

ADOPTED MINUTES OF THE GREENVILLE BOARD OF ADJUSTMENT
March 25, 2021

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- X
Christopher Lilley- *	Stephen Atkinson- *
Rodney Bullock - Co-Chair - *	Ann Bellis - *
Hunt McKinnon - *	John Landrine - X
Sharon Evans-*	Ryan Purtle - X

VOTING MEMBERS: Glenn, Bullock, Bellis, McKinnon, Lilley, Evans, Atkinson

OTHERS PRESENT: Elizabeth Blount, Lead Planner; Chantae Gooby, Chief Planner; Donald Phillips, Assistant City Attorney; Taylor Bland, Staff Support Specialist II; Thomas Barnett, Director of Planning and Development Services; Les Everett, Assistant Director of Planning Services; Brock Letchworth, Communications Manager

OPENING STATEMENT: Mr. Glenn read the following statement:

*The meeting will now come to order. Welcome to the **March 25, 2021** meeting of the City of Greenville Board of Adjustment. My name is Michael Glenn and I am the Chair of this Board.*

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/2021-board-of-adjustment-meeting-schedule-and-agendas> and clicking the March 25, 2021, 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 February 25, 2021. Motion passed unanimously.

Chairman Glenn swore in presenting staff members- 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

1. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY CLIFF PADILLA AND DOROTHY COUNCIL

The applicants, Cliff Padilla and Dorothy Council, desire 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 956 Mizell Street. The property is further identified as being tax parcel number 41001.

Chairman Glenn confirmed and swore in two registered speakers – Cliff Padilla and Dorothy Council.

Ms. Blount delineated the area on the map. She stated that the request is located in the northern portion of the City.

Zoning of Property:

RA20 (Residential Agricultural)

Surrounding Zonings:

North: RA20 (Residential Agricultural)
South: RA20 (Residential Agricultural)
East: RA20 (Residential Agricultural)
West: RR (Pitt County Zoning)

Surrounding Developments:

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

Description of Property:

The subject property is a 0.37-acre lot with approximately 104 feet of frontage along Mizell Street. The property is currently vacant.

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 March 11, 2021. Notice of the public hearing was published in the Daily Reflector on March 14 and March 21, 2021.

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 establish (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 Recommended Conditions:

Staff has no recommended conditions for this request.

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.

Chairman Glenn opened the public meeting.

Mr. McKinnon asked Ms. Blount if the concrete pad in the plot plan is a part of this application or if there are future plans for the concrete pad.

Ms. Blount stated the concrete pad is not a part of this request.

Mr. McKinnon asked why the concrete pad is shown on the plot plan if it is not a part of the application.

Ms. Blount stated the survey has to show what is on the lot. She also stated Mr. McKinnon may ask the applicant if they have plans for the concrete pad.

Dorothy Council, applicant, spoke in favor of the application. She stated they plan to place a mobile home on the vacant lot. She also stated they plan to place a barn on the concrete pad.

Cliff Padilla, applicant, spoke in favor of the application. He stated they want to place their mobile home on the vacant lot.

No one else spoke in favor of the request.

No one spoke in opposition of the request.

Chairman Glenn asked for staff's recommendation.

Ms. Blount stated staff had no objection to the request.

Chairman Glenn closed the public hearing and opened up for Board discussion.

Mr. McKinnon stated the concrete pad is within the side setback of 12.5 feet and rear setback of 10 feet. He stated even though that is not a part of this application, he wanted the applicant to realize that has to be part of their future plans.

Mr. Phillips stated that could be included in the Findings of Fact and any conditions the Board wants to place. He stated the particular plan for a barn is not part of the application.

Ms. Blount stated the barn is not a part of the special use permit and that it will be addressed by the City when the building permit is submitted.

Mr. Phillips stated if there is a violation of zoning or code enforcement ordinances it will be addressed by the City.

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

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

Mr. Lilley made a motion to find that Elizabeth Blount, Dorothy Council, and Cliff Padilla have standing to participate in the proceeding, Mr. Bullock seconded the motion and it passed unanimously. Vote: 7 to 0

Chairman Glenn announced that Dorothy Council and Cliff Padilla's special use permit had been granted.

2. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY CRISTIAN DEJESUS, HARRY GARCIA, AND WILLIAM ASHBERY

The applicants, Cristian DeJesus, Harry Garcia, and William Ashbery, desire to operate a personal service not otherwise listed (tattoo shop) pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 0 W 9th Street. The property is further identified as being tax parcel number 02759.

Chairman Glenn confirmed and swore in one registered speaker – Cristian DeJesus.

Ms. Blount delineated the area on the map. She stated that the request is located in the center portion of the City.

Zoning of Property:

CD (Downtown Commercial)

Surrounding Zonings:

North: CD (Downtown Commercial)
South: CDF (Downtown Commercial Fringe)
East: CDF (Downtown Commercial Fringe)
West: CD (Downtown Commercial)

Surrounding Developments:

North: Vacant Lot and CrossFit Greenville
South: Vacant Lots
East: City of Greenville Parking Lot, Tony’s Auto Repair, University PC Care and 7 House
West: Friendly Boutique and vacant units

Description of Property:

The subject property is 0.34 acres in size and contains four separate units within the commercial building. The property has approximately 107 feet of frontage along Dickinson and 154 feet of frontage along W 9th Street. The applicant wishes to occupy the unit for a tattoo shop and art gallery.

Comprehensive Plan:

The property is located within the Uptown Edge 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 March 11, 2021. Notice of the public hearing was published in the Daily Reflector on March 14 and March 21, 2021.

Staff Recommended Conditions:

Must obtain and maintain a permit from the North Carolina Department of Public Health and Human Services as required by N.C.G.S §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 N.C.G.S. §130A-283 and 15A N.C.A.C 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 N.C.G.S §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 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.

Chairman Glenn opened the public meeting.

Cristian DeJesus, applicant, spoke in favor of the application. He stated they are wanting to open a tattoo shop and art gallery. He stated this area of the city is geared towards the artistic community and the demographic they are targeting is the young professionals. He stated they want to continue to grow the community and the businesses around them.

No one else spoke in favor of the request.

No one spoke in opposition of the request.

Chairman Glenn asked for staff's recommendation.

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

Chairman Glenn closed the public hearing and opened up for Board discussion.

No board discussion.

Chairman 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 with the noted address change and that Ms. Blount and Mr. DeJesus have standing to participate in the proceeding, Mr. Bullock seconded the motion and it passed unanimously. Vote: 7 to 0

Mr. Bullock made a motion to approve the petition, Mr. Lilley seconded the motion and it passed unanimously. Vote: 7 to 0

Chairman Glenn announced that Christian DeJesus, Harry Garcia, and William Ashbery's special use permit had been granted.

With no further business, Mr. McKinnon made a motion to adjourn, Mr. Bullock seconded, and the motion to adjourn passed unanimously. Meeting adjourned at 6:45 p.m.

Respectfully submitted

Elizabeth Blount
Lead Planner