

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
June 22, 2017

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

Bill Johnson, Chair *	Ann Bellis *
Kevin Faison *	Thomas Taft, Jr. *
Michael Glenn *	Rodney Bullock X
Rich Winkler *	Jim Watts X
James Moretz *	Brad Guth X

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

VOTING MEMBERS: Johnson, Faison, Glenn, Winkler, Taft, Moretz, Bellis

OTHERS PRESENT:

Ms. Elizabeth Blount, Planner II	Ms. Cathy Meyer, Civil Engineer
Mr. Donald Phillips, Assistant City Attorney	Ms. Amy Nunez, Secretary
Mr. Ben Griffith, Director of Community Development	
Mr. Kelvin Thomas, Communications Technician	

MINUTES

Mr. Moretz made a motion to approve the April 27, 2017 minutes as presented, Mr. Winkler seconded and the motion passed unanimously.

UPDATE ON A REQUEST FOR A SPECIAL USE PERMIT BY WILLIAM JOSEPH DAVIS IV

Ms. Blount gave an update on a request for a special use permit by William Joseph Davis IV. She stated that the item was on the April agenda and got continued to the May agenda and then withdrawn. The property was awarded a special use permit in 1980 for a fraternity. The applicant decided to use the existing special use permit and withdrew the amended request.

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.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY KELLY AND TOBY BOUTILIER –APPROVED

The applicants, Kelly and Toby Boutilier, desire a special use permit to operate a private convention center pursuant to Appendix A, Use (8)l. of the Greenville City Code. The proposed use is located at 106 E 4th Street. The property is further identified as being tax parcel number 25337.

Mr. Glenn stated he owned property across from the proposed location but has no conflict or fixed opinion about the request. Motion made by Mr. Winkler, seconded by Mr. Taft regarding Michael Glenn ex parte and allowing him to vote. Motion passed unanimously.

Ms. Blount delineated the area on a map. She stated the property is located in the central portion of the City’s jurisdiction. Staff uses the planner’s definition of a convention center which is a commercial facility used for assemblies, meetings, conventions, conferences, seminars, product displays, entertainment functions etcetera that may be rented to various groups not hosted by the business/property owner.

Description of Property:

The subject property contains a 330-square foot 2-story commercial building with approximately 11 feet of frontage along E 4th Street. The property is located in the Center City Revitalization Area.

Zoning of Property: CD (Downtown Commercial)

Surrounding Zoning:

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

Surrounding Development:

North: Public parking lots, Coastal Fog, Martinborough, Offices
South: Truly Yours, WOOW, Offices
East: 4th Street Tavern, Parking Garage
West: Vacant Units, Emerge Art Gallery, Live United Born Learning Trail

Comprehensive Plan:

The property is located within the Uptown Core character type as designated by the Horizon Plan. The proposed use is in compliance with the Future Land Use Plan which recommends commercial and civic

development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on June 8, 2017. Notice of the public hearing was published in the Daily Reflector on June 12 and 19, 2017.

Staff Recommendation Conditions:

The establishment shall not operate as a public or private club.

Other Comments:

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

Staff Recommendations:

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. Tobias Boutilier, applicant, spoke in favor of the request. He stated that the property would be used as a multi-use space to rent out for private dinners, display of products and etcetera.

Mr. Faison asked if the property was renovated

Mr. Boutilier stated the property was already renovated.

Mr. Faison asked if there was a kitchen.

Mr. Boutilier stated no and that everything will be catered by Starlight.

No one spoke in opposition of the request.

Chairman Johnson asked for staff recommendation.

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

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

No board discussion made.

Chairman Johnson read the required findings criteria. No objections.

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

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

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY PASTOR HALEY HALL-APPROVED

The applicant, Pastor Haley Hall, desires a special use permit to operate a church pursuant to Appendix A, Use (8) o. of the Greenville City Code. The proposed use is located at 2019 N. Greene Street. The property is further identified as being tax parcel number 36382.

Ms. Blount delineated the area on a map. The property is located in the northern section of the City’s jurisdiction. The property is a 0.64-acre lot with 153 feet of frontage along N. Greene Street and contains a 3,000-square foot multi-unit commercial building.

Zoning of Property: IU (Unoffensive Industry)

Surrounding Zoning:

- North: IU (Unoffensive Industry)
- South: CH (CH (Heavy Commercial) and IU (Unoffensive Industry)
- East: IU (Unoffensive Industry)
- West: CH (Heavy Commercial)

Surrounding Development:

- North: Wooded lot
- South: Ryder Truck Rental, Kandy Coat Auto Sales & Repair facility, wooded lot
- East: East Carolina Vocational Center
- West: Wooded lot, Railroad tracks

Description of Property:

The subject property is a 0.64-acre lot with 153 feet of frontage along N. Greene Street and contains a 3,000-square foot commercial building.

Comprehensive Plan:

The property is located within the Office /Institutional character type as designated by the Horizons 2026 Plan. This character type allows for a transition between more intense commercial area and surrounding neighborhoods. Although office and institutional /civic development is preferred in this area, the subject church will occupy an existing commercial type structure and is limited to a three-year interval at the end of which a review of the compatibility of the church with the surrounding industrial area can be determined,

Therefore, the request is in general compliance with the Future Land Use Plan.

Notice:

Notice was mailed to the adjoining property owners on June 8, 2017. Notice of the public hearing was published in the Daily Reflector on June 12 and June 19, 2017.

Related Zoning Ordinance Regulations:

Definition:

Church or place of worship. A building in which persons regularly assemble for religious worship and which is maintained and controlled by a religious body organized to sustain public worship and holding a certificate of nonprofit organization from the Secretary of State.

Specific Criteria

Section 9-4-85(DD)

Church or place to worship. The special use permit shall be valid for 36 months from the date of the order granting the permit. From and after 36 months, the permit shall be considered void and of no effect and any reuse or continuance of use under this section shall be subject to reapplication and special use permit approval in accordance with current requirements.

Section 9-4-104 (A)

Shall be subject to the bufferyard regulation; however, no principal or accessory structure shall be located within 20 feet of any adjoining property zoned R-6, R-6A, R-6MH, R-6S, R-9, R-9S, R-15S, MR, MRS, RA-20 or PUD.

Staff Recommend Conditions:

Parking plan approval shall be required prior to the approval of any permits.

Other 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.

Mr. Moretz asked why they would need to reapply after three years.

Ms. Blount stated it is a requirement when the church is located in the IU zoning district.

Mr. Faison asked if the property has been operating as a church.

Ms. Blount stated yes but the request was never submitted originally.

Mr. Glenn asked about the parking requirement.

Ms. Blount stated that there is no parking on unimproved surfaces. The requirement states there must be one parking space per five seats in the main congregation area.

Chairman Johnson opened the public hearing.

Pastor Haley Hall, applicant, spoke in favor of the request. He stated he wanted to make the property noticeable as a place to worship.

Mr. Faison asked when he became aware of the need of a special use permit.

Pastor Haley Hall stated that he was unaware of the process until he put up a sign to show people where the church was located.

No one spoke in opposition of the request.

Chairman Johnson asked for staff recommendation.

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

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

No discussion was made.

Chairman Johnson read the required findings criteria. No objections.

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

Mr. Taft made a motion to approve the petition with the recommended conditions, Mr. Winkler seconded and the motion passed unanimously.

ELECTION OF CHAIR AND VICE-CHAIR

Attorney Phillips stated that the Rules of Procedures 3-1 state: *The Chairman shall be elected by majority vote of the full membership of the Board. The Board member having seniority will be given first consideration for nomination. Should that person decline said nomination, the nominees will then be chosen from the remaining regular Board members. The term of office shall be for one (1) year and begin on **June 1** or until a successor is elected; and*

he/she shall be eligible for re-election. Subject to these rules, the Chairman shall decide upon all points of order and procedure, unless directed otherwise by a majority of the Board in session at the time. The Chairman shall appoint any committees found necessary to investigate any matter before the Board. The Chairman shall have a vote on all matters before the Board. The procedure of the elections for are: 1- Open for nominations. Nominations do not require a second. 2- If no further nominations made, close the nominations by declaration of the Chair or vote by the Commission. 3- Vote in order of the nominations given. The first nominee to receive a majority vote is elected. All present members will vote. Alternate members are not allowed to serve as Chair.

Mr. Faison and Mr. Taft, as seniority members, declined consideration for nomination.

Mr. Taft nominated Mr. Bill Johnson. No other nominations made. A unanimous vote as made for Mr. Bill Johnson to serve as Chairman.

Attorney Phillips stated that the Rules of Procedures 3-2 state: *A Vice Chairman shall be elected by the Board from among its regular members in the same manner and for the same terms as the Chairman. The Vice Chairman shall serve as Acting Chairman in the absence of the Chairman, and at such times, shall have the same powers and duties as the Chairman.* Since Mr. Johnson is now Chair, there is a vacancy for Vice-Chair. The procedure of the elections is the same as for Chair with the exception of the seniority section. Alternate members are not allowed to serve as Vice Chair.

Mr. Faison nominated Mr. Rich Winkler. No other nominations made. A unanimous vote was made for Mr. Rich Winkler to serve as Vice-Chair.

Mr. Taft asked if all communications and agendas to be dispersed electronically if possible or without burden to staff.

Mr. Taft made a motion to approve communications to be dispersed electronically, Mr. Winkler seconded and the motion passed unanimously.

With no further business, Mr. Winkler made a motion to adjourn, Mr. Glenn seconded, and the motion was passed unanimously. Meeting adjourned at 6:30 p.m.

Respectfully Submitted,

Elizabeth Blount
Planner II