

**ADOPTED MINUTES OF THE GREENVILLE BOARD OF ADJUSTMENT
November 18, 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".

Rodney Bullock - Chair - *	Nathan Cohen- *
Ann Bellis - *	Christopher Lilley- Vice Chair-*
Hunt McKinnon - *	John Landrine - X
Sharon Evans-*	Ryan Purtle - *

VOTING MEMBERS: Bullock, Lilley, Bellis, Evans, McKinnon, Purtle, Cohen

OTHERS PRESENT: Elizabeth Blount, Lead Planner; Donald Phillips, Assistant City Attorney; Taylor Bland, Staff Support Specialist II; Les Everett, Assistant Director of Planning Services; Travis Welborn, Civil Engineer III; Chantae Gooby, Chief Planner.

OPENING STATEMENT: Mr. Bullock read the following statement:

*The meeting will now come to order. Welcome to the **November 18, 2021** meeting of the City of Greenville Board of Adjustment. My name is Rodney Bullock and I am the Acting 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 allows for remote meetings and quasi-judicial hearings during declarations of emergency.

Second, each applicant on tonight's agenda was notified before being placed on the agenda that this meeting would be conducted using a remote, electronic platform. We will confirm tonight at the start of each evidentiary hearing that the participants in the evidentiary hearing consent to the matter proceeding in this matter. No case is proceeding tonight in which the City has been contacted by an individual who objects to this meeting being heard by way of a simultaneous remote meeting platform.

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.

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 tonight'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 tonight's meeting by visiting the board of adjustment page on the city's website and clicking the November 18, 2021 Agenda and Meeting packet link. No new documents will be presented at tonight's meeting.

All decisions of this board are subject to appeal with the Pitt County Superior court.

Finally, any individual planning to testify or submit evidence in an evidentiary hearing will have to provide their consent for tonight's meeting. We will affirm everyone's oath on the record tonight.

MINUTES:

Motion made by Mr. Purtle, seconded by Mr. McKinnon, to approve the September 23, 2021 minutes. Motion passed unanimously. Vote: 7 to 0.

ELECTIONS

Mr. McKinnon nominated Rodney Bullock as chair. The board unanimously approved Rodney Bullock as chair.

Mr. McKinnon nominated Christopher Lilley as vice chair.

Mr. Lilley nominated Ryan Purtle as vice chair.

The board approved Christopher Lilley as vice chair. Vote: 6 to 1. Voting in opposition: Mr. Lilley

Chairman Bullock swore in presenting staff members- Elizabeth Blount, Travis Welborn and Chantae Gooby.

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.

OLD BUSINESS

1. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY WILLIE MOORE, JR

The applicant, Willie Moore Jr., desires 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 3151 Maye Lane. The property is further identified as being tax parcel number 03850.

**Motion made by Ms. Bellis, seconded by Mr. McKinnon, to withdrawal the request by Willie Moore, Jr.
Motion passed unanimously. Vote: 7 to 0**

2. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY SABREEN MEZHER

The applicant, Sabreen Mezher, desires to operate a personal service otherwise not listed (microblading and microneedling) pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 807 Red Banks Rd, Suite 7. The property is further identified as being tax parcel number 47941.

Chairman Bullock confirmed and swore in one speaker – Sabreen Mezher

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

Zoning of Property:

CG (General Commercial)

Surrounding Zonings:

North: CG (General Commercial)
South: CG (General Commercial)
East: CG (General Commercial)
West: CG (General Commercial)

Surrounding Developments:

North: Arlington Village
South: Fleming Office Building, Pride of North Carolina, and Single Family dwellings
East: Clean Eat & Arlington Village Shoppes
West: Arlington Village Shoppes

Description of Property:

The subject property is 0.07 acres in size and contains a commercial unit with 30 feet of frontage along Red Banks Road. The applicant wishes to operate a microblading and microneedling business within an existing salon.

Comprehensive Plan:

The property is located within a Mixed Use, High Intensity character type as designated by the Horizon 2026 Plan. The proposed use is in compliance with the Future Land Use and Character Map which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on October 7, 2021 and November 4, 2021. Notice of the public hearing was published in the Daily Reflector on October 16, October 23, November 6 and November 13, 2021.

Staff Recommended Conditions:

Must obtain a permit from the Department of Public Health as required by NCGS §130A-283, 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 all federal, state and local laws, codes and regulations regarding tattooing, including but not limited to NCGS §103A-283 and 15A NCAC 18A.3200 et seq. and must have and maintain all required permits including, Tattooing Permit issued by the North Carolina Department of Health and Human Services by and through the Pitt County Health Department (local health department) and not violate N.C.G.S. §14-400.

No loitering permitted outside of business.

Services shall be limited to micro blading and shading only and shall not include body art, body piercing services or other types of tattoos.

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 Bullock opened the public meeting.

Sabreen Mezher, applicant, spoke in favor of the application. She stated she has obtained her tattoo license and plans to do microblading as well as micro skin needling. She stated she has completed the requirements for safety, disposal and sanitation.

No one else spoke in favor of the request.

No one spoke in opposition of the request.

Chairman Bullock asked for staff's recommendation.

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

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

No board discussion.

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

Mr. Lilley 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 the recommended conditions by city staff, Mr. Lilley seconded the motion and it passed unanimously. Vote: 7 to 0

Chairman Bullock announced that Sabreen Mezher's special use permit had been granted.

3. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY DERONDE DALAS NIXON-TURNAGE

The applicant, DeRonde Dalas Nixon-Turnage, desires to operate a personal service otherwise not listed (microblading) pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 214 E Arlington Blvd. The property is further identified as being parcel number 27392.

Chairman Bullock confirmed and swore in one speaker – DeRonde Dalas Nixon-Turnage

Ms. Blount delineated the area on the map. She stated that the request is located near the central portion of the city.

Zoning of Property:

CG (General Commercial)

Surrounding Zonings:

North: CG (General Commercial)

South: OR (Office Residential) and R9S (Residential Single Family)

East: CG (General Commercial)

West: CG (General Commercial)

Surrounding Developments:

North: Century 21, S&R Computers, Tobacco Shop and WITN

South: Fleming Office Building, Pride of North Carolina, and Single Family dwellings

East: Roots Hair Studio and COECO Office Systems

West: Arlington Centre

Description of Property:

The subject property is 0.57 acres in size and contains several commercial units within the building. The property has approximately 98 feet of frontage along E. Arlington Blvd. The applicant currently operates a

salon in a 750 square foot unit. She wishes to operate a micro blading service in approximately 500 square feet of the unit.

Comprehensive Plan:

The property is located within the Office & Institutional character type as designated by the Horizon 2026 Plan. Although the proposed use is not in compliance with the Future Land Use and Character Map which recommends institutional/civic development, the use will be incorporated within an existing business.

Notice:

Notice was mailed to the adjoining property owners on October 7, 2021 and November 4, 2021. Notice of the public hearing was published in the Daily Reflector on October 16, October 23, November 6 and November 13, 2021.

Staff Recommended Conditions:

Must obtain a permit from the Department of Public Health as required by NCGS §130A-283, 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 all federal, state, and local laws, codes and regulations regarding tattooing, including but not limited to NCGS §130A-283 and 15A NCAC 18A.3200 et seq. and must have and maintain all required permits including, Tattooing Permit issued by the North Carolina Department of Health and Human Services by and through the Pitt County Health Department (local health department) and not violate N.C.G.S. §14-400.

No loitering permitted outside of business.

Services shall be limited to micro blading and shading only and shall not include body art, body piercing services or other types of tattoos.

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 Bullock opened the public meeting.

DeRonde Dalas Nixon-Turnage, applicant, spoke in favor of the application. She stated she has been a licensed cosmetologist for 29 years and has been a master educator of cosmetology and nail technology for 10 years. She stated she wanted to transition and expand her business. She stated she has a lot of client's that want this service and she has seen a general need for the service due to hair loss. She stated with the procedure she can also do micropigmentation as well as hair strokes to help rebuild the confidence people have lost. She stated she already has the background and training to have a professional environment and she has completed her certifications for

microblading. She stated appointments will be Monday through Wednesday with one client at a time. She stated the salon area will be closed off so there will be privacy for each individual who wants this service.

No one else spoke in favor of the request.

No one spoke in opposition of the request.

Chairman Bullock asked for staff's recommendation.

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

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

No board discussion.

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

Mr. McKinnon made a motion to approve the petition with the recommended conditions by city staff, Mr. Lilley seconded the motion and it passed unanimously. Vote: 7 to 0

Chairman Bullock announced that DeRonde Dalas Nixon-Turnage's special use permit had been granted.

4. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY FAITH AND BRANDON LAM

The applicants, Faith and Brandon Lam, desire to operate a child care facility (Drop-In Care) pursuant to Appendix A, Use (8)a. of the Greenville City Code. The proposed use is located at 3107 Evans Street, Unit D. The property is further identified as being tax parcel number 43348.

Chairman Bullock confirmed and swore in one speaker – Brandon Lam

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

Zoning of Property:

O (Office)

Surrounding Zonings:

North: O (Office)

South: O (Office) and R15S (Residential Single Family)

East: R15S (Residential Single Family)

West: CH (Heavy Commercial) and CN (Neighborhood Commercial)

Surrounding Developments:

North: Evans St. Office Complex Offices
South: ECU Medical Pavilion and Taylor Warehousing
East: Lynnhaven Subdivision
West: Evans Street Shops and Trade It

Description of Property:

The subject property is 1,643 square feet in size commercial building with approximately 25 feet of frontage along Evans Street. The applicant wishes to operate a childcare facility drop-in service within the building.

Comprehensive Plan:

The property is located within the Commercial 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 commercial development within the subject property.

Notice:

Notice was mailed to the adjoining property owners on October 7, 2021 and November 4, 2021. Notice of the public hearing was published in the Daily Reflector on October 16, October 23, November 6 and November 13, 2021.

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 Regulations:

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) or a school 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.

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 Bullock opened the public meeting.

Brandon Lam, applicant, spoke in favor of the application. He stated they are seeking the special use permit to operate an afterschool and tutoring program with other academic services all within a time frame of less than four hours.

Ms. Bellis asked what the hours of operation will be.

Mr. Lam stated the hours of operation will be from 2 p.m. to 6 p.m. for afterschool and 4 p.m. to 8 p.m. for tutoring services.

Ms. Bellis asked if there is a maximum number of children at any one time.

Mr. Lam stated they have a maximum of 25 children within given perimeters. He stated they have four rooms including the main tutoring room, a sub tutoring room, and a game room that is not part of the academic services.

Ms. Bellis asked if it is drop in or if people make appointments ahead of time.

Mr. Lam stated there are appointments for tutoring and afterschool is by registration.

No one else spoke in favor of the request.

No one spoke in opposition of the request.

Chairman Bullock asked for staff's recommendation.

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

Ms. Blount also stated that the occupancy load will be determined by the building code which has to be determined based on the use. She stated that will not be determined at this point.

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

No board discussion.

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

Mr. Lilley made a motion to adopt the Finding of Facts, Ms. Bellis seconded the motion and it passed unanimously. Vote: 7 to 0

Mr. Lilley made a motion to approve the petition with the recommended conditions by city staff, Mr. McKinnon seconded the motion and it passed unanimously. Vote: 7 to 0

Chairman Bullock announced that Faith and Brandon Lam’s special use permit had been granted.

5. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY TERRY WETHINGTON

The applicant, Terry Wethington, desires to operate a mini-storage warehouse, household; excluding outside storage pursuant to Appendix A, Use (14)k. of the Greenville City Code. The proposed use is located at 3103 Williams Road. The property is further identified as being tax parcel number 25864.

Chairman Bullock confirmed and swore in two speakers – Terry Wethington and Steve Janowski

Ms. Blount delineated the area on the map. She stated that the request is located southern portion of the city.

Zoning of Property:

CG (General Commercial)

Surrounding Zonings:

- North: R9S (Residential Single Family) and RA20 (Residential Agricultural)
- South: R9S (Residential Single Family) and RA20 (Residential Agricultural)
- East: R6MH (Residential Mobile Home) and OR (Office Residential)
- West: CG (General Commercial), R6 (Residential) and RA20 (Residential Agricultural)

Surrounding Developments:

- North: Tyson Farms
- South: Koinonia Christian Center, Red Oak Subdivision and Oakdale Subdivision
- East: A Child’s World and Edgewood Mobile Home Park
- West: Red Oak Plaza, Peperree Townhomes, and Manning Forest

Description of Property:

The subject property is an 18.62 acre lot with approximately 790 feet of frontage along SW Greenville Blvd and over 1,000 feet of frontage along Williams Road. The applicant wishes to subdivide the parcel and build a 14.10 acre multi-unit self-storage business.

Comprehensive Plan:

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

Notice:

Notice was mailed to the adjoining property owners on October 7, 2021 and November 4, 2021. Notice of the public hearing was published in the Daily Reflector on October 16, October 23, November 6 and November 13, 2021.

Staff Recommended Conditions:

- Final platting, stormwater management, erosion control, NCDOT access agreement and site plan approval is required prior to issuance of a building permit.
- Exterior storage of any kind shall be prohibited.

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 Bullock opened the public meeting.

Terry Wethington, applicant, spoke in favor of the application. He stated his company is Ample Storage and they have been in business for 38 years. He stated they operate approximately 80 facilities in four states; Virginia, South Carolina, Florida and North Carolina with two facilities in Greenville. He stated they build their facilities in a fortress style, the compound is completely surrounded by buildings and/or walls and fences. He stated they do this for security for their customers and to limit the intrusion on their neighbors. He stated there are no overhead doors on the outside of the building, only on the inside of the compound and most of the buildings are climate controlled. He stated the office hours are from 8 a.m. to 6 p.m. and the gates to the facility are open from 6 p.m. to 10 p.m. After that time, the only people authorized to enter are commercial tenants or municipalities that have a need but it will be closed to the public. He stated the facility has a manager's apartment and if a manager elects not to rent the apartment, they look for a law enforcement officer to rent the apartment to add security. He stated there is a riparian buffer to the back of the property and the stormwater pond is located between the buffer and the building.

Steve Janowski, Engineer with River's & Associates, stated he has been a Professional Engineer since 1985. He stated his expertise is in land development, site development, the impacts and understanding of zoning compliance, stormwater management and traffic impacts.

Mr. McKinnon asked if he will be the Civil Engineer of record from River's.

Mr. Janowski stated yes.

Mr. McKinnon asked if the site plan will be under his seal.

Mr. Janowski stated he will be the project manager and it will be his seal or their Lead Engineer's.

Mr. Bullock made a motion to find that the board find and conclude that Mr. Janowski is an expert in the field of traffic and stormwater, Ms. Evans seconded the motion and it passed unanimously. Vote: 7 to 0

Mr. Janowski stated they have generated a traffic analysis just in terms of general numbers to see the impact the facility would have using the Institute of Traffic Engineers manuals. He stated based on the size of the facility, it would generate 560 vehicles per day but those manuals have been around for quite some time. He stated they did an analysis at the facility on 10th Street and the gates open about 45 to 46 times a day, which does not include office visits. He stated the major use of the facility is to put something into storage or take something out. He stated there is over 400 feet from the closest building to the property line, there is another 130 to 140 feet from the woods so there will be as much as 500 feet from the building and some of that will be set aside for stormwater management.

Ms. Blount informed Mr. Wethington that on the application it says manager's apartment. She asked for clarity that the manager will stay on site and that it will be their residence.

Mr. Wethington stated the manager will live there but sometimes they hire a local person that has their own house but in such a case they search out to find City Policeman or Sheriff's Deputy to rent the facility to enhance security.

Ms. Blount stated with the clarification, that would need to be part of the special use permit to have a resident manager on site.

Attorney Phillips asked if this matter needs to be continued based upon that additional facts or is it proceeding with that.

Ms. Blount stated she is suggesting that it proceed with the clarity that it is a mini storage excluding outside storage along with a resident manager in this permit.

No one else spoke in favor of the request.

No one spoke in opposition of the request.

Chairman Bullock asked for staff's recommendation.

Ms. Blount stated staff had no objection to the request with the understanding that it is a special use permit for mini storage excluding outside storage and resident management on site and the recommended conditions.

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

No board discussion.

Chairman 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. Cohen seconded the motion and it passed unanimously. Vote: 7 to 0

Mr. McKinnon made a motion to approve the petition with the recommended conditions by city staff and the added condition of a resident manager to be on site, Mr. Lilley seconded the motion and it passed unanimously. Vote: 7 to 0

Chairman Bullock announced that Terry Wethington's special use permit had been granted.

NEW BUSINESS

1. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY DOWN EAST TIRES AND QUALITY WORK-FLEX CAR WASH

The applicant, Down East Tires and Quality Work-Flex Car Wash, desires to operate a minor repair facility pursuant to Appendix A, Use (9)b. of the Greenville City Code. The proposed use is located at 1009 Dickinson Ave. The property is further identified as being tax parcel number 12838.

Chairman Bullock confirmed and swore in one speaker – Troy Coggins.

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

Zoning of Property:

CDF (Downtown Commercial Fringe)

Surrounding Zonings:

North: CD (Downtown Commercial) and CDF (Downtown Commercial Fringe)
South: R6 (Residential) and MUI (Mixed Use Institutional)
East: CDF (Downtown Commercial Fringe)
West: CDF (Downtown Commercial Fringe)

Surrounding Developments:

North: Temple of Zion, Single Family Dwelling and a vacant lot
South: East Carolina Millennial Campus
East: Vacant Lot
West: Taylor Warehousing (vacant) and Dickinson Ave Auto & Tire Service

Description of Property:

The subject property is 0.69 acres in size and has 119 feet of frontage along Dickinson Avenue. The property contains 8,640 square foot commercial building. The applicant has been using the property for an automobile car wash and minor repair facility.

Comprehensive Plan:

The property is located within the Uptown Edge 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 commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on November 4, 2021. Notice of the public hearing was published in the Daily Reflector on November 13 and November 20, 2021.

Related Zoning Ordinance Regulations:

Definition:

Repair; minor. The following activities shall be considered minor repair:

- (1) Engine tune-up; changing of plugs, filters, oil, lubricants, belts, adjustments;
- (2) Change and rotate tires;
- (3) Brake services;
- (4) Electrical system services;
- (5) Radiator services;
- (6) Muffler services; and
- (7) Battery service.

Specific Criteria:

- (1) All wrecked or damaged motor vehicles and parts shall be screened so as not to be visible from adjoining property lines and street right-of-way.
- (2) All vehicles on the premises for repair shall be stored at the rear of the principal structure.
- (3) No vehicle shall be stored on the premises for more than 15 days.
- (4) There shall be no exterior storage of items other than vehicles.
- (5) Sale of vehicles shall be in accordance with Article B, section 9-4-22, definition of automobile, truck, recreational vehicle, motorcycle and boat sales, contained therein.
- (6) Rental or utility trailers, cars and trucks shall be permitted as accessory uses, provided that all units in excess of four shall be screened from adjoining street right-of-way and property lines in accordance with Bufferyard C or with a bufferyard of greater intensity as required by the bufferyard regulations.
- (7) Outdoor displays of products such as tires, oil, wiper blades or other similar products shall be permitted provided they are not closer than ten feet from the principal structure and shall not be more than twenty feet from the principal structure and must be outside of required bufferyards. Signage and tires displayed in conjunction with such shall be in accordance with the sign and tire storage regulations.
- (8) All services except fuel sales shall be performed within a completely enclosed building.
- (9) Tires stored outside must comply with the following standards to minimize their visual impact and reduce their potential as a public nuisance and fire hazard:
 - (a) The maximum area devoted to tire storage shall be limited to 10% of the property area or 25% of the building from which the business operates, whichever is less;

- (b) The maximum number of tires stored outside shall not exceed 300;
- (c) Tires must be stored behind required bufferyards and located where they are not visible from a street right-of-way or adjacent property through the installation of opaque fencing and/or landscaping or placement of tires behind buildings;
- (d) All tires must be placed on racks in the upright position;
- (e) There shall be a minimum separation of 20 feet between tire racks and property lines, street right-of-way, and buildings;
- (f) Rows of tire racks shall be separated from one another by a minimum of five feet;
- (g) The placement of tires stored outside shall be placed and maintained in accordance with this subsection (9) and the North Carolina Fire Code, as amended. The more restrictive provisions shall prevail between the NC Fire Code and tire storage standards of this section; and
- (h) Notwithstanding the provisions related to nonconforming uses and situations contained in Article C of this chapter, the requirements contained in this subsection (9) shall be applicable to all existing and future major and minor repair facilities.

Staff Recommended Conditions:

- Site plan approval shall be required before issuing a certificate of occupancy.
- Applicant must comply with City of Greenville Engineering and Greenville Utilities requirements for proposed use.
- All vehicles on the premises for repair shall be stored at the rear of the principal structure.
- All vehicles for repair shall be done within the facility only.
- All vehicles for carwash service shall be done on the side of the building and not block the driveways, drive aisle or the front entrance of the building.

Staff Comments:

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

The applicant will need to obtain building permits for all new work for the proposed 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 Bullock opened the public meeting.

Troy Coggins, applicant, spoke in favor of the application. He stated they have put in a water containment system. He stated once they wash a few cars they pump the water out of the designated area and into a 300 gallon tank which is taken to a facility that recycles the water. He stated all of their oil is recycled as well. He stated they have complied with everything so far and he hopes to expand his business.

No one else spoke in favor of the request.

No one spoke in opposition of the request.

Chairman Bullock asked for staff's recommendation.

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

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

No board discussion.

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

Mr. Lilley made a motion to adopt the Finding of Facts, Ms. Evans seconded the motion and it passed unanimously. Vote: 7 to 0

Mr. McKinnon made a motion to approve the petition with the recommended conditions by city staff, Mr. Purtle seconded the motion and it passed unanimously. Vote: 7 to 0

Chairman Bullock announced that Down East Tires and Quality Work-Flex Car Wash's special use permit had been granted.

2. PUBLIC HEARING ON A REQUEST FOR A VARIANCE BY B&M WANG, LLC

The applicant, B&M Wang, LLC, desires a variance from the parking requirements pursuant to Section 9-4-246 of the Greenville City Code. The proposed use is located at 655 S Memorial Drive. The property is further identified as being tax parcel number 43848.

Chairman Bullock confirmed and swore in one speaker – Bill Fleming

Ms. Blount delineated the area on the map. She stated that the request is located northwestern portion of the city.

Zoning of Property:

CG (General Commercial)

Surrounding Zonings:

North: CG (General Commercial)

South: CH (Heavy Commercial)

East: R6S (Residential Single Family)

West: MCH (Medical Heavy Commercial) and MS (Medical Support)

Surrounding Developments:

North: AutoZone and Popeye's Restaurant
South: Walgreen's
East: Single family dwellings
West: Vacant medical buildings

Description of Property:

The subject property is 0.84 acres in size and has approximately 94 feet of frontage along S Memorial Drive. The property is located within the Neighborhood Revitalization Strategy Area.

Comprehensive Plan:

The property is located within the Commercial 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 commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on November 4, 2021. Notice of the public hearing was published in the Daily Reflector on November 13 and November 20, 2021.

Staff Comments:

Pertinent facts regarding the application:

The subject property was built in 1986 as part of one lot. In 1995 it was subdivided into two lots with an access agreement. The applicant purchased Lot B of the property in 2017. During that time, the front unit was occupied by a laundromat. The laundromat closed late 2019/early 2020 and has remained vacant. Staff received inquiries concerning the front vacant unit and determined that the site had maximized the parking spaces in conjunction with the number of occupied units. Based on the ordinance, additional uses would not comply with the parking requirements and therefore would be prohibited from occupying the space. Per the special use permit application, the owner has had an inquiry for another laundromat to occupy the previous laundromat space. Staff held a meeting on site with the real estate agent to discuss parking options and recalculated the required spaces for the current uses. After researching the property, it was discovered that the site was deficient in parking after the subdivision. In addition, one of the units had been subdivided to accommodate smaller businesses which in turn increases the number of uses on the property. Greenville City Code Section 9-4-246 requires the sum total of all the individual uses when more than one use is included within any one lot or building. Since the property has nonconforming parking, Section 9-4-247 requires a use that is 50% or less of the original measurement to provide parking as if the use were a new and separate use. With the current parking situation and the inability to provide additional parking due to the location of the parcel, the applicant would not be able to comply with the ordinance parking requirement and has asked for variance. The variance would be required for legal documentation.

Variance Criteria:

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

1. Conditions and Specifications – The proposed location meets all the conditions and specifications of the Zoning Ordinance.

2. Notice – Persons owning property adjacent 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 November 6, 2021 and November 13, 2021 in The Daily Reflector.
3. Unnecessary Hardship – The applicant would suffer an unnecessary hardship if a strict application of the ordinance is applied. It is not necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
4. Unique Circumstances – The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
5. General Purpose of the Ordinance – If granted, the variance would be in harmony with the general purpose and intent of the Zoning Ordinance and would preserve its spirit.
6. Safety and Welfare – The granting of the variance secures the public safety and welfare and does substantial justice.

The concurring vote of four-fifths of the board shall be necessary to grant a variance.

The Applicant is seeking relief of

SEC. 9-4-246 COMBINATION OF REQUIRED PARKING SPACE

- (A) The required parking space for any number of separate uses may be combined in one lot, but the required space assigned to one use may not be assigned to another use, except that one-half of the parking space required for churches, theaters, stadiums, assembly halls or any other use whose peak attendance will be at night or on Sundays may be combined with a use which will be closed or which will generate significantly less parking demands at night and on Sundays than during normal business hours with prior approval by the Director of Planning and Development Services.
- (B) A use which is deficient in required parking spaces shall not designate existing parking to any other use.
- (C) When more than one use is included within any one lot or building, the minimum number of required spaces shall be the sum total of all the individual uses.

Staff Recommended Conditions if variance is granted:

The sum total of parking spaces for the property shall not exceed fifteen (15) spaces over the existing spaces.

No units may be used as a dwelling for any reason.

Must comply with all federal and state laws, rules, and local ordinances applicable to project.

Other Comments:

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

Staff Recommendation:

Planning staff recommends approval of the request with the noted conditions.

Mr. McKinnon asked if they are 15 parking spaces short of compliance.

Ms. Blount stated no. She stated the condition is that if this should be approved by the Board then any use shall not exceed 15 spaces over the current spaces that are there.

Mr. McKinnon asked how many spaces would be in compliance.

Ms. Blount stated they currently have 29 spaces so if they put the laundry mat as they have requested, the laundry mat parking requirements are based on the number of machines. She stated she cannot say how many spaces over they would be because she does not know how many machines they will put in. She stated the amount of machines they put in cannot exceed more than 15 spaces in addition to the 29.

Mr. McKinnon asked if it is possible to get 15 spaces in addition to the 29.

Ms. Blount stated they are not going to get any additional spaces. She stated this is a variance so what the Board is approving is for them to be varied from the parking requirements but that vary should not exceed 15 parking spaces if they were in compliance.

Mr. McKinnon asked if it is impossible to satisfy the parking requirements without the variance for the laundry mat.

Ms. Blount stated that is correct. She stated that is why the applicant is asking for a variance.

Mr. McKinnon asked what the equation would be for another use.

Ms. Blount stated it depends on the use. She stated the parking requirements would be determined by the use.

Mr. McKinnon asked if the variance is based upon there being a person interested in renting the space for a laundry mat.

Ms. Blount stated that is what the applicant has stated in his applicant so that would be a question for the applicant.

Chairman Bullock opened the public meeting.

Bill Fleming, Agent for applicant, spoke in favor of the application. He stated he is the property manager for the subject property. He stated the vacant space is at the front of the building and is 3,100 square feet. He stated when the owner purchased the building there was a laundry mat in the space and that particular laundry mat went out of business about a year and a half ago. He stated the space has been vacant since then and they have a company that wants to rent the space and put a new laundry mat in the facility. He stated there are five parking spaces next to the building, five spaces next to Memorial Drive, and on the side there is an additional six with two of them being handicap so there are 16 spaces adjoining this particular space. He stated it would be a hardship to the owner of the building if he was not able to rent this space because it is twenty seven percent of his building. He stated it would be to the City's benefit to approve this variance because vacant property is a magnet for crime. He stated it would

be to the City's benefit and also the surrounding property owner's if there was a thriving business there versus a vacant property.

No one else spoke in favor of the request.

No one spoke in opposition of the request.

Chairman Bullock asked for staff's recommendation.

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

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

Mr. Lilley asked Ms. Blount if a variance goes with the life of the business or if a different business owner were to lease the space would they have to come before the Board for another variance or something different depending on the parking.

Ms. Blount stated she will refer to Attorney Phillips.

Attorney Phillips stated with his understanding the variance runs with the land. He stated as Ms. Blount stated this particular application is applicable for that use. He stated to answer Mr. Lilley's question it is possible that there may be a need for another variance depending on the use and it may not be related to parking, it could be related to something else such as setbacks.

Ms. Evans stated there are issues with this location. She stated her concern is if the variance is approved, she would only be willing to be in favor if it is specifically for a laundry mat. She stated if the variance is not specifically for a laundry mat and they put something else in there, it could lead to problems because of the space and the traffic.

Attorney Phillips stated he would need to research that issue as to whether or not that would apply and that that could be a lawful condition that is placed on it.

Ms. Evans asked if it is possible to continue this case to give him time to properly research that.

Attorney Phillips stated that would be a board decision to continue the case.

Ms. Evans made a motion to continue the case, Mr. McKinnon seconded the motion and it passed unanimously. Vote: 7 to 0

Mr. Fleming stated there is a lease signed by the company that wants to put the laundry mat there and it is contingent upon this getting approved.

Chairman Bullock suggested Mr. Fleming contact city staff to make for certain that everything is submitted so the board can expedite the request.

Mr. Fleming asked when the next meeting is.

Ms. Blount stated the next meeting is December 16th.

Mr. McKinnon asked if the laundry mat went ahead, does that mean that the building cannot be fully occupied and therefore the board would hear another variance at a later date to fill the building.

Chairman Bullock stated he believes that will be answered by the amount of research that is put into this to make sure the board can answer the question raised by Ms. Evans.

Ms. Blount stated it depends on the use because different uses have different parking requirements. She stated she cannot say it will not be able to be occupied by another use until she knows what the use is.

Mr. Fleming stated if they rent this space the building will be fully occupied.

3. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY ANDREW & CHRISTY GARRIS

The applicants, Andrew Garris & Christy Garris, desire to operate a major repair facility pursuant to Appendix A, Use (9)a. of the Greenville City Code. The proposed use is located at 701 Peed Drive. The property is further identified as being tax parcel number 43918.

Chairman Bullock confirmed and swore in three speakers – Andrew Garris, Christy Garris, and Igor Palyvoda.

Ms. Blount delineated the area on the map. She stated that the request is located southwestern portion of the city.

Zoning of Property:

CH (Heavy Commercial)

Surrounding Zonings:

North: CH (Heavy Commercial) and R6S (Residential Single Family)
South: R6 (Residential) and CH (Heavy Commercial)
East: CH (Heavy Commercial)
West: R6 (Residential)

Surrounding Developments:

North: Vacant building
South: Vacant Lot and Wingate Hotel
East: Auto Pro Car Dealership
West: Summerfield Gardens Apartments

Description of Property:

The subject property is 0.95 acres in size and has 159 feet of frontage along Peed Drive. The property contains an 8,500 square foot commercial building. The applicant wishes to operate an auto body and repair shop at the proposed location.

Comprehensive Plan:

The property is located within the Residential High Density character type as designated by the Horizon 2026 Greenville Community Plan. The proposed use is not in compliance with the Future Land Use Plan which recommends residential development for the subject property; however, the existing building is located in the Heavy Commercial zoning district.

Notice:

Notice was mailed to the adjoining property owners on November 4, 2021. Notice of the public hearing was published in the Daily Reflector on November 13 and November 20, 2021.

Related Zoning Ordinance Regulations:

Definition:

Repair; major. The following activities shall be considered “major repair.”

- (1) Engine overhaul or dismantling of subparts;
- (2) Body or frame repair;
- (3) Windshield or glass replacement;
- (4) Transmission, starter, alternator or other subpart rework service;
- (5) Welding or metal cutting; and
- (6) Any other repair other than minor repair.

Specific Criteria:

- (1) All wrecked or damaged motor vehicles and parts shall be screened so as not to be visible from adjoining property lines and street right-of-way.
- (2) All vehicles on the premises for repair shall be stored at the rear of the principal structure.
- (3) No vehicle shall be stored on the premises for more than 15 days.
- (4) There shall be no exterior storage of items other than vehicles.
- (5) Sales of vehicles shall be in accordance with Article B, section 9-4-22, definition of automobile, truck, recreational vehicle, motorcycle and boat sales, contained therein.
- (6) Rental or utility trailers, cars and trucks shall be permitted as accessory uses, provided that all units in excess of four shall be screened from adjoining street right-of-way and property lines in accordance with Bufferyard C or with a bufferyard of greater intensity as required by the bufferyard regulations.
- (7) Outdoor displays of products such as tires, oil, wiper blades or other similar products shall be permitted provided they are not closer than ten feet from the principal structure and shall not be more than twenty feet from the principal structure and must be outside of required bufferyards. Signage and tires displayed in conjunction with such shall be in accordance with the sign and tire storage regulations.
- (8) Tires stored outside must comply with the following standards to minimize their visual impact and reduce their potential as a public nuisance and fire hazard:

- (a) The maximum area devoted to tire storage shall be limited to 10% of the property area or 25% of the building from which the business operates, whichever is less;
- (b) The maximum number of tires stored outside shall not exceed 300;
- (c) Tires must be stored behind required bufferyards and located where they are not visible from a street right-of-way or adjacent property through the installation of opaque fencing and/or landscaping or placement of tires behind buildings;
- (d) All tires must be placed on racks in the upright position;
- (e) There shall be a minimum separation of 20 feet between tire racks and property lines, street right-of-way, and buildings;
- (f) Rows of tire racks shall be separated from one another by a minimum of five feet;
- (g) The placement of tires stored outside shall be placed and maintained in accordance with this subsection (9) and the North Carolina Fire Code, as amended. The more restrictive provisions shall prevail between the NC Fire Code and tire storage standards of this section; and
- (h) Notwithstanding the provisions related to nonconforming uses and situations contained in Article C of this chapter, the requirements contained in this subsection (9) shall be applicable to all existing and future major and minor repair facilities.

Staff Recommended Conditions:

- Site plan approval shall be required before issuing a certificate of occupancy.
- All vehicles on the premises for repair shall be stored at the rear of the principal structure.
- All vehicles for repair shall be performed within a completely enclosed building.

Staff Comments:

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

The applicant will need to obtain building permits for all new work for the proposed 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 Bullock opened the public meeting.

Christy Garris, applicant, spoke in favor of the application. She stated her husband has been in the industry for 30 years and they want to open a body shop of their own.

Igor Palyvoda, Baldwin Design Consultants, spoke in favor of the application. He stated the special use permit was required for his clients because they want to have a paint booth. He stated the existing use was similar because the building was used to restore classic cars. He stated there is no major change in the uses.

Ms. Blount stated there was no indication that there was a paint booth requirement on the application. She stated the application states auto body and restoration.

Mr. Palyvoda stated they would need a paint booth in a body shop.

Ms. Blount stated the city classifies that as a different use. She stated that was not clear on the application.

Attorney Phillips stated based upon that, this matter may need to be continued to sort out those issues.

Mr. Bullock made a motion to continue the application to the December 16, 2021 meeting, Mr. McKinnon seconded the motion and it passed unanimously. Vote: 7 to 0

4. PUBLIC HEARING ON A REQUEST TO AMEND A SPECIAL USE PERMIT BY IRONWOOD DEVELOPMENT, INC.

The applicant, Ironwood Development, Inc., desires to amend an agricultural master plan community special use permit pursuant to Appendix A, Use (2)b(1). of the Greenville City Code. The proposed use is located at 0 NC Hwy 43 N. The property is further identified as being tax parcel number 18678.

Chairman Bullock confirmed and swore in three speakers – Tim Newell, Steve Janowski, and Roger Kemp

Roger Kemp stated he would like to request a continuance of the application.

Attorney Phillips asked Tim Newell how he is related to this application.

Mr. Newell stated he is representing the property owner, Ironwood Development, Inc.

Attorney Phillips asked if he is an attorney or property manager.

Mr. Newell stated he is a Landscape Architect and Senior Project Manager with River's & Associates and the Land Planner for Carolina Crofts.

Attorney Phillips asked if he is appearing for the application as an agent.

Mr. Newell stated yes.

Attorney Phillips asked Mr. Kemp if he is asserting that he has standing to act as a party in this case.

Mr. Kemp stated he is a property owner that is affected by this and received notice of this meeting.

Attorney Phillips asked if he is appearing on behalf of an incorporated or unincorporated association.

Mr. Kemp stated he is appearing on behalf of the Rock Springs Owner's Association.

Attorney Phillips asked if the association is made of owners or lessees of property in a designated area and do they belong as members by virtue of their owning or leasing property in that area.

Mr. Kemp stated yes.

Attorney Phillips asked if the association is otherwise organized to protect and foster the interest of the particular neighborhood or local area.

Mr. Kemp stated yes.

Attorney Phillips asked if the association was created in response to this proposed development or issues.

Mr. Kemp stated no it was not.

Attorney Phillips asked who he asserts are the individual members of the association who he contends has standing as an individual to challenge the board's decision.

Mr. Kemp stated he is not sure of the question.

Attorney Phillips stated he would have to show that there is someone that has standing that is a member of that association. He asked who he asserts is the individual member of the association who he contends has standing as an individual to challenge the board's decision.

Mr. Kemp stated he does as a property owner in Rock Springs.

Attorney Phillips asked if he contends that he is the person that will suffer special damages as a result of the board's decision.

Mr. Kemp stated yes as well as the other people that live in Rock Springs.

Attorney Phillips asked how close in proximity to the subject property at issue does he live.

Mr. Kemp stated along the 200 feet boundary required to be notified.

Attorney Phillips asked if he has any evidence as to the damage to his property value.

Mr. Kemp stated he does not.

Attorney Phillips asked if he has any evidence as to the secondary impacts upon the requested development.

Mr. Kemp stated he does not and that is why he is asking for a continuance.

Attorney Phillips asked if he owns the property where he lives.

Mr. Kemp stated yes.

Attorney Phillips asked if he has any evidence tonight for the board's consideration regarding potential damage to any other valuation regarding his property.

Mr. Kemp stated he does not.

Attorney Phillips stated based on that, the board would need to decide if Mr. Kemp has standing for purposes of being able to request a continuance.

Mr. McKinnon asked if the board could establish if Mr. Kemp is an adjacent property owner.

Mr. Kemp stated he is.

Chairman Bullock stated he believes it was stated that Mr. Kemp received notice of being one of the persons inside 250 feet of the project that is on the application.

Mr. McKinnon stated he did say that but he did not say he shares a property line with the development.

Mr. Lilley stated he is looking at Mr. Kemp's property on the map and he does share a property line towards the back end.

Chairman Bullock stated he indeed has standing.

Attorney Phillips stated the board decides whether he has standing or not. He stated just being a property owner is not statutorily enough but the board makes that determination. He stated the board has to decide if they are going to entertain a request to continue without finding that he has standing to make that determination or the board determines he has standing and that he is requesting a continuance and rule on that issue.

Chairman Bullock requested board discussion on whether Mr. Kemp has standing after what has been heard.

Mr. McKinnon stated he is assuming that Mr. Kemp's property backs up to the property for this development.

Mr. Lilley showed the board Mr. Kemp's property and that it backs up to the property for this development.

Mr. McKinnon stated he would suggest that since Mr. Kemp is an adjacent property owner he has standing by definition.

Attorney Phillips asked if the board is saying he has standing because he is representing an incorporated or unincorporated association or if they are saying he is a person that will suffer special damages. He stated there are two options that are available.

Mr. McKinnon stated Mr. Kemp has stated where his address is but he has not stated he is a spokesman for his association.

Ms. Evans stated when he first came on he said that.

Mr. Kemp stated he has been designated by the association to speak for the association.

Attorney Phillips stated he first has to be designated as someone who has standing that is suffering special damages and the second part is that it would fit under the incorporated or unincorporated associated prong.

Mr. Bullock made a motion that Roger Kemp has standing to participate in this remote quasi-judicial proceeding because he has standing in accordance with the standing law under 160D 1402C2 that he is a person who will suffer special damages as a result of the board's decision, Ms. Evans seconded the motion and it passed unanimously. Vote: 7 to 0

Mr. Bullock made a motion that Roger Kemp who has standing under 160D 1402C2 is appearing as an agent for an incorporated or unincorporated association that being Rock Springs Owners Association and that said association is owners or lessees of property in a designated area belonging by virtue of their owning or

leasing property in that area or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area and that Mr. Kemp is one of the members of the association who has standing as an individual to challenge the board's decision and that the association was not created in response to this particular development at issue under 160D1402C3, Ms. Evans seconded the motion and passed unanimously. Vote: 7 to 0

Mr. Kemp stated he would like to have a continuance of this item. He stated the time frame of receiving the material and the time he had to analyze the inconsistencies in the information that was presented is not a sufficient time so he would like to request a continuance to the next meeting which is December 16th.

Chairman Bullock stated it is his understanding that particularly if he received a notice because he is in a certain amount of feet from the property being discussed, there would be ample enough time to do whatever is necessary to challenge.

Ms. Blount stated information was submitted in accordance to the local requirements and in accordance to General Statutes. She stated her question would be what additional steps would be taken if the continuance occurs. She asked if the board is waiting for him to get evidence and what the continuance is for.

Chairman Bullock asked Mr. Kemp what would be his reasoning for the request of a continuance and if granted what is he looking to accomplish in order to be able to feel as though his challenge will be adequate to the request.

Mr. Kemp stated although he received noticed on November 4th, the agenda material was not posted online until the November 15th. He stated the cutoff date and time to present information to protest against this was 5 p.m. on November 15th. He stated since that time he has gone through some of the material and found some inconsistencies in the material presented to the board. He stated he would like a continuance until December 16th so he can understand what the differences are and possibly get in touch with someone representing Ironwood Development. He stated it has already been approved that there will be a development there but their concern is the number of things that have changed from the original proposal so that is why he is asking for a continuance.

Ms. Blount stated the meeting package was posted on the website on November 12th. She stated the same time the board received the meeting package is the same time it was posted on the website.

Mr. McKinnon asked when this comes before the board in December, how will the board know any more than they know now other than the objections that Mr. Kemp may bring.

Chairman Bullock stated the question would be will he be able to present any more information than he has presented tonight and if allowing him to have the continuance would yield any new information that would help support his challenge to the request.

Mr. McKinnon stated for example is the concern the difference between the original and revised request and if so, which parts of the plan are bothersome. He stated there is an approved plan and revised plan.

Attorney Phillips stated he thinks that may be part of the issue. He stated it would allow him the opportunity to prepare and submit documents. He stated it would also allow him an opportunity to speak with Mr. Newell and other representatives of the applicant. He stated perhaps some of these issues can be worked out prior to the next meeting.

Ms. Evans made a motion on the request for a continuance by Mr. Kemp, Mr. McKinnon seconded the motion and it passed unanimously. Vote: 7 to 0

PROPOSED BOA DECISION AND ORDER GRANTING SPECIAL USE PERMIT FOR METRONET FIBERNET, LLC

Attorney Phillips stated the order is from the special meeting held on September 9, 2021. He stated this was the decision and order that the board requested he prepare to resolve any facts and the statute requires the contested facts be determined. He stated the board is free to throw it out and do their own order. He stated the board can change facts but they would have to vote on that. He stated if they approve the order as proposed, he would suggest that the dates reflected on pages 11 and 12 be changed from the October date to the November date to accurately reflect the date of their decision.

Mr. McKinnon asked if this is the consideration of the vault that had a problem with noise generation.

Attorney Phillips stated yes.

Mr. McKinnon stated that the facility is under construction. He stated the vaults are in place but the fence and antenna are not up. He stated he thinks it is great that the board has a summary of the facts but there are also facts on the ground. He stated it may be proper because the board approved it.

Ms. Evans stated the board did not get a chance to make modifications and put any special requests in it. She stated she was going to go back to what Mr. McKinnon suggested about the fence because they can't trust them to be cognizant, good stewards of their word and agree to be compliant. She stated there is a residential neighborhood and medical facility there so the fact that they have already started construction is disturbing. She stated she realizes they are behind schedule but she has a problem with all of that.

Mr. McKinnon stated if a mistake is made it is going to be a very expensive mistake to fix because a chain link fence is not going to buffer 45 dbA to that residential neighborhood or the commercial uses.

Chairman Bullock stated Ms. Bellis had made a point that there would be certain times that no noise or construction would be allowed during that time to be more agreeable with the residents that are close by. He stated at that time, the board did not put that stipulation in with City Staff's recommended conditions. He stated if the board goes with the order prepared by Attorney Phillips and add that stipulation that would suffice for the point Ms. Evans raised.

Ms. Evans stated the time frame as well as the fence that Mr. McKinnon suggested.

Attorney Phillips stated just to clarify, at the time of the hearing and the vote those conditions were not approved and voted on. He stated so essentially they are seeking to add conditions afterwards which at this time he is not clear that that can be done. He stated if that is done it may be subject to an appeal and the board would have to justify the grounds for the addition of those conditions. He stated there has not been an official decision written and submitted to the parties so it is theoretically possible to add additional conditions but the parties are not here to have any say on that.

Mr. McKinnon asked if it true that the board only approved those minutes tonight.

Ms. Blount stated no. She stated the minutes approved tonight were from September 23, 2021.

Mr. Lilley stated the board is not trying to change anything tonight, they are just trying to make it a formality. He stated it was the boards own misstep. He stated the applicant agreed to the concerns that the neighbors brought up and they all had a verbal agreement between the parties. He stated he thinks it was mostly inexperience on their part as a board and they forgot to add the recommendations. He stated if he is understanding correctly this matter has been decided already, they are just formally moving it forward.

Ms. Evans stated it is not decided until they vote on the final vote as of tonight. She stated as far as she is concerned she can retract her vote from the last time because she is not going to go forward with the order.

Chairman Bullock stated he believes what the board voted in favor of is for them to start construction. He stated now they get the opportunity to have on record the other stipulations as far as the fence and the time for noise. He stated this gives them an opportunity to make that matter of record.

Mr. Purtle asked if he heard that there is an opportunity to rescind a vote from a board decision that has already been made.

Mr. McKinnon stated he still holds that it is in the packet for review tonight and he believes they voted on those minutes tonight. He stated on page two of the minutes from September 23rd, it states a correction to page 8 of the September 9th minutes. He stated these were changes to imperfections in the minutes prior to that time.

Ms. Blount stated that was changes to the minutes, not to that case or order.

Attorney Phillips stated any changes to the order that is being proposed will need to be specifically changed and voted on by the board.

Mr. Purtle asked if the board is willing to accept the precedent that after the fact with no parties present, that the board would make a stipulation with no one here to hear that stipulation that they have to do something additional. He asked if that is what they are saying here.

Attorney Phillips stated he thinks that is what is being considered and he thinks it is theoretically possible but they do run the risk of an appeal.

Ms. Evans asked if it is possible to table the discussion tonight, contact MetroNet and say the board needs them to come back so that they will have representation and be present to hear the board's concerns.

Attorney Phillips stated he supposes that is possible but he will have to research opening up the public hearing to hear more evidence to consider additional conditions that were not voted on that particular night.

Chairman Bullock stated that he wants to clarify that the stipulations they are talking about adding is not new information. He stated what they are trying to do is take what they had a verbal agreement on and the board's intent was to make the stipulations but they did not at that time. He stated it is not to enter new evidence as matter of record.

Mr. Purtle stated he understands what Chairman Bullock is saying but the board does not deal with intent, they deal with facts and what they have voted on. He stated they voted on the issue and the issue had no additional stipulations and asked if that was correct.

Chairman Bullock stated at that time it did not.

Mr. Purtle asked how this item got back on the agenda package for review or consideration.

Attorney Phillips stated any time there are contested facts the statute requires the board must determine contested facts and make its decision within a reasonable time. He stated theoretically it is possible on the night of the hearing to determine facts and to make findings of fact that night but that is very difficult. He stated additionally it is possible for the attorney to present a proposed order that night but how do you do that when you haven't heard the facts. He stated that is why cities do this, you have the facts and then continue it over for a proposed decision to be drafted for your consideration determining the facts as presented. He stated you already voted on it that night and

this is basically memorializing your vote with the facts in writing. He stated going down the road of reopening things, you can potentially get into dangerous territory but you are free as a board to do what you want.

Mr. McKinnon stated he would argue the Finding of Facts included a discussion about the noise generated by the generator when operated, in other words that generator is going to have to be tested on a regular basis. He stated it is not a construction issue, it is an operational issue which means it is ongoing forever.

Attorney Phillips stated he thinks that is reflected in Finding of Fact number 28 on page 6 of 12. He stated anytime he writes the orders, he listens to the entirety of the meeting, reads the minutes and goes through the application and material submitted by the opponents.

Ms. Bellis asked if the function of the fencing was a sound barrier or vision barrier because if it was a sound barrier, a chain link fence is not going to accomplish that.

Mr. McKinnon stated he believes it was a privacy fence to obscure what was behind the fence.

Mr. Lilley clarified that the board received verbal confirmation that the applicant would run the generator after hours or on the weekends and do the testing once a week. He stated that's what the applicant and the opposition agreed on but it was the board that did not record that into the findings.

Attorney Phillips stated again, that is reflected in proposed Findings of Fact 28. He stated it is not a condition but it is memorialized as what happened at the meeting.

Mr. Lilley stated they have had this discussion at the original meeting and they can't go back and change it now.

Mr. McKinnon read from page 6 of 12 of the proposed order, "For example, the Applicant, Ms. McCrea, and Mr. Jenkins were agreeable to the weekly preventative maintenance check/test on the generator being conducted on a weekday at 7:30 a.m. but in no event continuing after 8:30 a.m." He stated given it is a residential area, it is going to be a delightful way to wake up in the morning.

Mr. Purtle asked Mr. McKinnon why he did not include the noise condition in the motion previously.

Mr. McKinnon stated he thinks the motion Ms. Bellis made was confused in terms of voting whether or not there would be an additional stipulation from what city staff recommended.

Attorney Phillips stated he does not believe there were any residents that testified.

Mr. McKinnon stated that is also correct. He stated there was one person from a medical community and the other was involved in finance. He stated just because residents did not appear before the board that does not mean that they are protected from damage. He stated if we made a mistake, we are supposed to present ourselves as representing the public. He stated he agrees it should be consistent and following the standards of being legal.

Ms. Blount stated that the Board of Adjustment is quasi-judicial, this is not a legislative board. She stated we are dealing with facts and facts only.

Attorney Phillips stated facts as presented at the hearing.

Ms. Blount stated she understand the board is appointed by Council but the board is not a representation of the community so we have to deal with facts.

Mr. Purtle stated the facts are we did not put those stipulations on the findings when we made that decision. He stated it is a bad precedent to go back and do this after the fact when the applicant has to representation.

Ms. Evans stated she suggests to table this conversation and contact MetroNet and ask them to reappear.

Mr. Purtle stated he disagrees that it has to be tabled, the decision is already made.

Ms. Evans stated they still have to vote on this tonight.

Attorney Phillips stated the decision has been made however, it has not been memorialized in a written decision which is the actual decision that is the special use permit.

Chairman Bullock asked that because it is in this state, the board still has the opportunity to make their suggestions.

Attorney Phillips stated he will have to really research that.

Chairman Bullock stated he is inclined to seek a motion to table the matter until Attorney Phillips has time to research and offer his suggestions.

Attorney Phillips asked if he is researching to add conditions.

Chairman Bullock stated yes.

Mr. McKinnon asked when they say tabling the matter if they are talking about the order.

Attorney Phillips stated correct. He stated there is no special use permit granted so technically the applicant continues to wait to do anything until this board decides a decision.

Ms. Blount stated the applicant can do some work on the site. She stated the applicant can do site prep and erosion control.

Attorney Phillips stated the applicant cannot act pursuant to a special use permit.

Ms. Blount stated correct. She informed Mr. McKinnon that they may be doing work but we do not know what type of work they are doing. She stated they could be doing erosion control.

Mr. McKinnon stated he does know what kind of work they are doing because he went by there.

Ms. Blount stated he is not sure because they have to look at the permit and verify that. She stated let's get facts and not opinions. She stated she will be happy to look into that to make sure that is not taking place until this is finalized.

Mr. McKinnon stated he invites her to do that because there are pre-constructed buildings there.

Ms. Blount stated they can place them there but she will check on it.

Mr. McKinnon stated they should have a building permit.

Chairman Bullock stated he would like to table this matter to give Attorney Phillips and the City to do their due diligence.

Ms. Evans made a motion to continue the proposed order, Mr. McKinnon seconded the motion. Motion passed 4 to 3. Voting in favor: Bullock, Bellis, McKinnon, Evans. Voting in opposition: Lilley, Cohen, Purtle.

Mr. Lilley stated he knows that they are trying to make it right for the neighbors but in reality it seems as though the issues that they voted on are not supposed to be rehashed again. He stated it seems like a lawsuit waiting to happen.

Chairman Bullock stated he understands what he is saying but if it hasn't been finalized and voted on then it is not finalized. He stated there is an area in there before actually finalizing it where they get the opportunity to make for certain that everything is upstanding.

Mr. Purtle asked Mr. Bullock if he made the motion to approve that agenda item at the previous meeting.

Mr. Bullock stated yes.

Mr. Purtle asked again.

Mr. McKinnon asked if Ms. Bellis brought up the suggestion.

Chairman Bullock stated yes.

Mr. McKinnon stated for some reason it was not added and he doesn't know that guilt is part of it but they went ahead and voted on city staff's recommendations and not with the additional recommendations that Ms. Bellis brought before them.

Mr. Purtle asked at that point in time, if it is that person's responsibility of making the motion to make sure any stipulations at that time are included as a part of the motion.

Chairman Bullock stated it is indeed.

Mr. Purtle stated we are responsible for what we say and we have to be held accountable for that. He stated we don't like what we did after the fact and now we want to change it.

Chairman Bullock stated he does not think it is that cut and dry. He stated we don't like the way that it happened even though it was discussed at length that evening. He stated this gives the opportunity to make the stipulations we wanted to add concrete. He stated he thinks it is that simple and that is what he is wanting to give Attorney Phillips the opportunity to see if it is indeed that simple and if it is not then that is a different discussion.

Mr. Lilley stated from everything they have heard from Attorney Phillips so far it does not seem that it is going to be that simple.

Attorney Phillips asked if it is the pleasure of the board that they want to specifically reach out to MetroNet, Ms. McCrea, and Mr. Jenkins to see if they desire to be at the December meeting.

Chairman Bullock stated that is the desire of the board.

Attorney Phillips stated the board will need to vote on that to direct city staff to do that.

Mr. McKinnon asked if the sole issue is the fence around the facility.

Chairman Bullock stated the fence and the timing of generator noise.

Attorney Phillips stated there are multiple issues at play so they are essentially going to try to reopen the public hearing and potentially add in additional conditions based on the hearing that occurred on September 9th. He stated his instinct is that that may not be possible but he will find out if it is possible.

Attorney Phillips stated there will need to be a vote to direct city staff to contact them to give them the opportunity to be present.

Ms. Blount asked what city staff will contact them about because it has to be advertised.

Chairman Bullock asked if it is possible to stay tabled and have an opportunity to see what needs to be done.

Ms. Blount stated unfortunately they are pressed for time because December 16th advertisement has to be sent out in a timely manner so they need to know what direction to take.

Mr. McKinnon stated there is one simple issue which is the potential noise generated by this facility which would have to be endured by the neighbors.

Ms. Blount stated the board is trying to add a condition that the applicant needs to be present to hear about.

Mr. McKinnon stated what they are trying to do is to bring up something that was in the Findings of Fact that the people who come before them can focus on.

Ms. Blount stated she thinks the best solution would be to have Attorney Phillips direct them legally and go from there. She stated it may not be heard in December, it may not be until January.

Attorney Phillips stated that is entirely possible. He stated it may be December or it could be set over to January for the actual rehearing and that is set over again until February for the actual written determination so you have gone from September to February for consideration of the special use. He stated that is a theoretical likelihood.

Ms. Blount stated for clarification, there is no building permit for the site.

Mr. McKinnon stated there is a potential for having to deconstruct if this decision is not verified until February because construction is already going on.

With no further business, Ms. Evans made a motion to adjourn, Mr. McKinnon seconded, and the motion to adjourn passed unanimously. Meeting adjourned at 9:30 p.m.

Respectfully submitted

Elizabeth Blount
Lead Planner