

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT  
June 27, 2013

The Greenville Board of Adjustment met on the above date at 7:00 PM in the City Council Chamber of City Hall.

Scott Shook, Chairman-\*

Charles Ewen \*

Linda Rich X

Justin Mullarkey \*

Kevin Faison \*

Claye Frank \*

Sharon Ferris \*

Bill Fleming \*

Thomas Taft, Jr. \*

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

VOTING MEMBERS: Ewen, Faison, Mullarkey, Ferris, Frank, Fleming, Taft

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney  
Mr. Michael Dail, Planner  
Mr. Chris Kelly, Engineering  
Mrs. Elizabeth Blount, Secretary  
Mr. Jonathan Edwards, Communications Technician

**MINUTES**

Mr. Ewen made a motion to approve the April 25 minutes as presented, Ms Ferris seconded and the motion passed unanimously.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY FLEMMING SOLAR CENTER, LLC -APPROVED**

The applicant, Flemming Solar Center, LLC, desires a special use permit to operate a solar energy facility pursuant to Appendix A, Use (5)l. of the Greenville City Code. The proposed use is located east of Flemming School Road 900 feet north of Martin Luther King Jr. Boulevard. The property is further identified as being tax parcel number 41783.

Mr. Dail delineated the area on the map. He stated that the property is located in the northern portion of the city's jurisdiction.

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

**Surrounding Zoning:**

North: RR (Rural Residential) – Pitt County's Jurisdiction

South: RA20 (Residential Agricultural)

East: RA20 (Residential Agricultural)

West: RA20 (Residential Agricultural)

**Surrounding Development:**

North: Vacant

South: Agricultural

East: Agricultural

West: Single Family Residences, Soul Saving Station Church, Agricultural

**Description of Property:**

The subject property is 55.12 acres in size, has approximately 1,900 feet of frontage along Flemming School Road and is currently vacant.

**Comprehensive Plan:**

The property is located within Vision Area “A” as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends office/institutional and industrial development for the subject property.

**Notice:**

Notice was mailed to the adjoining property owners on May 9 and June 13, 2013. Notice of the public hearing was published in the Daily Reflector on May 13, May 20, June 17 and June 24, 2013.

**Related Zoning Ordinance Regulations:**

Definition: *Solar Energy Facility* Adopted on April 11, 2013

A solar collection system that generates electricity from sunlight to a wholesale electricity market through a regional transmission organization and an interconnection with the local utility power grid and/or for direct distribution to more than one property or consumer as a commercial venture located on a parcel containing a minimum of thirty (30) acres. Solar energy facilities shall consist of a minimum of three (3) individual photovoltaic modules (solar panels), which are an assembly of solar cells to generate electricity. Solar facilities constructed only for the production of electricity dedicated to another facility co-located the same site, or a solar facility which is clearly a subordinate accessory land use, shall not be subject to the special use permit requirements.

Specific Criteria:

1. *Setbacks.* Solar Energy Facilities and their appurtenant components and structures shall be a minimum of fifty feet from all property lines, and one-hundred feet from any residence. Inverters shall be a minimum of 150 feet from any residence.
2. *Height Requirements.* Individual modules/panels shall be a maximum of 25 feet in height as measured from the grade at the base of the structure to the apex of the structure.
3. *Site Plan.* A site plan, drawn and stamped by a North Carolina licensed surveyor or engineer, shall be submitted showing the following:
  - a) A narrative describing the proposed solar energy facility including an overview of the project;
  - b) The proposed location and dimensions of all solar panels, inverters, existing and proposed structures,

screening, fencing, property lines, turnout locations, ancillary equipment, transmission lines, vegetation and the location of any residence within 100 feet of the perimeter of the facility;

- c) Any preexisting structures on the same lot and principal structures on other properties that would affect the placement of solar panels;
  - d) Parking and access areas;
  - e) Location of any proposed solar access easements;
  - f) Location where wiring is brought together for inter-connection to system components and/or the local utility power grid, and location of disconnect switch;
  - g) Standard drawings of the solar collection system components;
  - h) Security Fencing, a minimum of six feet in height, shall be provided along the entire perimeter of the facility;
  - i) The entire perimeter of the facility shall be screened from adjoining properties by a ten foot buffer yard. The buffer yard shall consist of nine evergreen trees or shrubs per 100 linear feet or fraction thereof: The vegetation shall comply with Section 9-4-267;
  - j) Copies of any lease agreement and solar access easement(s);
  - k) Evidence that the electrical utility provider has been informed of the customer's intent to install an interconnected, customer-owned generator (off-grid systems shall be exempt from this requirement);
  - l) Decommissioning plans that describe the anticipated life of the facility, the estimated decommissioning costs in current dollars, and the anticipated manner in which the facility will be decommissioned and the site restored;
  - m) Signature of the property owner(s) and the owner/operator of the facility (if different than the property owner); and
  - n) Other relevant studies, reports, certifications, and approvals as may be reasonably requested by the City of Greenville to ensure compliance with this Article.
4. *Location.* Solar Energy Facilities will be permitted only in the RA-20 (Residential –Agricultural) zoning district on a parcel (or parcels) containing a minimum of thirty (30) acres as a special use as permitted by the City of Greenville Board of Adjustment.

5. *Other Requirements.*

- a) Development of a Solar Energy Facility will be subject to other overlay district regulations including watershed impervious surface limits.
- b) Solar Energy Facilities shall be fully screened from adjoining properties and adjacent roads by an evergreen buffer capable of reaching a height of 6 feet within three years of planting, with at least 75% opacity at the time of planting.
- c) All outdoor lighting shall be shielded to direct light and glare onto the system's premises and may be of sufficient intensity to ensure security.
- d) Any electrical wiring used in the system shall be underground (trenched) except where wiring is brought together for inter-connection to system components and/or the local utility power grid.
- e) Solar panels shall be mounted onto a pole, rack or suitable foundation, in accordance with manufacturer specifications, in order to ensure the safe operation and stability of the system. The mounting structure (fixed or tracking capable) shall be comprised of materials approved by the manufacturer, which are able to fully support the system components and withstand adverse weather conditions.

- f) Multiple mounting structures shall be spaced apart at the distance recommended by the manufacturer to ensure safety and maximum efficiency.
- g) No ground-mounted large solar energy systems shall be affixed to a block wall or fence.
- h) No signage shall be permitted on the perimeter fence, with the exception of one (1) sign not to exceed 32 square feet that displays the name, address and emergency contact information of the facility as well as appropriate warning signs.
- i) All obsolete or unused systems shall be removed. Any structure or equipment associated with the solar farm that is not operated for a continuous period of three hundred sixty five (365) days shall be considered obsolete or unused system.
- j) Any lease agreement, solar access easement, and plan for removal of system/equipment shall be provided to the Community Development Director or designee. If the system is to be interconnected to the local utility power grid, a copy of the conditional approval from the local utility must also be provided before a special use permit will be granted.
- k) The Solar Energy Facility and components shall meet all requirements of the North Carolina State Building Code.
- l) The Solar Energy Facility and components shall comply with the current edition of the National Electrical Code; UL listed, and be designed with an anti-reflective coating.
- m) The electrical disconnect switch shall be clearly identified and unobstructed, and shall be noted clearly on the site plan.
- n) The owner or future owner of a property onto which a solar farm is installed assumes all risk associated with diminished performance of said system caused by any present or future adjacent structure or landscaping that may interfere with the system's ability to produce power at its rated capacity, regardless of when that adjacent structure or landscaping is constructed or installed.
- o) Inverter noise shall not exceed 40dBA, measured at the property line.
- p) Other conditions, including, but not limited to, buffering and noise controls that provide adequate protection for adjacent residential properties as may be deemed reasonable and appropriate for the type of system, may be added by the City of Greenville Board of Adjustment.

**Other Comments:**

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

A site plan must be submitted and approved prior to any activities on the property.

Mr. Andrew Foukal, Director of Operations at HelioSage, spoke in favor of the request. He gave the company's overview and stated that North Carolina is the fifth largest solar market in America. There are over 1,000 solar companies in the state and they create \$3.7 billion in revenues. The applicant will be leasing the proposed property which is in compliance of the zoning ordinance. He showed pictures of the panels from other projects and described the mounting system. The installation of the system will take a couple of months to complete. The only foot traffic on the property will be for regular scheduled maintenance. The system is monitored remotely.

Chariman Shook asked if the panels were mounted with concrete.

Mr. Foukal stated that it depends on the soil. The proposed location will not require concrete.

Mr. Ewen asked about the potential hazards of the solar farm.

Mr. Foukal stated there are not a lot of hazards. The farm is fenced in and will comply with local, state and national building and safety codes.

Mr. Ewen asked if there is a problem with a glare from the panels.

Mr. Foukal stated that the modules are anti-reflective.

Mr. Frank asked how the modules hold up to wind and increment weather.

Mr. Foukal stated the racking system is designed to the wind code of 120 mph.

Mr. Mullarkey asked if the company had any issues with compliance.

Mr. Foukal stated no.

Mr. Ewen asked how long the panels last before they are replaced.

Mr. Foukal stated the panels have a 25 year warranty with ½% annual degradation. The life expectancy is 35-40 years.

Chairman Shook asked if the panels become obsolete from a technological standpoint.

Mr. Foukal stated there is not a lot of incentive to change the system once it is producing electricity.

Chairman Shook if any employees will be on site.

Mr. Foukal stated yes – local security, cameras, and maintenance personnel to do maintenance one time a month.

Chairman Shook asked the type of items that will be served.

Mr. Mullarkey asked what type of maintenance would be done.

Mr. Foukal stated maintenance would include ensuring the inverters and transformers are clean and the electrical side is functioning proper.

Mr. Taft asked who would install the panels.

Mr. Foukal stated that local contractors would install the panels.

Mr. Fleming asked the location of the monitoring station.

Mr. Foukal stated on the equipment pad.

Mr. Frank asked about the location of the remote monitoring.

Mr. Foukal stated that the system is web based so the station can be accessed anywhere via the Internet or onsite at

the inverter.

No one spoke against the application.

Mr. Dail stated that staff had no objection to the request.

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

Chairman Shook read the required findings criteria. No objections.

**Ms Ferris made a motion to adopt the finding of facts with the stated conditions, Mr. Frank seconded and the motion passed unanimously.**

**Mr. Fleming made a motion to approve the petition with the stated conditions, Mr. Taft seconded and the motion passed unanimously.**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY 3JMG ENTERTAINMENT-APPROVED**

The applicant, 3JMG Entertainment, LLC, desires a special use permit to operate a public or private club pursuant to Appendix A, Use (6)m. of the Greenville City Code. The proposed use is located at 1001 West Street. The property is further identified as being tax parcel numbers 19987 and 19988.

Mr. Dail delineated the area on the map. He stated that the property is located in the center portion of the city's jurisdiction, north on West Street and west of South Memorial Drive.

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

**Surrounding Zoning:**

North: CH (Heavy Commercial)

South: CH (Heavy Commercial)

East: CH (Heavy Commercial)

West: CH (Heavy Commercial)

**Surrounding Development:**

North: Vacant, Weeks Seed Company, Abrams

South: Sugs Body Shop, Import Services, Ace Cash Express

East: Mobile Home

West: Auto Locators, Greenville Marble & Granite, Vidant Health Building & Grounds Dept.

**Description of Property:**

The subject property is 0.55 acres in size, has approximately 188 feet of frontage along West Street and is currently vacant. The applicant proposes to construct a 2,850 square foot commercial building on the property to be used as a public/private club.

**Comprehensive Plan:**

The property is located within Vision Area “G” as designated by the Comprehensive Plan. The proposed use is in general 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 May 9 and June 19, 2013. Notice of the public hearing was published in the Daily Reflector on May 13, May 20, June 17 and June 24, 2013.

**Related Zoning Ordinance Regulations:**

Definition:

*Public or private club.*

- (1) An establishment of which the principal use is entertainment and which meets all of the following:
  - (a) May be open to the general public;
  - (b) May require a membership, cover or minimum charge for admittance or service during regular or special periods of operation;
  - (c) May provide live or recorded amplified music;
  - (d) May provide a floor show;
  - (e) May provide a dance area;
  - (f) May offer a full service bar;
  - (g) May offer food services;
  - (h) May provide food attendant (waiter/waitress) table ordering and busboy services; and
  - (i) Does not qualify under the definitions of restaurant, fast food; restaurant, conventional; or dining and entertainment establishment as contained in this section.
- (2) Any proposed or established dining and entertainment establishment that does not comply with the definition, standards or requirements applicable to dining and entertainment establishments as contained herein shall be classified as a public or private club for purposes of zoning regulation.

**Specific Criteria:**

(F) *Public or private club.*

- (1) (a) A special use permit for a public or private club is subject to revocation in accordance with

the provisions of this subsection (F)(1). Nothing herein shall prohibit or restrict the authority of the Board of Adjustment to rescind or revoke a special use permit for a public or private club in accordance with the provisions of section 9-4-83.

- (b) An annual review shall be conducted by the Director of Community Development or his or her authorized representative of a public or private club which has received a special use permit for the purpose of determining and ensuring compliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The findings of the Director of Community Development or his or her authorized representative as a result of this annual review shall be compiled in a written staff report.
- (c) At a meeting of the Board of Adjustment, the Director of Community Development or his or her authorized representative shall present to the Board of Adjustment the staff report of a public or private club for which the annual review includes a finding of one or more instances of noncompliance with applicable laws, codes and ordinances, including but not limited to noise regulations, litter control regulations, fire codes, building codes, nuisance and public safety regulations, and special use permit conditions of approval. The special use permit holder as specified under subsection (F)(4) below shall be provided notice of the meeting and a copy of the staff report.
- (d) Based on the staff report, the Board of Adjustment, by a majority vote, may either determine that a rehearing is not required for the special use permit or order a rehearing on the special use permit.
  - 1. An order for a rehearing shall be based upon a determination by the Board of Adjustment that either:
    - a. The use of the property is inconsistent with the approved application;
    - b. The use is not in full compliance with all specific requirements set out in this chapter;
    - c. The use is not compliant with the specific criteria established for the issuance of a special use permit including conditions and specifications, health and safety, detriment to public welfare, existing uses detrimental, injury to properties or improvements, and nuisance or hazard; or
    - d. The use is not compliant with any additional conditions of approval established by the Board and set out in the order granting the permit.
  - 2. The rehearing shall be in the nature of and in accordance with the requirements for a hearing upon a special use permit application. After the rehearing and in accordance with the provisions of section 9-4-81, the Board of Adjustment may grant a special use permit with conditions imposed pursuant to this subsection (F) and section 9-4-82 or deny the



special use permit. The grant or denial of the special use permit by the Board of Adjustment after the rehearing shall constitute a revocation of the previously granted special use permit for a public or private club.

- (e) The requirements and standards set forth in this subsection (F)(1) are in addition to other available remedies and nothing herein shall prohibit the enforcement of applicable codes, ordinances and regulations as provided by law.
- (2) The owner(s) and operator(s) of a public or private club shall collect and properly dispose of all litter and debris generated by their establishment or patrons immediately following the closure of business or not later than 7:00 a.m. each morning following any period of operation. All litter or debris shall be collected from within the boundaries of the establishment, associated parking areas, adjacent sidewalks and public rights-of-way or other adjacent public property open to the public. In addition, the owner(s) and operator(s) of a public or private club shall comply with the provisions of Title 11, Chapter 9 of the City Code, whether or not the establishment is a nightclub, bar or tavern.
- (3) In addition to subsection (F)(2) above, the Board of Adjustment may establish specific and reasonable litter and trash mitigation standards or requirements.
- (4) The special use permit shall be issued to the property owner as listed on the tax records of the county. When the ownership of any property, which has a special use permit for a public or private club, is transferred to a new owner by sale or other means, the new owner shall sign and file with the office of the Director of Community Development an acknowledgment of the rights, conditions and responsibilities of the special use permit prior to operation of the use under the permit. The acknowledgment shall be made on forms provided by the planning office.
- (5) Any public or private club that has been issued a special use permit by the Board of Adjustment, that is subject to mandatory annual renewal, shall continue under the terms and conditions of the issued special use permit, until the expiration of the permit. All subsequent special use permit approvals for the location shall be subject to the specific criteria set forth under this subsection (F).
- (6) No public or private club located in any district shall be located within a 500-foot radius of an existing or approved public or private club as measured from the nearest lot line in accordance with the following. When a public or private club is located or to be located on a lot exclusive to itself, the measurement shall be from the perimeter lot line of the exclusive lot. When a public or private club is located or to be located in a separate structure exclusive to itself on a lot containing multiple uses, the measurement shall be from the perimeter lot line of the lot containing multiple uses. When a public or private club is located or to be located in a common structure with other uses such as a shopping center on a common lot, the measurement shall be from the perimeter lot line of the common lot.
- (7) At the time of special use permit approval, a public or private club shall not be located within a 500 foot radius, including street right-of-ways, of (i) a conforming use single-family dwelling located in any district, or (ii) any single-family residential zoning district. The required measurement shall be from the building or structure containing the public or

private club to the nearest single-family dwelling lot line or single-family residential zoning district boundary line. For purpose of this section, the term "single-family residential zoning district" shall include any RA20, R15S, R9S, R6S, and MRS district.

**Other Comments:**

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

Mr. Faison asked if there was an existing building.

Mr. Dail stated no.

Mr. Mullarkey asked if anyone occupied the mobile home.

Mr. Dail stated he was told there is a lady that lives in the mobile home.

Attorney Sonny McLawhorn, legal representative for the applicant, spoke in favor of the request. The applicant does business as The Limelight. They have to move from their current location because of the 10<sup>th</sup> Street Connector Project. The applicant has been operating since January 2012 and has been in compliance with all regulations and laws. They have only had one call for service which involved a broken window at an adjacent lot. During peak times, the applicant uses off duty police officers to patrol the parking lot. The new building will be a metal building surrounded by a perimeter fence and 45 parking spaces. Hours of operation are Thursday, Friday and Saturday from 10 pm -2:30 am. The organization is well organized and managed.

Mr. Fleming asked the capacity of the building

Mr. James Moretz, partial owner of 3JMG, stated that the building will sit 183 people.

Chairman Shook asked if the current location is the Padded Club

Mr. Moretz stated yes.

Mr. Aaron Lucier, citizen of Greenville, spoke in favor of the request. He stated that the applicants run a tight operation and are strong supporters of the community. They support the Pitt County Service AIDS Organization. The applicants support quarterly free HIV testing in the community. The applicants are also supportive of ECU student group events, respectful of their customers and exemplary business leaders in the community.

Mr. Deryck Wilson, citizen and real estate broker of Greenville, spoke in favor of the request. The new location will be a great place for the community. Limelight serves as a support to the Lesbian, Gay, Bisexual, Transgender (LGBT) community. Greenville needs to value the diversity in our city and maintain a safe environment. Limelight has provided a safe place for people to meet and build relationships. All the applicants have careers besides the club.

Mr. Ewen asked if the new building will be open before the demolition of the existing club.

Mr. Moretz stated that they are working with the state on a continuance for 90 days while they work with the

contractor.

Chairman Shook asked how long before the applicant had to be out of their existing location.

Mr. Moretz stated that the state has already sent a notice but they are working with them. The state is requiring that the applicant keep them informed of their progress.

Mr. Mullarkey asked if the club had to have a sprinkler system and if appropriate lighting will be installed.

Mr. Faison stated that it depends on the occupancy.

Attorney McLawhorn stated that the parking lot will be well lit.

Mr. Moretz stated that the perimeter fence will go around three-quarters of the parking lot so the fence will not cover the entrance.

No one spoke against the request.

Chairman Shook asked Mr. McLawhorn to expound on the adjacent mobile home.

Mr. McLawhorn stated that the mobile home is a nonconforming use and the language about a public/private club not being close to a residence will not apply. He has never seen anybody at the mobile unit.

Chairman Shook asked Attorney Little to expound on the nonconforming use so that the board does not set a precedent on allowing clubs near residences.

Attorney Little stated the whole area is zoned Heavy Commercial. There is not a lot of interfering activity at night. If noise becomes an issue, then the request can come back to the board. A condition can be added to the petition that the club be mindful of the outside use. Conditions are in the ordinances concerning noise for special use permits being able to come back to the board at a later date if it becomes an issue.

Chairman Shook asked Attorney Little if Attorney McLawhorn was legally correct by stating that the mobile unit is in a nonconforming use and that it nullifies the public/private club criteria concerning distance from a residence.

Attorney Little stated that the nonconforming use does not nullify the criteria, however, the noise is still a potential issue.

Attorney McLawhorn stated that since a lot of people do not live in heavy commercial that approval for the request would not set a precedent.

Mr. Mullarkey stated that the applicant needs to be aware that they are in a heavy commercial zone and that at any point a heavy industrial user may be adjacent to their property and they would have no recourse.

Attorney McLawhorn stated that that is understood.

Mr. Dail stated that staff had no objection with the request.

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

No board discussion.

Chairman Shook read the required findings criteria. No objections.

**Mr. Ewen made a motion to adopt the finding of facts with the stated conditions, Ms Ferris seconded and the motion passed unanimously.**

**Mr. Fleming made a motion to approve the petition with the stated conditions, Mr. Frank seconded and the motion passed unanimously.**

Attorney Little announced to the board that the legislature has voted on statues stating how the Board of Adjustments operate. The laws will be effective October 1 and give more power to the Board of Adjustment. Training may be provided but if not detail information will be given to Chair and distributed to each board member.

**With no further business, Mr. Ewen made a motion to adjourn, Ms Ferris seconded, and it passed unanimously. Meeting adjourned at 7:45 p.m.**

Respectfully Submitted

Michael R. Dail, II  
Planner