

**ADOPTED MINUTES OF THE GREENVILLE BOARD OF ADJUSTMENT**  
**October 22, 2020**

The Greenville Board of Adjustment met electronically on the above date at 6:00 PM from different locations due to Covid 19 protocols.

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

Michael Glenn – Chairman - *	Nathan Cohen- *
Christopher Lilley- *	Stephen Atkinson- X
Rodney Bullock - Co-Chair - *	Ann Bellis - *
Hunt McKinnon - *	Dillion Godley- X
Sharon Evans-*	John Landrine –*

**VOTING MEMBERS:** Glenn, Bullock, Bellis, Evans, McKinnon, Cohen, Lilley

**OTHERS PRESENT:** Elizabeth Blount, Lead Planner; Les Everett, Assistant Director of Planning and Development Services; Thomas Barnett, Director of Planning and Development Services; Donald Phillips, Assistant City Attorney; Kelvin Thomas, Communication Specialist; Tony Parker, Planner I; Valerie Shiuegar, City Clerk.

**OPENING STATEMENT:** Mr. Glenn read the following statement:

*I would like to start by acknowledging that we are conducting this meeting using a remote, electronic platform. I would ask for your patience today as we proceed. There may be slight delays as we transition between speakers, participants and presentations.*

*The Board of Adjustment is a quasi-judicial body that is governed by the North Carolina General Statutes and the City's Code of Ordinance. We conduct evidentiary hearings on requests for special use permits, variances, appeals of administrative decisions and interpretations.*

*Before we begin the evidentiary hearings on today's agenda, I would like to provide some important information about the steps taken to ensure that each parties' due process rights are protected as we proceed in this remote platform.*

*First, today's meeting will be conducted in accordance with the newly enacted statutes in Session Law 2020-3, which allow for remote meetings and quasi-judicial hearings during declarations of emergency.*

*Second, each applicant on today's agenda was notified before being placed on the agenda that this meeting would be conducted using a remote, electronic platform. Every applicant on today's agenda has consented to the Board conducting the evidentiary hearing on their request using this remote platform. We will also confirm today at the start of each evidentiary hearing that the participants in the evidentiary hearing consent to the matter proceeding in this remote platform. If there is any objection to a matter proceeding in this remote platform, the case will be continued.*

*Third, notice of this meeting was provided to the applicants and the public in numerous ways, well beyond the legal requirements for noticing this meeting and the evidentiary hearings.*

*Specifically, notice of today's evidentiary hearings was provided by mail to all property owners within 250 feet of each subject property. The mailed notices were sent two weeks in advance of the meeting date and within the law to provide such notice – and each notice letter notified the recipient of the remote meeting platform.*

*Notice was also provided by posting signs on the site of each property, publishing notice in the newspaper and providing notice on the City's website. Each of these notice methods were also done within the legal requirement to provide such notice.*

*The notices for today's meeting contained information about the means by which the public can access the remote meeting, as the meeting occurs.*

*Fourth, any individual wishing to participate in today's evidentiary hearings was required to sign-up prior to the meeting to participate. Information about this sign-up requirement, along with information about how to sign-up to participate, was included in the mailed notice letters sent to each property owner within 250 feet of each subject property. This information was also included on the Board's website and, among other information, a link to the Board's website was included in all methods of notice.*

*All individuals participating in today's evidentiary hearings were also required to submit a copy of any presentation, document, exhibit or other material that they wished to submit at the evidentiary hearing prior to today's meeting. All materials that the City received from the participants in today's cases, as well as a copy of City staff's presentations and documents, were posted online on the Board of Adjustment Meeting Schedule and Agenda prior to this meeting. All materials that will be discussed today can be viewed at any time during today's meeting by visiting <https://www.greenvillenc.gov/government/city-council/boards-and-commissions/board-of-adjustment/2020-board-of-adjustment-meeting-schedule-and-agendas> and clicking the September 24, 2020 Agenda and Meeting packet link. No new documents will be presented at today's meeting. All decisions of this board are subject to appeal with the Pitt County Superior court.*

*Finally, all individuals who signed-up to participate in an evidentiary hearing on today's agenda, as well as all City staff participants, were emailed a witness oath form prior to today's meeting. Any individual planning to testify or submit evidence in an evidentiary hearing was notified that they must sign the oath form prior to today's meeting. We will also reaffirm everyone's oath on the record at today's meeting.*

#### **MINUTES:**

**Motion made by Mr. McKinnon, seconded by Mr. Bullock, to approve the August 2, 2020 minutes with corrections as pointed out by Mr. Atkinson. Motion passed unanimously.**

Mr. Glenn then swore in staff members who would be presenting, Elizabeth Blount.

Assistant City 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.

## **NEW BUSINESS**

### **PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY BRUCE W. ELLSWORTH AND KYLE M. ELLSWORTH**

The applicants, Bruce & Kyle Ellsworth, desire a special use permit to operate a personal service otherwise not listed (tattooing shop) pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 3193 E. 10th Street, Suite A. The property is further identified as being tax parcel number 16439.

Mr. Glenn asked Mr. Parker to name the speakers for this item. There were two, Bruce Ellsworth and Kyle Ellsworth. Mr. Glenn swore them in after they stated their names and home addresses and stated they are willing to participate in a virtual meeting.

Mr. Glenn asked staff to present the report.

Ms. Blount presented:

**Zoning of Property:** CH (Heavy Commercial)

**Surrounding Zonings:**

North: R6 (Residential)

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

East: CH (Heavy Commercial)

West: CG (General Commercial)

**Surrounding Developments:**

North: Police East Zone Substation, PIC Kutz barber shop, Sherry's Beauty Shop, Cristiana Tax Service, The Place To Be beauty shop, and East 101h Street Bargains and Discounts

South: Domino's Pizza, MO's Barber Shop, Jet Nails, Lam's Garden Restaurant, Subway and Food Lion

East: Little Caesar's pizza, and G&K Restaurant

West: 42 Fry restaurant and Jackson Hewitt

**Description of Property:**

The property is 2.18 acres in size and contains three separate multi-unit commercial buildings. The property has approximately 280 feet of frontage along E. 10<sup>th</sup> Street and 350 feet of frontage along River Bluff Road/Harbor Pointe Lane. The applicant wishes to occupy a unit which is 750 square feet in size.

**Comprehensive Plan:**

The property is located within the Mixed Use High Intensity character type as designated by the Horizon Plan. The proposed use is in compliance with the Future Land Use Plan which recommends commercial development within the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on October 8, 2020. Notice of the public hearing was published in the Daily Reflector on October 12 and October 19, 2020.

**Staff Recommended Conditions:**

Must obtain and maintain a permit from the Department of Public Health as required by NCGS

§ 130A-283 (Tattooing Regulation), and comply with any other health department requirements including but not limited to sanitation, first aid, vaccinations, health certifications, disposal of needles and other bio hazard waste material.

Must comply with including but not limited to NCGS §130A-283 and 15A NCAC 18A.3200 et seq., (Rules governing tattooing from Environmental Health) *et seq.*, and any other federal, state and local laws and regulations.

Must not violate NCGS§14-400, Tattooing; body piercing prohibited regulations for those under 18 years of age.

No loitering permitted outside of business.

**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. Glenn asked if there were questions for staff. Hearing none, Mr. Glenn asked the applicants to decide who would speak first, and to state his name for the record and to proceed with his presentation.

Mr. Kyle Ellsworth stated that he has been a tattoo artist for three years practicing in professional tattoo shops. Before then he did a year's apprenticeship under an established artist. He said he is taking the next step from tattooing under somebody to tattooing on his own. Mr. Ellsworth stated they picked this building due to location and proximity to the East Carolina campus. As he begins his practice, he said, it will be just himself so clients can come in, become comfortable, view his portfolio, and receive a professional tattoo in a clean and safe environment. He stated that they like the location, believes the population of Greenville can support another tattoo shop, and he is ready to move forward with the project.

Mr. Bruce Ellsworth said that Kyle Ellsworth covered nearly everything. He did want to add that they have been working closely with the local health department and establishing a relationship with them. Mr. Ellsworth added that with the current corona virus pandemic they would be taking extra precautions and following all best practices protocols to ensure a safe environment.

Mr. Kyle Ellsworth added that he has been tattooing in Morehead City during the pandemic and is well aware of what the safety measures are. He will have barriers put up to protect his clients, as well as making everyone wear masks, wash hands, and observe all safety precautions. He stated his equipment will be well sanitized and once the process is complete, he will clean and spray disinfectant to keep the shop safe.

Mr. Glenn asked if there were any board questions for the applicants.

Hearing none, Mr. Glenn stated that there were no further speakers, and asked Ms. Blount for staff recommendation.

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

Mr. Glenn then closed the public hearing and opened up Board discussion.

**Mr. Glenn 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, Ms. Bellis seconded the motion and it passed unanimously. Vote: 7 to 0.**

**Mr. McKinnon made a motion to approve the petition with recommended conditions, Mr. Bullock seconded the motion and it passed unanimously. Vote: 7 to 0**

Mr. Glenn announced that Bruce and Kyle Ellsworth's SUP has been granted.

### **PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY GENTRY RUSSO**

The applicant, Gentry Russo, desires 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 1650 Sandstone Court. The property is further identified as being tax parcel number 46784.

Mr. Glenn asked Mr. Parker to name registered speakers. There was one, Gentry Russo. Mr. Russo confirmed his name and address and gave consent for the meeting. Mr. Glenn swore him in.

Ms. Blount presented:

**Zoning of Property:** RA20 (Residential Agricultural)

**Surrounding Zonings:**

North: RA20 (Residential Agricultural)  
South: RA20 (Residential Agricultural)  
East: RA20 (Residential Agricultural)  
West: RA20 (Residential Agricultural)

**Surrounding Developments:**

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

**Description of Property:**

The subject property is a 0.46-acre lot with 97 feet of frontage along Sandstone Court. The property is located within the 100% annual chance of flooding floodplain.

**Comprehensive Plan:**

The property is located within the Traditional Neighborhood 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 October 8, 2020. Notice of the public hearing was published in the Daily Reflector on October 12, 2020 and October 19, 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 subject property is located within the floodplain. Development of this property will require a Floodplain Development Permit and shall comply with the provisions of the Flood Damage Prevention Ordinance. Minimum finished floor elevations is 2.0 feet above the 100 year flood elevation. A pre-construction elevation certificate is required with the building permit application. A final elevation certificate is required before the issuance of any occupancy permit.

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. Bellis said that she was not sure if this was a comment or a question for staff. She stated that she went out to the site. Ms. Bellis said she wanted to make it clear she has no objection to the application, but she said the road is unacceptable in Pitt County. She said she has been to third world countries with better roads. Ms. Bellis said this was more than a bump in the road, but craters. She said the road is in the Extra Territorial Jurisdiction (ETJ) and the city will say it is a county problem. The county will say it is the city's problem, and nothing will be done. She said that she feels the people in our city or ETJ have a right to good roads to their homes. She asked if Mr. Phillips could address this and give the applicant direction as to who to speak with concerning the road.

Mr. Phillips stated he would have to take the request under advisement and he would reach out to the applicant.

Ms. Bellis asked Mr. Phillips if he would come back to the board next month to report on his findings.

Mr. Phillips said he would.

Ms. Blount addressed the chair and board and explained that Sandstone Court is a private street. When dealing with a private street it is normally the responsibility of the home owner's association or of those who live on the road. She said as Attorney Phillips looks into this to keep in mind that Sandstone Court is a private street.

Mr. Phillips said he would confirm this and report back to the board.

Mr. Glenn opened the public meeting.

Mr. Russo, applicant, spoke in favor of the request. He said that he worked for Excel Contractors and that they were general contractors for the Rebuild NC program. He said he is working with a Mr. Godley, who is an applicant within the NC Rebuild program. The program has replaced seventy mobile homes in the state, and they are working on getting Mr. Godley's home replaced. Mr. Russo said that they have already demoed the property, added the dirt pad, and already have the flood certificate of elevation. He said the marking for elevation are on the power pole and that they would be adhering to all of the flood plain elevation regulations.

No one else spoke in favor of the request.

No one spoke in opposition of the request.

Mr. Glenn then closed the public hearing and opened up Board discussion.

**Mr. Glenn 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, Mr. Lilley seconded the motion and it passed unanimously. Vote: 7 to 0**

**Mr. McKinnon made a motion to approve the petition with recommended conditions, Mr. Bullock seconded the motion and it passed unanimously. Vote: 7 to 0**

Mr. Glenn announced that Gentry Russo's SUP has been granted.

### **PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY ANDREW DAVIS, III**

Mr. Glenn asked for recusal because he was the property owner.

**Mr. McKinnon made a motion to recuse Mr. Glenn from Agenda Item #3, Ms. Evans seconded the motion and it passed unanimously. Vote: 6 to 0**

Mr. Phillips addressed the board and said that Mr. Bullock assumes the role of chair, and stated the voting members will be Bullock, Bellis, McKinnon, Lilley, Evans, Cohen, and Landrine.

The applicant, Andrew Davis, III, desires a special use permit to operate a child day care (drop-in service) pursuant to Appendix A, Use (8)a. of the Greenville City Code. The proposed use is located at 1716 W. 5th Street. The property is further identified as being tax parcel number 17562.

Mr. Bullock asked Mr. Parker to name the speaker for this item. There were two, Andrew Davis III and Leigh Anne Friesen. Mr. Bullock swore them in after they stated their names and home addresses and stated they are willing to participate in a virtual meeting.

Ms. Blount presented:

**Zoning of Property:** CDF (Downtown Commercial Fringe)

**Surrounding Zonings:**

North: R6 (Residential) and CDF (Downtown Commercial Fringe)  
South: MS (Medical Support), MI (Medical Institutional) and MCH (Medical Heavy Commercial)  
East: CDF (Downtown Commercial Fringe)  
West: MCH (Medical Heavy Commercial) and R6 (Residential)

**Surrounding Developments:**

North: Moyewood Subdivision and a vacant lot  
South: ECU Medical Pavilion and Taylor Warehousing  
East: Joseph Murad, MD Gynecology and a vacant lot  
West: Vacant Lots

**Description of Property:**

The subject property is 0.42 acres in size with approximately 142 feet of frontage along W. 5<sup>th</sup> Street. The property contains a 2,501 square foot commercial building. The applicant wishes to operate a childcare facility- drop-in service within the building.

**Comprehensive Plan:**

The property is located within the Office and Institutional 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 and institutional/civic development within the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on October 8, 2020. Notice of the public hearing was published in the Daily Reflector on October 12 and October 19, 2020.

**Pertinent Information:**

NC General Statute 110-86(2)(d) defines drop-in/short-term child care as a child care arrangement where care is provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible. The statute also states that the business is not required to be licensed or regulated by any state agency but it must complete a registration application and post their notice notifying parents of the requirements by the general statute. Since the use is not required to obtain a Day Care License from the State, the use is not required to meet the minimum playground and lot size requirements in which we use as our specific criteria when considering a Child Day Care Center.

**Related Zoning Ordinance Regulation:**

Definition:

*Day care; child.* An establishment which provides for the care and supervision of six or more children away from their homes by persons other than their family members, custodians or guardians for periods not to exceed 18 hours within any 24-hour period.

**Staff Recommended Conditions:**



The proposed use must comply with NCGS 110-86(2)(d)(d1) and 110-99(c) and all federal, state and local laws and regulations.

The proposed request may not evolve into a complete child care facility by definition of NC G.S. 110-86(2) without obtaining a special use permit for such use.

All activities with the children shall remain inside the building at all times.

The proposed use must obtain and maintain all applicable licensing requirements for drop-in care.

**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. McKinnon asked if there were any plans to have outdoor play equipment.

Ms. Blount asked if this question was for staff or the applicant.

Mr. McKinnon said either staff or applicant.

Mr. Bullock asked if there any questions for staff before hearing from the applicant. Hearing none, Mr. Bullock opened the public hearing.

Andrew Davis, applicant, spoke in favor of the application. He said he came up with the idea for a drop in child care facility because there is a need for it. He said there is a large need for this in the western portion of town.

Mr. Davis asked if he was allowed to have outdoor recreational equipment. He said his plans were to eventually have outdoor activities.

Ms. Blount said that based on the previous conversation with the applicant, the application submitted was for a "drop in child care" facility which does not allow children to go outside. If the applicant wanted such activities, different regulations would apply and the application would need to be resubmitted.

Mr. Davis said he understands.

Mr. Bullock asked Mr. McKinnon if he was satisfied with staff's explanation of outdoor equipment.

Mr. McKinnon said he understands that there will be no outdoor recreation equipment.

Ms. Evans asked staff if the board needed to add a condition stating no outdoor recreation equipment.

Mr. Bullock stated that he believed this was already a stipulation as addressed in the staff report.

Ms. Blount confirmed.

Leigh Anne Friesen, consultant, spoke in favor of the request. She said she helped Mr. Davis prepare the application and said she was a certified AICP planner and had experience working with boards and commissions as a planner in New Bern, NC. She said she and Mr. Davis worked together to make sure they had all the correct information for the permit and the board. She said that she feels they have met all of the requirements and stipulations for the permit.

Mr. Bullock asked for the staff recommendation.

Ms. Blount said that staff had no objection to the request, however she wanted to make sure the applicant understood NC General Statute 110-86(2){d } which defines drop-in/short-term child care as a child care arrangement where care is provided while parents participate in activities that are not employment related and where the parents are on the premises or otherwise easily accessible.

Mr. Davis asked if that meant the parent was easily accessible, like on a telephone, or if they had to be on the premises.

Ms. Blount said this type of facility is not for parents who are working, this is designed for parents who are engaged in some sort of short term activity.

Mr. Davis said he did not know that, but he understands now.

Ms. Blount asked the applicant if he is still remaining with his original request.

Mr. Davis said yes.

Ms. Blount followed up and said staff has no objection to the request with the additional recommendations.

Mr. Bullock closed the public hearing and asked if there were any board discussion.

**Mr. Bullock 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, Mr. Lilley seconded the motion and it passed unanimously. Vote: 7 to 0**

**Ms. Bellis made a motion to approve the petition with recommended conditions, Mr. McKinnon seconded the motion and it passed unanimously. Vote: 7 to 0**

Mr. Bullock announced that Andrew Davis's SUP has been granted.

Mr. Phillips addressed member's absences and noted that any absence due to sickness or death, or such happenings, are excused absences by the chair.

Meeting adjourned at 7:01PM

Respectfully submitted  
Elizabeth Blount  
Lead Planner