

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
November 19, 2015

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, Co-Chair X

Kevin Faison *

Justin Mullarkey X

Jim Watts *

Jeremy Spengeman *

Claye Frank *

Thomas Taft, Jr. *

Bill Johnson *

Rich Winkler X

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

VOTING MEMBERS: Shook, Faison, Frank, Taft, Johnson, Watts, Spengeman

OTHERS PRESENT: Mr. Bill Little, Assistant City Attorney
Mr. Michael Dail, Planner
Mr. Thomas Weitnauer, Chief Planner
Mr. Scott Godefroy, City Engineer
Mr. Billy Merrill, City Surveyor/Flood Coordinator
Ms. Amy Nunez, Secretary
Ms. Jewel Jones, Communications Technician
Mr. Kelvin Thomas, Communications Technician

MINUTES

Mr. Johnson made a motion to approve the October 21, 2015 minutes as presented, Mr. Frank seconded and the motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR SPECIAL USE PERMIT BY BARNHILL CONTRACTING COMPANY- APPROVED

The applicant, Barnhill Contracting Company, desires a special use permit to operate a temporary sand mine pursuant to Appendix A, Use (5)k.(1) of the Greenville City Code. The proposed use is located at 1855 Staton House Road. The property is further identified as being tax parcel number 12484.

Mr. Dail delineated the area on the map. He stated that the property is located in the northwestern portion of the City’s jurisdiction. It is located north of the major thoroughfare NC Hwy 33 West. He stated a portion of the property is in the floodway and another portion of the property is in the 100-year floodplain.

Zoning of Property: RA20 (Residential Agricultural)

Surrounding Zoning:

North: RA20 (Residential Agricultural)

South: RA20 (Residential Agricultural) & R6MH (Residential Mobile Home)

East: RA20 (Residential Agricultural) & R9S (Residential Single Family)

West: RA20(Residential Agricultural) & County Zoning - RACD (Rural Agricultural) & RR (Rural Residential)

Surrounding Development:

North: Agricultural, Single Family Residences

South: Single Family Residences, Mobile Home Park

East: Single Family Residences, Agricultural

West: Sand Mine, Single Family Residences, Mt. Pleasant Church

Description of Property:

The subject property is 100.5 acres in size, has 645 feet of frontage along NC Highway 33 West and is currently used for agricultural production.

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 medium and high density residential development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on November 5, 2015. Notice of the public hearing was published in the Daily Reflector on November 9, 2015 and November 16, 2015.

Related Zoning Ordinance Regulations:

Definition:

Temporary Sand Mining. The extraction by excavation of naturally occurring materials, such as sands and dirt (“borrow materials”), from a specifically designated and limited geographical area (which shall be identified by one or more specifically delineated property parcels) (“borrow site”), to be used in conjunction with a specifically designated government highway construction project, and which shall be for a specifically designated and limited duration in time that coincides with the completion of the government project. (see also section 9-4-86(SS)).

Specific Criteria: *Temporary Sand Mining.*

- (1) No excavation shall occur closer than 100 feet to an adjacent residential dwelling.
- (2) A 50 foot buffer (minimum) shall be maintained between the mining activity and adjacent property lines.
- (3) The borrow site shall be directly related to a designated and approved NC Department of Transportation (NCDOT) highway construction project.

- (4) The duration of the borrow material excavation and use of the borrow site for excavation shall be limited to the completion of the NCDOT highway construction project.
- (5) Upon completion of the NCDOT highway construction project, the borrow site shall be reclaimed in accordance with NCDOT requirements, and shall result in the creation of a recreational water body (lake or pond).
- (6) The borrow site shall have direct access to a primary highway and that highway shall be utilized for the transport of borrow materials from the excavation area in order to minimize the use of secondary roads or residential streets for this purpose.
- (7) No blasting shall be permitted in conjunction with the borrow material excavation or borrow site.
- (8) Any dust or other airborne emissions shall be minimized from the borrow material excavation and excavation area, whether at the borrow site or during transport of borrow materials over the haul route from the site in accordance with NCDOT regulations.
- (9) All loads of borrow material shall be covered when leaving the borrow site for transport over roadways.
- (10) All trucks used for transport of borrow material from the excavation site shall be registered, licensed and meet emissions standards for the State of North Carolina.
- (11) A gravel construction entrance shall be installed and maintained at the borrow site to prevent the tracking of borrow materials onto the roadways from the site, in accordance with NCDOT regulations.
- (12) Hours of operation at the borrow site shall be limited to 6:30 a.m. to 7:30 p.m. Monday through Saturday.
- (13) In order to protect the integrity and safety of roadways, trucks leaving the borrow site shall comply with all weight and load requirements for North Carolina roadways.
- (14) A six (6) foot earthen berm shall be installed and maintained in the excavation buffer area where no naturally wooded or vegetative screening exists between the borrow site and adjacent residential uses. This berm may be removed at the conclusion of the borrow site activity.

Staff Recommended Conditions:

Temporary sand mining at the subject property shall be in conjunction with the NCDOT Southwest Bypass Highway Project only. All sand mined from the subject property shall be used in conjunction with the NCDOT Southwest Bypass Highway Project. Upon completion of the NCDOT Southwest Bypass Highway Project sand mining at the subject property shall cease.

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

The applicant must comply with the Flood Damage Prevention Ordinance. A “No-rise No-impact” certification is required for the area in the floodway prior to any mining activities on the subject property.

Staff Comments:

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

Staff Recommendation:

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

Attorney Little stated that the Temporary Sand Mining Zoning Ordinance was passed by City Council with the 14 specific criteria conditions. The application must comply with this ordinance.

Chairman Shook opened the public hearing.

Mr. Jim Hopf, representative for the applicant, spoke in favor of the request. He stated that the applicant helped draft the Temporary Sand Mining Zoning Ordinance with City Staff. They are aware of the 14 specific criteria conditions they must comply with.

Mr. Jeremy Whitehurst with Barnhill Contracting Company spoke in favor of the request. He has worked for Barnhill for 12 years and is an Estimator/Project Manager. The company won the bid for the NCDOT Southwest Bypass Highway Project. The mostly sand material at this site is good for the use of construction of roadways and is in close proximity to the NCDOT project. The site must meet NCDOT criteria and their reclamation/environmental evaluation process. Both the Army Corp of Engineering and NCDOT Engineering were involved and approved the land for use. NCDOT will oversee the project, monitor and be in direct involvement with project and the 14 specific criteria for Temporary Sand Mining. Also all regulations set forth by the North Carolina Standards will be followed and met. After sand mining is complete, the reclamation plan is to grade all the slopes above and below the water table, seed the area, seed berms and the area becomes a recreational lake. Barnhill Contracting will provide one year maintenance when completed. They will comply with the City of Greenville Water Supply Watershed Overlay District to protect the water. He was involved in drafting the 14 conditions of the zoning ordinance and will comply. He stated this would be a 3 year project under contract with NCDOT. The intention is to complete the project before 3 years and they are aware of penalties for exceeding the 3 years. He stated they have done projects like this before. The site will be accessed by NC Hwy 33. After sand mining, there will be a six foot berm inside the 100 foot buffer where there are no trees as a buffer. He stated he sent out notifications and personally contacted residents in the area and received no opposition.

Mr. Faison asked how deep the lake would be.

Mr. Whitehurst stated 16-18 feet.

Mr. Faison asked where the water would come from to fill the lake.

Mr. Whitehurst stated natural ground water.

Mr. Watts asked how the area would be protected from children or to avoid accidents.

Mr. Whitehurst stated they will post signs and have 6 foot barriers, no fencing. After the project completion and the one year warranty, the property will be the responsibility of the owner.

Mr. Taft asked about surrounding pond/pits.

Mr. Whitehurst stated they are commercial borrow pits that are ongoing. His project will be completely depleted.

Mr. Jon Day, real estate agent, spoke in favor of the request. He has been in business since 1975 and provides analysis and review of use of properties. He reviewed the area around the proposed site looking for comparable sale values and positive/negative impacts. The area is of residential, mobile home and small farm properties. They are well maintained, some are near water and there is also new construction near. A copy of his findings was provided to Board members. He is of the opinion that the temporary sand mine will not have an adverse affect on values of the area. He stated living near water is a positive influence. No negative impact on property value. The proposed is consistent with the character of the area. No negative impact on desirability of the homes in the area. It is not detrimental now or in the future. It will not have an adverse affect on existing uses in the area.

Attorney Little stated that Mr. Day has been tendered as an expert witness as a licensed real estate broker as defined in General Statute 93E-1-4(7C). It states: *“A licensed real estate broker may provide a comparative market analysis and price opinion as to probable selling or leasing price of a particular parcel as compared to other properties of similar condition, market and neighborhood.”* The person may testify as an expert if you determine the person testifying poses sufficient technical, scientific or other specialized knowledge that will aid the finders of fact to understand an issue, a particular fact or other relevant point. You must determine before you accept the person as an expert that the person poses sufficient knowledge, skill, experience, training or education to be accepted as an expert. If you accept the person as an expert that person may give an opinion based on the facts before you. You may inquire into the facts and inferences used to form the basis of the opinion. Even if the witness provides an opinion on the ultimate issues before you, you may not exclude the opinion on that basis alone nor may you accept it as the sole basis for your findings of fact or determination on the ultimate issue. Your decision must be based on all of the testimony and documentary evidence and your findings of fact must be based on your determinations after having considered and weighed all the facts presented.

Mr. David Mayo, neighbor of proposed site, spoke in favor of the request. He stated he is familiar with the Barnhill Contracting Company request and how they spoke with the proposed site neighbors. He stated Barnhill has been transparent and has shown concern for the neighbors. He stated that there has been no previously adverse affect from other sand pits in the area. He has lived around several borrow pit operations in the area without worry, nuisance or hazard to his knowledge. He stated he speaks for the neighbors in the area (many who were present at the meeting) that they are in favor of the request.

No one spoke in opposition of the request.

Chairman asked for the Staff Recommendation.

Mr. Dail stated staff has no objection with the stated conditions.

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

Mr. Taft asked how deep the lake would be.

Mr. Faison stated 16 feet in the middle.

Chairman Shook read the required findings criteria. No objections.

Mr. Frank made a motion to adopt the finding of facts, Mr. Faison seconded and the motion passed unanimously.

Mr. Frank 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 VARIANCE BY MIKE BALDWIN- APPROVED

The applicant, Mike Baldwin, desires a variance from the required finished floor elevation height for structures located in the 100 year floodplain, found in Section 9-6-2 of the Flood Damage Prevention Ordinance in the Greenville City Code. The subject property is located at 1600 E. Fire Tower Road. The property is further identified as being tax parcel number 73873.

Mr. Dail delineated the area on the map. He stated that the property is located in the southeast portion of the City's jurisdiction. There is no building on the property now.

Reason for Request:

The applicant seeks relief from the regulatory flood protection elevation requirements as set forth in the FLOOD DAMAGE PREVENTION ORDINANCE.

The request is to reduce the regulatory flood protection elevation from two (2) feet above the base flood elevation (BFE) to 0.60 feet above the BFE for the finished floor elevation.

Zoning of Property: OR (Office Residential)

Surrounding Zoning:

North: OR (Office Residential)
South: OR (Office Residential)
East: OR (Office Residential)
West: OR (Office Residential)

Surrounding Development:

North: Modlin Insurance
South: Family Foot and Ankle
East: Vacant
West: Wasabi 88

Description of Property:

The subject property is 0.91 acres in size, has 100 feet of frontage along E. Fire Tower Road and is currently vacant. The applicant plans to construct a 5,500 square foot office building on the property.

Comprehensive Plan:

The property is located within Vision Area "D" as designated by the Comprehensive Plan. The proposed use is in general compliance with the Future Land Use Plan which recommends office/institutional/multi-family development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on November 5, 2015. Notice of the public hearing was published in the Daily Reflector on November 9, 2015 and November 16, 2015.

Mr. Billy Merrill, City Surveyor/Flood Coordinator, presented additional information.

Staff Comments:

Representatives for the property owner met with city staff to inquire about a reduction to the finish floor elevation requirement in the Flood Damage Prevention Ordinance. The ordinance requires the finish floor of any habitable structure constructed on this property to be elevated to the base flood elevations (BFEs) plus two (2) feet.

The representatives stated the common access driveways to the property located to the east and west were constructed in 2007 and 2009 upon the subject property. At the time the common access driveways were constructed the finished floor elevation of the proposed office building was predetermined by design. Having to elevate the structure to meet the ordinance would add unnecessary expense for the construction of ADA compliant ramps to access the structure. At that time the property was not located in Special Flood Hazard Area. The flood insurance rates maps (FIRM) were updated by FEMA in July 2014 placing the subject property in the Special Flood Hazard Area.

Staff Findings:

The property owner has not submitted a site plan to the city for construction of any building or parking lot on the subject property. The existing common access driveways upon the subject property are shown on the site plan for the construction of the office building to the east dated October 16, 2008. This plan does show future parking spaces and a future building location on the subject property, but has no elevations for the finish floor of the future building.

The cost of flood insurance is based upon risk and value of the structure and contents. Granting a variance to reduce the finish floor elevation requirement will increase the risk of flood damage and increase the cost of flood insurance to the property owner. The higher the structure is above the base flood elevation the lower the premium. Premium rates change at every even foot above or below the base flood elevation.

At the Board of Adjustment meeting on April 23, 2015, the Board granted a variance for the reduction of the minimum floor elevation requirement to the doctor's office building located to the west. This was granted to allow the finished floor of the expansion to the building to remain at the elevation of the existing floor.

Variance Criteria:

Variances from the provisions of the Flood Damage Prevention Ordinance are heard and decided by the Board of Adjustment. The findings of facts for a variance from any provision of the Flood Damage Prevention Ordinance are different than the typical criteria used by the Board of Adjustments.

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

- (a) The variance will not make the structure in violation of other federal, state or local laws, regulations or ordinances.
- (b) The variance is the minimum necessary, considering the flood hazard, to afford relief.
- (c) Variances shall only be issued upon:
 - 1. A showing of good and sufficient cause;
 - 2. A determination that failure to grant the variance would result in exceptional hardship; and
 - 3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or chapters.

Below are the pertinent sections of the Flood Damage Prevention Ordinance. They include the section the applicant is seeking relief and the administration section specific to the issuance of variances by the Board of Adjustment.

The Applicant is seeking relief of

SEC. 9-6-2 DEFINITIONS

Regulatory flood protection elevation. The elevation to which all structures and other development located within the special flood hazard areas must be elevated or flood proofed, if nonresidential.

- (1) In "Special Flood Hazard Areas" where base flood elevations (BFEs) have been determined, this elevation shall be at least the BFE plus two (2) feet for all structures and other development except manufactured homes.

The Administration Section on the issuance of variances.

SEC. 9-6-4 ADMINISTRATION

(G) Variances.

- (1) The Board of Adjustment as established by the city shall hear and decide requests for variances from the

requirements of this chapter.

(2) Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal the decision to the Superior Court as provided in G.S. Chapter 7A of the North Carolina General Statutes.

(3) Variance may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

(4) In passing upon such applications for variances, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this chapter and:

- (a) The danger that materials may be swept onto other lands to the injury of others;
- (b) The danger to life and property due to flooding or erosion damage;
- (c) The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- (d) The importance of the services provided by the proposed facility to the community;
- (e) The necessity to the facility of a waterfront location, where applicable;
- (f) The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- (g) The compatibility of the proposed use with existing and anticipated development;
- (h) The relationship of the proposed use to the Comprehensive Plan and floodplain management program for that area;
- (i) The safety of access to the property in times of flood for ordinary and emergency vehicles;
- (j) The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (k) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(5) The findings listed above shall be submitted to the Board of Adjustment, in writing, and included in the application for a variance.

(6) Upon consideration of the factors listed above, and the purposes of this chapter, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes of this chapter.

(7) Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.

(8) Conditions for variances:

(a) Variances may not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations or ordinances.

(b) Variances shall only be issued upon a determination that the variance is the minimum necessary,

considering the flood hazard, to afford relief.

(c) Variances shall only be issued upon:

1. A showing of good and sufficient cause;
2. A determination that failure to grant the variance would result in exceptional hardship; and
3. A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or chapters.

(d) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevation and the elevation to which the structure is to be built and stating that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced reference level elevation. Such notification shall be maintained with a record of all variance actions.

(e) The Local Floodplain Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

Chairman Shook opened the public hearing.

The applicant, Mike Baldwin, spoke in favor of the request. He is representing the Hayes Family Holdings. He provided Board members with a copy of a map. He stated this area was designed back in 2006. Dr. Stancil's building and the Modlin Agency building were built. The design elevations were already predetermined for the whole area. The finished floor elevations were based on those approved design elevations. Dr. Hayes purchased the property in 2012 and it was not in the 100 floodplain. During hurricane Floyd and other rain storms, this property did not flood. The flood maps were changed by FEMA in July 2014 and now included this property/area in the 100 year floodplain. He stated there are mathematical data and empirical data (based on observation). In this case, empirical data is superior to mathematical data. Unnecessary hardship. The property would not look appropriate next to the existing neighboring buildings since it would be at a higher elevation, BFE (base flood elevation) of almost three feet higher. The parking isles have been constructed to the design grades and compliance with the Code of Ordinances would necessitate many long and expensive ramps to serve the building. Hardships results from conditions of property. The owner purchased the lot with the existing parking lot improvements in place and a predetermined finished floor elevation. Hayes Family Holdings, LLC purchased the property in May 2012, over 2 years before the flood maps were revised. Hardship did not result from actions of owner. The flood maps were revised long after the property owner bought the lot and parking improvements. The owner would have never considered the flood maps would be changed to adversely affect the future development of his lot. He paid an extremely high price for this lot simply due to the infrastructure already in place which would minimize construction costs. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved. If a variance is granted, the finished floor elevation will still be at .60 feet above the BFE (100 year flood elevation), therefore the spirit, purpose and intent of the ordinance has been satisfied and public safety and substantial justice has been provided. This property is not a home. It will be an office which can be vacated if a flood was to happen. Marketability will be hindered due to the cost/salability to raise the BFE. This would be a completion of a predesigned project.

Mr. Pete West, owner of Custom Building Company, spoke in favor of the request. He built the addition to neighboring property with a variance granted by the Board and additional properties in the area. He stated there is no water on these sites. He lives behind this area which does not flood and he doesn't understand why it's

considered flood prone because it shouldn't be. He stated there were two potential users/buyers for this property but when they found out about the flood elevation, they said no.

Dr. Mark Hayes, owner of the property, spoke in favor of the request. He purchased it in 2012. His plans changed and he will not be building on the property. He was unaware of the flood elevation area until he had a potential buyer. He states there is a large retention pond behind the site which is never full. He never would have purchased the property if he knew it was in a flood zone or going to be in a flood zone. He wants the variance so they can build a building, market it and sell it.

No one spoke in opposition of the request.

Chairman asked for the Staff Recommendation.

Mr. Merrill recommended the BFE (base flood elevation) at a minimum of 1 foot, which would be a .40 difference from the applicant's request of .60 feet BFE.

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

No board discussion was made.

Chairman Shook read the required findings criteria. No objections.

Mr. Johnson made a motion to adopt the finding of facts, Mr. Frank seconded and the motion passed unanimously.

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

Correction of Procedural Omission in Approved Minutes from September 24, 2015

Attorney Little stated a section of the September 24, 2015 minutes was inadvertently omitted. He stated a copy of the corrected September minutes had been passed out. The highlighted section on page 6, First Reading of the Proposed Time Alteration from 7pm to 6pm, was now included.

Chairman Shook made a motion to accept the corrected September 24, 2015 minutes, Mr. Taft seconded and the motion passed unanimously.

With no further business, Mr. Frank made a motion to adjourn, Mr. Faison seconded, and it passed unanimously. Meeting adjourned at 7:11 p.m.

Respectfully Submitted,

Michael R. Dail, II
Planner