposed use is in compliance with the Future Land Use Plan which recommends office use.

#### **Notice:**

Notice was mailed to the adjoining property owners on October 9, 2019. Notice of the public hearing was published in the Daily Reflector on October 14 and October 21, 2019.

#### **Related Zoning Ordinance Regulations:**

Definition: *Mental health, emotional or physical rehabilitation day program facility.*

(1) An establishment qualified for a license by the State of North Carolina which provides a day treatment,

day activity or other extended counseling service to persons who do not reside at the establishment and who are physically disabled, mentally retarded, developmentally disabled, persons recuperating from alcohol or drug related problems, persons adjusting to society as an alternative to imprisonment, children or adolescents who are emotionally disturbed and need special educational services, and persons recuperating from mental or emotional illness, but not including mentally ill persons who are dangerous to others. Persons receiving service at the establishment may be at the facility for no longer than 18 hours within any 24-hour period.

(2) "Dangerous to others" means that within the recent past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that his conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Professionals or paraprofessionals providing assistance to the occupants shall be allowed in addition to the maximum occupancy.

### **Staff Recommended Conditions:**

The facility must comply with all requirements, licensing, rules, health certifications, background checks and other requirements imposed or directed by the NC Division of Health, Human Services; the Commission or Council on MR/Developmental Disabilities; and Community Alternative Programs for DD/MR adults and/or juveniles.

At no time will clients of the day program facility be permitted to wait or be outside without being accompanied by a staff member of the facility to supervise and ensure proper behavior of the clients including but not limited to aggressive actions, littering, fighting, yelling, loitering or other unacceptable behavior.

Shall not operate as a mental health, emotional or physical rehabilitation center.

### **Other Comments:**

The proposed project shall meet all related NC State fire and building codes regulations applicable to the occupancy use.

### **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.

Amy Corbit, the applicant, spoke in favor of the request. The request is for a day program through the division of Health and Services licensing and oversight by Trillium to operate.

Ms. Bellis asked the applicant to explain their services.

Ms. Corbit replied that they offer service for individuals with special needs such as Autism, Cerebral Palsy, Down Syndrome or mental health disease. They go into the home to provide care and teach independence to individuals. There

service also helps the family because the individual can stay at home. Their employees take the clients out into the community and teach them how to gain and promote their independency.

Mr. Moretz asked if the applicant was ok with the staff recommendations.

Ms. Corbit answered yes.

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

**Ms. Evans a motion to approve the petition with the conditions, Mr. Moretz 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.

Meeting adjourned at 6:17 pm

Respectfully submitted

Elizabeth Blount

Lead Planner