

MINUTES ADOPTED BY THE GREENVILLE BOARD OF ADJUSTMENT

SEPTEMBER 3RD 2019

The Greenville Board of Adjustment met on the above date at 6:00 PM in the City Council Chambers of City Hall.

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

Bill Johnson -Chairman - * Nathan Cohen-*

Christopher Lilley- X Michael Glenn- *

Rodney Bullock - * Ann Bellis - *

Hunt McKinnon - X James Moretz- X

Dillion Godley-* Sharon Evans-*

Stephen Atkinson –*

VOTING MEMBERS: Johnson, Bellis, Cohen, Bullock, Atkinson, Evans and Glenn

OTHERS PRESENT: Ms. Elizabeth Blount, Lead Planner; Mr. Donald Phillips, Assistant City Attorney
Ms. Camillia Smith, Secretary, Notary; Kelvin Thomas, Communication Specialist

MINUTES

Mr. Bullock made a motion to approve the July 25th 2019 minutes with the change that Ms. Bellis was a voting member, Ms. Evans seconded and the motion passed unanimously.

Attorney Phillips reviewed information. As stated on pages 2 to 3 of the Meeting Handout available to the Public, the EVIDENCE TO BE CONSIDERED BY THE BOARD OF ADJUSTMENT IS AS FOLLOWS:

- A. The Board of Adjustment is a quasi-judicial body that makes a decision concerning an application, petition or appeal based on the evidence presented by those in favor as well as those in opposition.
- B. The members of the Board of Adjustment are lay persons and as such, the rules of evidence that are followed in a court are relaxed for cases heard before this body.
- C. Though the rules of evidence are relaxed, it does not mean they are ignored. Only evidence that is material, competent and substantial will be considered and may be used by the Board in its decision-making process.

D. The Board may not consider, nor is it admissible to present or offer affidavits, letters or other writings in support of or in opposition to a matter before the Board unless the person who prepared the writing is testifying. These writings are considered hearsay.

1. Statements by a person such as in my opinion, the application will create a traffic hazard," is not an admissible opinion and may not be considered by the Board.

a. However, such an opinion may be admissible if it is made by an expert or a person who is qualified to give opinions concerning traffic hazards, is making a presentation to the Board concerning his or her investigation and the basis for his or her conclusion in the report.

b. A lay person can give an opinion but he or she also must present facts to show how the proposal affects his or her piece of property specifically and not just in a general way.

2. A statement that another person who is not present and not testifying either supports or doesn't support the petitioner or application is hearsay and is not admissible.

3. The same rule applies to both the applicant and those in opposition.

Pursuant to North Carolina General Statute 160A-388 and Section 4 of the Board of Adjustment's Rules of Procedure:

4-3. No member of the Board of Adjustment shall participate in either the discussion or vote on any special use permit, variance, or appeal from an administrative officer's decision in any manner that would violate the affected persons' constitutional right to a fair and impartial decision maker.

Prohibited conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter and not willing to consider changing his or her mind; and undisclosed ex parte communications with the person before the Board, any witnesses, staff, or other Board members. Decisions on either a request for recusal by a member or objections by a person appearing before the Board shall be decided by a simple majority vote.

4-4. No Board Member shall take part in the hearing, consideration, or determination of any matter in which that Board Member is involved or has a financial or personal interest. Personal interest shall be defined as having a family member involved in the project under consideration, a neighborhood association involvement where a Board Member is on the governing body of such association, or where the Board Member is involved in a conflict or dispute with the applicant on a matter unrelated to the application. [f a Board Member has such a conflict, he shall declare the conflict and request to be excused from voting on the issue. A majority vote of the remaining members present shall be required to excuse the member.

4-5.No Board member shall vote on any matter deciding an application or appeal, unless he shall have attended the public hearing on that application or appeal.

4-6. No Board member shall discuss any case with any parties in interest prior to the public hearing on that case, provided however, that members may receive and/or seek information pertaining to the case from any other members of the Board.

If a Board member has had an ex parte communication that also needs to be disclosed at this time.

The notary swore in staff and all those speaking for and against the request.

NEW BUSINES

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY INKVILLE TATTOOS

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

Ms. Blount delineated the property on the map. She stated that the subject property was located in the central portion of the city.

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: CG (General Commercial) and OR (Office Residential)

South: CG (General Commercial) and OR (Office Residential)

East: OR (Office Residential) and R15S (Residential Single Family)

West: CG (General Commercial)

Surrounding Development:

North: Pirates Pointe and East Carolina University

South: PNC Bank, Telco Credit Union, Wells Fargo Advisors, State Employees Credit Union, Vacant Lot

East: ECU Administration building, State Employees Credit Union and Single Family Dwellings

West: Arlington Village Shopping Center

The subject property is 39.27 acres in size and contains a 144,034 square foot multi-unit commercial building. The property has approximately 825 feet of frontage along E. Arlington Blvd, over 1000 feet of frontage along SE Greenville Blvd and 495 feet of frontage along Charles Blvd. The applicant wishes to occupy a unit which is 3,440 square feet in size.

Comprehensive Plan:

The property is located within the Mixed Use High Intensity character type as designated by the Horizon 2026 Plan. The proposed use is in compliance with the Future Land Use Plan which recommends multifamily development within the subject property.

Notice:

Notice was mailed to the adjoining property owners on August 19, 2019. Notice of the public hearing was published in the Daily Reflector on August 26, 2019 and September 2, 2019.

Staff Recommended Conditions:

Must obtain and maintain a permit from the Department of Public Health as required by NCGS 130A-283 (Tattooing Regulation), and comply with any other health department requirements including but not limited to sanitation, first aid, vaccinations, health certifications, disposal of needles and other bio waste material.

Must comply with NCGS 130A-283 and 15A NCAC 18A.3200 (Rules governing tattooing from Environmental Health) et seq., and any other federal, state and local laws and regulations.

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

No loitering permitted outside of business.

Other Comments

The proposed project must meet all related 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 Johnson opened the public hearing.

Mr. James Vinson, applicant, spoke in favor of the request. He stated he had a location in Cross Creek Mall for 2 years without any incidents. His business was active within the community. Mr. Vinson stated that there are many gifted tattoo artist in the City of Greenville that are tattooing in their homes because they haven't been able to get into any of the local studios. He wished to give them and piercing artists an opportunity.

Mr. Cameron Brown, security at Cross Creek Mall, spoke in favor of the request. He stated that Mr. Vinson was a very helpful tenant, he assisted other businesses and mall security. They can reach out to him if they need help. His business has helped in keeping mall traffic up.

Ms. Kimberly Stone, security at Cross Creek Mall, spoke in favor of the request. She stated that there hadn't been any issues or problems with Mr. Vinson or his clients. He is well respected and he will be a reward to have in the city of Greenville.

Mr. Louis Guzman, tattoo artist, spoke in favor of the request. He stated that Mr. Vinson helped him out when he was just starting out. Mr. Vinson also helped him to own and operate his own shop and continued to guide him.

Mr. Ryan Richardson, manager at I-fix and repair shop located next to Cross Creek Mall, spoke in favor of the request. He stated that his best friend was an employee in Mr. Vinson's shop and he was such a helpful person.

Chris Soenz, piercing artist, spoke in favor of the request. He stated that he has known Mr. Vinson for two years and he gave him a chance. Mr. Vinson treated him and all his employees respectfully and like family. He stated that Mr. Vinson's business has a respectable family friendly environment, with no vulgar language or music.

Mr. Jason Nobles, manager of local tattoo shops spoke in opposition. He stated that he was not against tattooing but was against cross contamination at the mall with blood borne pathogens. He stated that if someone received a tattoo and sat at a table in the mall or went shopping that they could spread microscopic traces of blood and spread hepatitis. He stated that hepatitis in its dried state stays active for 6 weeks. Tattooing is an adult business and there are kids in the mall that can be walking by and see something that they shouldn't see. The concentration of people at the mall is too high to prevent cross contamination.

Chairman Johnson asked what was his interest and if he owned a tattoo shop nearby.

Mr. Nobles replied no, but he managed four different tattoo shops. He stated that he does all the purchasing and performs blood borne pathogens training. He stated that customers receive a tattoo and go in the bathroom and throw away a bloody bandage. If a customer goes shopping and rubbed against clothing in a store, the clothing will have to be thrown away.

Mr. Glenn asked the location of the tattoo shops that he managed.

Mr. Nobles replied Greenville, Winterville, Rocky Mount and Goldsboro.

Mr. Vinson rebutted in favor of the request. He stated that tattoo shops shouldn't be putting bandages on tattoos. They should use a clear guard that goes over the tattoo. There are red contamination bins that house all needles. All piercings and private tattoos are in a private area in the back of the shop. The shop's protocol was much more than what the Health Department required of the shop. They also make a copy of the customer's ID and attach it to the form.

Mr. Atkinson asked about customers that come in with little children.

Mr. Vinson replied that they are turned away and no one under 18 is allowed in the shop.

Mr. Nobles rebutted in opposition of the request. He replied he provided a portion of the blood borne pathogen manual for Occupational Safety and Health Administration. The manual states that any bandage that soaks up blood is contaminated.

Mr. Glenn asked how would customers getting a tattoo in a standalone building and went to a restaurant be any different than someone getting a tattoo in the mall and getting something to eat.

Mr. Nobles replied that it wouldn't be any different but being in the mall is convenient.

Chairman Johnson asked what would be the difference from someone receiving stitches leaving Urgent Care and going to the mall and someone receiving a tattoo going to the mall.

Mr. Nobles replied no difference and that it is nasty and they should not do it.

Mr. Guzman rebutted in favor of the request. He stated that the way they did tattoos was regulated by the Health Department. They apply a clear shield that protects the skin and the tattoo for 24 hours. They have private areas for private piercings and tattoos.

Ms. Stone rebutted in favor of the request. She stated she received tattoos from Mr. Vinson about a week ago and they applied a clear shield to them. She did not remember bleeding because they are constantly wiping as they do the tattoo.

Mr. Soenz rebutted in favor of the request. He commented cleanliness is top priority.

Mr. Atkinson asked what type of training or licensing was required for piercing.

Mr. Soenz replied that he had CPR and first aid training.

Chairman Johnson asked Mr. Phillips to reread the introductory statement regarding evidentiary testimony. He then asked Mr. Nobles if he was an expert in this field.

Mr. Nobles replied that he had worked in the industry for over 20 years.

Ms. Evans asked what degrees Mr. Nobles had.

Mr. Nobles replied he had a Political Science degree from East Carolina University.

Chairman Johnson asked Ms. Blount how the no loitering condition would be enforced in a mall.

Ms. Blount replied with mall security.

Chairman Johnson asked for staff recommendation.

Ms. Blount gave the staff recommendation of approval with the conditions.

With no further testimony, Chairman Johnson closed the public hearing.

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

Ms. Evans stated her profession and expertise on the spread of hepatitis and HIV and that is was not as easy as the opponent depicted.

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

Mr. Bullock made a motion to adopt the Finding of Facts with the recommended conditions, Ms. Evans seconded the motion and it passed unanimously.

Ms. Bellis made a motion to approve the petition with the conditions, Ms. Evans seconded the motion and it passed unanimously.

Motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY NOLAND PROPERTIES

The applicant, Noland Properties, Inc., desires to amend a special use permit to expand the operation of a building supply; lumber and materials sales, plumbing and/or electrical supply facility including outside storage pursuant to Appendix A, Use (12)d. of the Greenville City Code. The proposed use is located at 1001 Howell Street. The property is further identified as being tax parcel number 44247.

Ms. Blount delineated the property on the map. She stated that the subject property was located in the central portion of the city. Ms. Blount reminded the board of the prior special use permit that was granted in March 2018. This request would be an expansion of the outside storage area and no increase to the floor space.

Location: The proposed use is located at 1001 Howell Street. The property is further identified as being tax parcel number 44247.

Zoning of Property: CDF (Downtown Commercial Fringe)

Surrounding Zoning:

North: CDF (Downtown Commercial Fringe) and R6 (Residential)

South: R6 (Residential)

East: R6 (Residential)

West: CDF (Downtown Commercial Fringe)

Surrounding Development:

North: The Next Generation Funeral Home and a vacant lot

South: Multi-family dwellings (Glendale Court)

East: Residential dwellings

West: A vacant lot, Hardy Auto Group and Carolina Plumbing Supply Store

Description of Property:

The subject property is 5 acres in size with approximately 380 feet of frontage along Howell Street. The applicant wishes to do a minor expansion to the storage only area in the rear of the operation. There will be no increase in the sales floor area.

Comprehensive Plan:

The property is located within the Mixed Use and the Traditional Neighborhood, Medium – High Density 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 primary commercial use that can serve as a transition in intensity to nearby neighborhoods.

Notice:

Notice was mailed to the adjoining property owners on August 19, 2019. Notice of the public hearing was published in the Daily Reflector on August 26 and September 2, 2019.

Related Zoning Ordinance Regulations:

(LL) Building supply; lumber and material sales, plumbing and/or electrical supply including outside storage.

- (1) The Board of Adjustment may attach additional reasonable screening conditions to any perimeter property boundary when the Board determines that the proposed outside storage area and use would otherwise be incompatible with, and detrimental to, adjacent and area land uses absent such additional screening.
- (2) Required screening may be accomplished by a solid wood fence, masonry wall, earth berm, evergreen vegetation, enclosed structure or combination thereof. Vegetation utilized for this purpose shall comply with Article P.
- (3) The requirements of this section shall be in addition to the applicable bufferyard and planting requirements set out under Article G and Article P; provided, however, that qualified existing and planted vegetation shall be credited and count toward applicable requirements.

Staff Recommended Conditions:

Site plan approval is required prior to operation.

Install additional screening along the south and east sides of the property to provide appropriate screening from nearby residential homes.

History of Previous Request

The applicant's original request was granted in March 2018. Staff recommended screening around the outside storage area but the board removed the condition due to the existing vegetation. Based on current conditions, staff is recommending screening due to the expansion of the storage area and the spacing of the vegetation which prohibits a reasonable screening between the proposed use and adjacent existing developments.

Other Comments:

A stormwater management plan will be required if concrete footing is used under racks and increases the impervious area.

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

Staff Recommendation:

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Mr. Atkinson asked if the ordinance requires maintenance for vegetation.

Ms. Blount replied that vegetation shall be maintained or replenished when necessary.

Chairman Johnson opened the public hearing.

Mr. Mellor, applicant and representative of Rivers and Associates, spoke in favor of the request. Mr. Rivers stated that the expansion was needed and that he agreed with staff's recommended conditions.

No one spoke in opposition.

Chairman Johnson closed the public hearing

Chairman Johnson asked for staff recommendation.

Ms. Blount gave staff recommendation of approval with the conditions.

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

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

Mr. Bullock made a motion to adopt the Finding of Facts with the recommended conditions, Ms. Bellis seconded the motion and it passed unanimously.

Ms. Evans made a motion to approve the petition with the conditions, Mr. Bullock seconded the motion and it passed unanimously.

Motion passed unanimously.

DECISION AND ORDER OF THE SPECIAL USE PERMIT FROM JULY 25, 2019 HEARING

The voting members for the matter were: Johnson, Glenn, Bullock, Bellis, Evans, Cohen and Godly.

The vote reflected the board's decision on the contested Special Use Permit application submitted by Mr. William Davis.

Mr. Godley made a motion to approve the order, Mr. Bullock seconded the motion. Motion passed unanimously.

With no further business to discuss, motion made to adjourn by Mr. Godley, seconded by Ms. Evans

Motion passed unanimously

Meeting adjourn at 7:04 pm

Respectfully submitted by,

Elizabeth Blount,

Lead Planner