

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
March 22, 2018

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

Bill Johnson, Chairman - *

Rich Winkler - *

Thomas Taft Jr. - X

Kevin Faison - X

Michael Glenn - *

Rodney Bullock - *

Ann Bellis - *

Hunt McKinnon - *

James Moretz - *

Dillon Godley - *

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

VOTING MEMBERS: Johnson, Winkler, Glenn, Bullock, Moretz, Bellis, and McKinnon.

OTHERS PRESENT:

Ms. Elizabeth Blount, Planer II

Ms. Amy Nunez, Secretary

Mr. Donald Phillips, Assistant City Attorney

Ms. Cathy Meyer, Civil Engineer II

Mr. Kelvin Thomas, Communication Technician

MINUTES

Mr. McKinnon made a motion to approve the November 30, 2017 minutes as presented, Mr. Moretz 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. 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.

Secretary swore in staff and all those speaking for or against.

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY NOLAND PROPERTIES, INC.-
APPROVED**

The applicant, Noland Properties, Inc., desires a special use permit to operate a building supply facility to include 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. It is located in the central portion of the City's jurisdiction. The subject property is 5 acres in size with approximately 380 feet of frontage along Howell Street. The applicant wishes to operate a wholesale contractor supply facility with outdoor storage racks.

Zoning of Property: CDF (Commercial Downtown Fringe)

Surrounding Zoning:

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

South: R6 (Residential)

East: R6 (Residential)

West: CDF (Commercial Downtown Fringe)

Surrounding Development:

North: The Next Generation Funeral Home and a vacant lot

South: Multi-family dwellings (Glendale Court)

East: Residential dwellings

West: Vacant lot and Carolina Plumbing Supply Store

Comprehensive Plan:

The property is located within the Mixed Use and the Traditional Neighborhood, Medium-High Density character types as designated by the Horizon 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 owner on March 8, 2018. Notice of the public hearing was published in the Daily Reflector on March 12 and March 19, 2018.

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 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; 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.

Screening shall be installed for outside storage area.

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 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. Eric Schudt, engineer with Rivers & Associates, spoke in favor of the request. He provided a handout that had pictures of the lumber racks that would be on site. They are similar to the racks from a previous business at this same location which is visible on google maps street view. He stated there is existing screening at the side of the property adjacent to the single family homes and at the back of the property adjacent to the duplexes. The additional proposed racks would be next to where the previous racks were and no additional screening would be necessary.

Mr. Glenn asked how Noland is different from the current occupant of the property.

Mr. Schudt stated they are similar and there is no change of the building footprint.

Chairman Johnson asked if he thought the screening was sufficient.

Mr. Schudt stated yes.

No one spoke in opposition to the request.

Chairman Johnson asked for the staff recommendation.

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

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

Mr. Winkler asked what additional screening the City would feel is necessary that is not currently there.

Ms. Blount stated the regulations state that the Board of Adjustment may attach additional reasonable screening. Recommendations listed were: a solid wood fence, a masonry wall, earth berm, evergreen vegetation, enclosed structure or combination thereof.

Mr. Glenn asked if the Board could decide if the existing screening is ample.

Ms. Blount stated yes.

Chairman Johnson read the required findings criteria. No objections.

Mr. Winkler made a motion to adopt the finding of facts with the recommended conditions, Mr. McKinnon seconded and it passed unanimously.

Mr. Glenn made a motion to approve the petition with the stated condition and waive the additional screening, Mr. Winkler seconded the motion. In favor: Glenn, Johnson, Winkler, Moretz, Bullock, and Bellis. Oppose: Mr. McKinnon. Motion carried.

DECISION AND ORDER OF THE SPECIAL USE PERMIT FROM JANUARY 25, 2018 HEARING

Attorney Phillips stated N.C.G.S. § 160A-388 section E-2 states the written decision following a hearing shall be signed by the Chair or other duly authorized member of the Board. A quasi-judicial decision is effective upon filing of the written decision with the Clerk of the Board or such other officer or official as the ordinance specifies. The decision of the Board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy. The Board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent material and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The hearing was January 25, 2018 and there were contested facts presented to the Board. The Board tasked Attorney Phillips to prepare a proposed findings of facts in conclusion of law for the Board's consideration. Pursuant to the statute, the Board is required to, based on the evidence presented, to base its decision, inform its decision and reduce the decision to writing, findings of facts and conclusions of law. The members received copies of the proposed Decision and Order granting a special use permit for their consideration. The Decision and Order can be accepted as is or can be re-written by members based on their recollection and view of the contested facts. The Board makes the decision of what the facts are. He encouraged the Board to review the findings, discuss them and decide as a Board what the findings of facts should be.

Motion by Mr. Winkler to approve the Decision and Order as proposed. No second made.

Mr. McKinnon was concerned with item #38 in the proposed Decision and Order. He recalled hearing information that the parking deck would create 1800-1900 trips per day on to 13th Street. He assumes that to be 45% of the total capacity of the parking deck. That means that 810-855 vehicles will travel down 13th Street and will access Charles Boulevard.

Attorney Phillips stated that information was item #34 on page 11. He stated that as a Board, they have the ability to decide what the facts are based on the facts that were presented in the case.

Mr. Winkler recalls the trips as being in and out and that would reduce the percentage by half.

Mr. McKinnon stated the end of item #34 read: there will be 10 site trips in the morning turning into the property and 29 in the evening.

Attorney Phillips stated the Board is not limited to these facts. They can be expanded or deleted. The Board ultimately decides the facts as necessary and base them on their conclusion. He stated the Board could continue the matter to review in more detail the findings.

Mr. McKinnon is concerned with the only doors of the dormitory for 600 students are three doors on Charles Boulevard. It would be a safety issue since most would be going north but would probably not go south to cross at the crosswalk.

Attorney Phillips reiterated that the Board needs to determine what the facts were that were presented.

Mr. Winkler stated these are the facts as presented.

Mr. McKinnon stated he is trying to see if he has interpreted the facts correctly.

Mr. Bullock asked if these facts are factual numbers.

Mr. McKinnon asked if they agreed that this is what it actually says.

Mr. Winkler stated yes.

Mr. McKinnon stated his concern with increasing pedestrians and vehicular traffic will be a safety issue. More pedestrian protection is needed at 13th Street.

Mr. Winkler referred to item #31 that stated the City Engineer and NCDOT have not made their final comments and recommendations.

Attorney Phillips stated a condition of the special use permit was in paragraph 2-b on page 17 that states that the applicant shall comply with approved traffic impact analysis recommendations.

Mr. McKinnon suggested they wait until they receive that data.

Attorney Phillips reiterated that the Board's task is to determine what the facts were that were presented at the hearing. He stated facts can be modified, deleted, added or take more time to review the facts.

Mr. Winkler stated they are not contesting the facts. Mr. McKinnon is concerned with pedestrian safety.

Ms. Meyer stated at the last meeting about this they highlighted signalization. They are aware of the concerns and are looking at all possibilities with NCDOT. Before they can move forward, they need to receive the site plan.

Mr. Winkler stated that everyone needs to come together.

Ms. Meyer stated yes. They are looking at sidewalks, barriers, ADA compliance, and bike racks. The goal is to funnel pedestrian traffic in one direction.

Mr. Moretz highlighted Mr. McKinnon's concern about egress of the building closer to 13th Street and Charles Boulevard and not at 14th Street.

Attorney Phillips stated that the discussion is almost like re-opening the hearing. The task is to determine the facts.

Mr. Winkler stated the proposed order by Attorney Phillips represents the facts heard at the hearing.

Mr. McKinnon suggested to wait until all the studies are in agreement on pedestrian safety.

Chairman Johnson stated that the permit was approved with conditions that must be met. The City and NCDOT still have requirements that must be met.

Mr. McKinnon asked if the Board had sufficient information to make a decision. He asked if they have all the facts they need. There is no site plan approval. He asked if this application was incomplete and therefore cannot render a judgement.

Mr. Bullock stated that at the hearing and in the order regarding the facts, it stated that there are some incomplete items. Knowing this, the Board approved their request with stipulations that items needed to be met before they could move forward and now have discharged their duty. He recognized Mr. McKinnon's concerns with pedestrian safety and encouraged him to share those concerns directly with staff. Staff will make sure all stipulations are met and that pedestrian safety is looked at. The discussion has become redundant because the information was heard at the hearing in January. He stated the Board has done everything they were supposed to do. He stated he too has concerns about safety with the exponential growth of pedestrians in this area and that concern should be shared with the City.

Mr. Godley stated they should not reopen this issue. It is true there are safety concerns but there is no one here to answer those concerns. It should not be a precedent to approve a permit and then reopen it when they receive the order reduced to writing.

Chairman Johnson stated that one of the conditions for the approved permit was to comply with approved traffic impact analysis recommendations. These have yet to be made. They needed their permit in order to continue.

Attorney Phillips stated he wanted to clarify that on page 20, Mr. Michael Birch is the attorney representing both the applicant and the property owners. He hadn't received a response from Mr. Birch regarding if he would accept the order on behalf of all the property owners or provide addresses for each.

Mr. Winkler made a motion to approve the Decision and Order Granting Special Use Permit as presented subject to the service of property owners correctly, seconded by Mr. Bullock. In favor: Glenn, Johnson, Winkler, Moretz, Bullock, and Bellis. Oppose: Mr. McKinnon. Motion carried.

With no further business, Mr. Moretz made a motion to adjourn, Mr. Winkler seconded and it passed unanimously. The meeting adjourned at 6:52 pm.

Respectfully submitted,

Elizabeth Blount
Planner II