

MINUTES ADOPTED BY THE BOARD OF ADJUSTMENT
NOVEMBER 30, 2017 SPECIAL MEETING

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. - *

Kevin Faison - *

Michael Glenn - *

Rodney Bullock - X

Ann Bellis - *

Hunt McKinnon - *

James Moretz - X

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

VOTING MEMBERS: Johnson, Winkler, Taft, Faison, Glenn, Bellis, and McKinnon.

OTHERS PRESENT:

Ms. Elizabeth Blount, Planer II

Ms. Amy Nunez, Secretary

Mr. Donald Phillips, Assistant City Attorney

Mr. Scott Godefroy, City Engineer

Mr. Thomas Weitnauer, Chief Planner

Mr. Kevin Mulligan, Director of Public Works

Mr. Kelvin Thomas, Communication Technician

MINUTES

Mr. Taft made a motion to approve the October 26, 2017 minutes as presented, Mr. Faison seconded and the motion passed unanimously.

Ms. Blount stated that a copy of an email was given to the Board members stating that the applicants of item number 2, Andy and Heather Kiser, have withdrawn their request.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 HARRY & GWENDOLYN D. THOMAS-APPROVED

The applicants, Harry and Gwendolyn D. Thomas, desire a special use permit to operate a home occupation child day care pursuant to Appendix A, Use (3)a. of the Greenville City Code. The proposed use is located at 2620 Camille Drive. The property is further identified as being tax parcel number 69775.

Attorney Phillips stated this item was tabled from the October 26, 2017 meeting of the Board to verify the existence of the restrictive covenants and to clarify the restrictive covenants' impact upon the Board's decision-making authority and ultimate decision. City Staff did verify the existence of The Declaration of Restrictive Covenants for Charleston Village Section 1, Phase 1 and Phase 2 which were recorded on March 11, 2005 in Book 1877, Page 187-193 of the Pitt County Registry. The entirety of the Restrictive Covenants at issue are included in your agenda packet. As you will note, there are several highlighted portions which were read in your hearing by one of the opponents to the application at the October 26, 2017 public hearing. He asked what does the existence of restrictive covenants with potentially prohibitive language mean to the Board of Adjustment regarding this particular application. There are public land use restrictions and private land use restrictions. Sometimes they overlap and both can prevent a certain project such as for an example, the building of a nuclear power plant in a residential area, etc. Sometimes, one may be at odds with the other. This Board is charged with interpreting and enforcing public land use restrictions not private land use restrictions. The private land use restrictions may be enforced separately by individual homeowners or a homeowners' association or otherwise pursuant to the specific language of the restrictive covenants. This enforcement is a separate proceeding from the action taken by the Board. As a reminder, pursuant to your Rules of Procedure Section 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.

Secretary Nunez stated that Mr. Taft, Mr. Winkler and Mr. Glenn were not in attendance at the original October 26, 2017 hearing.

Attorney Phillips stated they will not vote. A simple majority vote is needed with the remaining members.

Ms. Bellis asked if the restrictive covenants was not applicable.

Attorney Phillips stated that the Board does not have the authority to enforce private restrictive covenants.

Secretary Nunez stated the minutes from the October 26, 2017 meeting reflect that the public hearing for this item was closed and the findings of facts were read.

Mr. Faison made a motion to approve the petition with the recommended conditions, Ms. Bellis seconded and the motion passed unanimously. (Those voting: Johnson, Faison, Bellis, McKinnon).

Attorney Phillips stated: Pages 6 to 7, Section 7 of the Rules of Procedures states as follows:

7. APPEALS AND APPLICATIONS

7-1. Types of Appeals. The Board shall hear and decide all appeals from decisions of administrative officials who are authorized to enforce zoning or unified development ordinances, appeals arising from the interpretation of any other ordinance regulating land use or development, and appeals of decisions of the Historic Preservation Commission.

7-2. Procedures for Filing Appeals. No appeal shall be heard by the Board unless notice thereof is filed within thirty days (30) days after the receipt of written notice of the decision. Notice may be served by hand delivery, electronic mail or first-class mail. It shall be conclusively presumed that all who have standing have constructive notice of the decision from the date when a sign is posted on the affected property with the words “Zoning Decision” or Subdivision Decision” in letters at least 6 inches high and containing the name and number of person to contact concerning the decision. The person serving the decision shall file prepare a certification of service noting the date and manner in which the notice was served and filed with the City Clerk. The sign must remain at least 10 days.

7-3. Filing of Appeal. Appeals must be filed in writing with the City Clerk within the time requirements and stating the grounds for the appeal.

7-4. Standing. All persons who meet the requirements of NCGS §160A-393(d) plus the city including but not limited to 1) persons having an ownership interest in the property affected by the decision; 2) has an option to purchase or contract to purchase the property which is the subject of the decision; 3) was an applicant before the decision making board/commission; 4) any person who would suffer special damages as a result of the decision; 5) an incorporated or unincorporated association to which owners or lessees of property in a designated area affected by the decision. All applications shall be made upon the form furnished for that purpose and all required information shall be provided by the applicant before an appeal or an application shall be considered as having been filed.

7-5. Fees. No application or notice of appeal shall be considered as having been completed until the filing fee set by the City has been paid.

7-4. Time of Hearing. After receipt of the completed notice of appeal from the applicant, the Secretary shall schedule a hearing at the next regular meeting or at a special meeting held in accordance with Section 5-2 of these Procedures, within thirty-six (36) days from the filing of such completed notice of appeal.

7-5. Notice. The Board shall give public notice of a hearing by all of the following means:

(a) By publishing or advertising notice of the hearing in a newspaper of general circulation in the City of Greenville once a week for two (2) successive calendar weeks, said notice to be published the first time no later than ten (10) days prior to the date established for such public hearing.

(b) By posting a sign on the property which is subject to the action at least seven (7) days prior to the hearing.

(c) By mailing notices to the owners of all properties located within one hundred (100) feet of any portion of the property which is the subject of the action at least seven (7) days prior to the hearing. Before a notice of appeal is considered as being complete, the petitioner shall be required to furnish the Planning and Community Development Department with the names and mailing addresses of the owners of all properties located within one hundred (100) feet of the property which is subject to the action. (Where the property is bounded by a street, alley, stream or similar boundary, the land owner across such boundary shall also be considered as an adjoining land owner.) All such notices shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.

7-6. Conduct of Hearing.

(1). Administrative Decisions. An appeal from a zoning official shall be conducted in the same manner as a hearing on application for special or conditional use permit including notice, receipt of evidence, conduct of hearing and decision. The official who made the decision shall be present as a witness. The appellant can present matters outside of the appeal but if any person or other party to the proceedings would be prejudiced by such presentation, the board will continue the hearing. The Board may

1. Affirm,
2. Reverse or
3. Modify

the decision of the administrative official.

Before you begin the hearing on this appeal, I want to give you some preliminary instructions that you might find useful as you hear this case.

1. You are sitting as a quasi-judicial body.
2. You will only consider that testimony that is: 1) competent, 2) material, and 3) substantial.
3. As a reminder hearsay evidence is not admissible unless it falls within one of the exceptions. If testimony or written evidence is received that you believe contains hearsay, you may ask for an interpretation and whether or not an exception is available.
4. Throughout the hearing, the Appellant, in this case has the burden of persuasion and proof.
5. The Appellant's burden on appeal is to establish that decision of the Administrative or Zoning Officer's decision was not based on material, competent, and substantial evidence.

Appellant is appealing the decision of a Decision by the Director of Public Works. This is an appeal is from an Administrative or Zoning officer decision, this is not a hearing to vary or change an ordinance, but to apply what the City Council has issued to the particular facts.

It requires a 3-step process:

- A) Interpret the meaning of the ordinance which is questioned.
- B) Apply the ordinance to the particular facts presented.
- C) Sustain, reverse, or modify the decision of the administrative or zoning officer.

THE ORDER OF THE HEARING WILL BE AS FOLLOWS

1. The Administrative or Zoning officer who made the decision will present the background of the case including those facts that have previously been decided and are not in dispute.
2. The Officer's presentation can include its position.
3. You may ask questions of the Officer concerning the presentation or may ask me for an interpretation of the law.

4. The Appellant will then present his case. The Appellant will call any witnesses and produce any documents for your consideration.

When a witness is through testifying, the Officer may ask questions.

After the Officer, the Board may ask questions of the witness concerning the witness' testimony including explanation and clarification.

5. When the Appellant finishes his case, the Officer may present any additional matters for you to consider including any witnesses. If witnesses are presented, examination and cross examination will occur just like the case in chief.

6. At the conclusion of the Appellant's case, the Board may ask if there is rebuttal testimony or evidence. Rebuttal is not rehashing what was originally said but specifically addressing any points brought out by the Appellant if it presents additional witnesses or documents.

7. The parties may if they wish make a concluding statement. This is not testimony but a summary of why their position is the correct position or why the other position is not correct or a combination of both.

When all of the evidence is in, the hearing will be closed. At that point he will provide some closing instructions. He asked if there were any questions at this point and if not, the hearing may proceed.

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

PUBLIC HEARING ON A REQUEST FOR AN ADMINISTRATIVE APPEAL BY THOMAS GOODWIN-APPROVED

The applicant, Thomas Goodwin, desires to appeal a decision made by the Public Works Director on October 18, 2017 concerning the requirement to install a sidewalk at the property located at 1000 Staton Road. The property is further identified as being tax parcel number 83952.

Mr. Kevin Mulligan delineated the property. The site is for Sunbelt Rentals and is located in the City's ETJ. It's across the street from the Aquatics Center.

Zoning of Property: IU (Unoffensive Industry)

Surrounding Zoning:

North: IU (Unoffensive Industry)

South: IU (Unoffensive Industry)

East: IU (Unoffensive Industry)

West: IU (Unoffensive Industry)

Surrounding Development:

North: Aquatics & Fitness Center, Ignite School

South: A vacant lot
East: A wooded lot
West: FedEx

Description of Property:

The subject property is a 6.44 acre lot located within the City's extraterritorial jurisdiction.

Notice:

Notice was mailed to the adjoining property owner on November 9, 2017. Notice of the public hearing was published in the Daily Reflector on November 13 and November 20, 2017.

Mr. Mulligan stated the City Of Greenville requires sidewalks with the construction of any new development of non-residential developments in accordance with SEC. 9-4-281 of the City Of Greenville Code. SEC. 9-4-4: Zoning regulations pertain to the City limits and the ETJ. He showed a picture of the approved site plan with the proposed sidewalk.

SEC. 9-4-281 SIDEWALK REQUIREMENTS ALONG MAJOR THOROUGHFARES, MINOR THOROUGHFARES AND BOULEVARDS:

- Construction of sidewalks shall be required along major thoroughfares, minor thoroughfares and boulevards in conjunction with the construction of any new development of non-residential developments, mixed-use developments and multifamily residential developments in accordance with the provisions of this section.
- Sidewalks shall be provided along both sides of major thoroughfares, minor thoroughfares and boulevards as designated on the adopted Highway Map from the Highway Element of the Comprehensive Transportation Plan, as amended.
- The developer shall provide the sidewalk on the side of the street where the development is located in conjunction with the new development on existing lots.

Mr. Mulligan stated that Staton Road is a minor thoroughfare. The GREAT Bus Service extends to this area in front of the Aquatics Center. Currently there are not sidewalks on either side of the street. A 10-year master plan for sidewalks was developed. To install all sidewalks where they are required would cost over \$125 million. He showed pictures of examples of sidewalks that have been installed with new development. He spoke about Vision Zero which is a policy that the City is evaluating. It is a policy with the goal of zero pedestrian, zero motorist and zero cyclist deaths. The City has had pedestrian deaths. All developments required to install sidewalks have complied. In summary, the City has been consistent in requiring sidewalks in accordance with SEC. 9-4-281 of the City Of Greenville Code.

Mr. Winkler asked if there was anything on improvements to existing buildings.

Mr. Mulligan stated if an existing building is expanding, they will be required to install sidewalks.

Ms. Bellis asked when the ordinance was passed.

Mr. Mulligan stated about 5-6 years ago.

Ms. Bellis asked if other businesses developed on Staton Road since the ordinance passed.

Mr. Mulligan stated not to his knowledge.

Mr. Taft asked if there were any parcels left to be developed.

Mr. Mulligan stated there are no empty parcels.

Chairman Johnson asked when Staton Road was designated a minor thoroughfare.

Mr. Mulligan stated he was not sure.

Mr. Faison asked if the City or County would put in sidewalks since there are no more developable lots.

Mr. Mulligan stated yes with the exception of a change of development or addition.

Attorney Phillips suggested that the facts should be heard regarding the application, decision by the zoning officer, and pertinent facts to the appeal request.

Ms. Blount stated the application was received October 8, 2017. The written decision was received from the Director of Public Works on October 18, 2017. The applicant wanted to make sure his application was in on time. The applicant and the Public Works Director had been communicating via email. The original decision was in July 2017 but the applicant had not applied for an appeal. A written statement was needed to accompany his appeal request.

Mr. Faison asked what happened in July.

Ms. Blount stated the site plan was approved with the sidewalk. The appeal fee was paid when the application was submitted. The request was published in the Daily Reflector and adjoining property owners received their letters.

Mr. Thomas Goodwin, appellant and owner of T.D. Goodwin Construction, spoke in favor of his request to appeal. The original request to remove the sidewalk was made by his engineer and was denied in an email back in July. The site plan was submitted but without the sidewalk. He had to resubmit the site plan with the sidewalk in order to get approved. The project for Sunbelt Rentals was fast paced and time sensitive. His main goal back in July was to get the site plan approved and would take care of the issue with the sidewalk later. He is a builder and builds often in Greenville and builds sidewalks as well. He believes that sidewalks are a great idea when applicable. This situation doesn't make sense to put in sidewalks. He stated the denial he received was based directly from the ordinance SEC. 9-4-281. He supplied a handout for members that highlighted the ordinance. He is appealing based on the special conditions in the same ordinance. There are many accentuating circumstances in this situation that are not found in other circumstances. This property was the last vacant lot to be developed and there are no other sidewalks. The probability of anyone adding to or tearing down a building that would warrant sidewalks is extremely unlikely. He is being required to install sidewalks in a ditch area with handicap access from one side of the frontage of the lot to the other which ends in a non-encroachment area where nothing can be built. At no point in the future will the sidewalk connect due to the non-encroachment area and past that is Parkers Creek. There is no curb and gutter in this area. It is impossible to install a sidewalk at the proper elevation that, at some point in the future would be torn out, would satisfy the ADA requirements and allow the City to tie into it properly.

Mr. Winkler asked if the sidewalk had to be in the ditch.

Mr. Goodwin stated that is the only drainage area because there is no curb and gutter. This is the only situation like this in Pitt County. He would have to put the sidewalk at the bottom of the ditch.

Mr. McKinnon asked why the sidewalk could not be moved closer to the parking lot.

Mr. Goodwin stated it is a possibility but it would be a tight fit. The placement would be to the side of the ditch but at the same elevation. It will be a challenge to make it ADA compatible. He has never installed a sidewalk without a curb and gutter street.

Ms. Bellis asked how far from the edge of the paved road does the sidewalk have to be.

Mr. Goodwin stated he did not know right now but that it can be pretty close. Due to the center line of the ditch and the light poles, they decided to pull the sidewalk further back toward the building than push it back to the street.

Ms. Bellis asked if the ditch connected with other drainage. She asked if the ditch could be moved closer to the building so that the sidewalk will fit.

Mr. Goodwin stated yes the ditch connects to other drainage which is Parkers Creek. He stated there is room for the sidewalk but there will be an issue with the elevation of it.

Mr. McKinnon stated that there is room but it would be very expensive.

Mr. Goodwin stated he cannot do work on the state road right-of-way. The elevation issue will be in the future when the City tries to tie into the sidewalk.

Mr. McKinnon stated that the placement of the sidewalk may not be desirable but it's feasible.

Mr. Goodwin stated yes but in his opinion the sidewalk would be about 90% temporary.

Mr. McKinnon stated that is your opinion.

Mr. Faison asked if they could consider Mr. Goodwin an expert.

Attorney Phillips stated that an expert would have to list their credentials for a designation of an expert. Then the Board would need decide to accept if the individual is an expert in that particular field to speak as an expert.

Mr. Glenn asked if the information from the engineer in the emails was to be considered expert.

Attorney Phillips stated it is evidence since it is part of the record but the opinions found in there are not supported by anyone here tonight who wrote the email.

Mr. McKinnon stated that if the question was about development up and down the street, it would be a question for a real estate appraiser. It's not a question for a builder. He stated the applicant speculates about future development on Staton Road. Although the applicant is a builder, he may not be an appraiser.

Mr. Goodwin stated an appraiser would come after development.

Mr. McKinnon asked, given his license as a builder, did his coursework prepare him to foresee the potential for development to adjacent sites. He asked if the applicant was uniquely prepared to foresee adjacent development.

Mr. Goodwin stated yes. He is a builder and a developer.

Mr. McKinnon stated that the applicant stated there would be no development in perpetuity.

Mr. Goodwin stated that there are no empty lots and therefore not developable in that matter. The only other development is to expand existing sites or to tear down and rebuild.

Chairman Johnson asked if there were sidewalks at the buildings to the west of this site.

Mr. Goodwin stated no and showed aerial photos.

Mr. Faison stated the Aquatics Center is across the street, which is owned and leased by the City.

Mr. McKinnon stated the Ignite School is also across the street with the potential for bus stops.

Mr. Glenn stated the sidewalk pictures that Mr. Mulligan showed were all in residential areas. This situation is totally different. The email from the engineer on June 29, 2017 listed six points that are very worthy of consideration.

Ms. Blount stated the email was about the site plan and not the appeal and that Mr. Baldwin was the applicant's representative at that time.

Mr. Goodwin asked Mr. Mulligan for a timeline of sidewalks in this area in the future. He stated there is no residential in a two mile radius. This is an industrial park. There are no grocery stores or gas stations or things of the like that would promote pedestrian traffic. The only thing is the Aquatics Center and there is a bus stop that designates a singular location to control pedestrian traffic to the Aquatics Center. It is a heavily commercial traveled road due to the Coca-Cola Company, FedEx and UPS. This situation exists nowhere else in Pitt County.

Mr. Faison asked if the main reason was the sidewalk to nowhere or a financial burden.

Mr. Goodwin stated it is because it's a sidewalk to nowhere. He puts in sidewalks all the time. He stated after you pass Hasting's Ford, there are no sidewalks to be found.

Chairman Johnson asked if the land east of the request was wet areas.

Mr. Goodwin stated yes. He believes this situation is the perfect example of the special condition provision in the ordinance that allows deferment. It's not about money. If there were curb and gutter and it made sense to put in a sidewalk, he would. This does not make sense. It would be years before the City adds sidewalks to this area.

Chairman Johnson asked if there was anyone else to speak in favor of the applicant. No one else spoke.

Mr. Goodwin stated he had no questions for Mr. Mulligan.

Mr. Winkler asked if the sidewalk was presented in the site plan.

Mr. Mulligan spoke in rebuttal. He stated the request to remove the sidewalk was done before the site plan received final approval. The final site plan approval was issued with the sidewalk plan after he denied the request to remove the sidewalk. The sidewalk needs to meet ADA requirements. Since Staton Road is a DOT road, the sidewalk needs to be at the back of the right-of-way. The applicant would need an encroachment agreement in order to install the sidewalk within the DOT right-of-way. The City nor DOT would allow a sidewalk be installed at the bottom of a drainage swall. He has seen pedestrians on Staton Road. He compared Staton Road to Belvoir Road that is also industrial and pedestrians have been hit.

Mr. Taft asked Mr. Mulligan to speak about the encroachment and the creek.

Mr. Mulligan stated the sidewalk would end at Parkers Creek or turn and cross the street.

Chairman Johnson stated the idea is to have pedestrian safety. If someone is walking east on Staton Road now, they would be walking on grass and then come up to this sidewalk, in front of the applicant's property, and then step back into the grass near Parkers Creek or cross the street. Mr. Goodwin is being asked to provide sidewalk to nowhere on either side of his property. Eventually the City will build sidewalks on this road.

Mr. Mulligan stated it is clear there is no sidewalk now. He stated there are many locations throughout the City that do not have sidewalk continuity. It is a slow process to infill sidewalks throughout the City. A deferment doesn't apply in this scenario.

Chairman Johnson stated Mr. Goodwin applied for a waiver which was denied and now it's up to the Board.

Mr. Faison asked what the estimated time that the City would add sidewalk here.

Mr. Mulligan stated currently there are no development plans for Staton Road but things change quickly.

Mr. Winkler asked if appeals or waivers are done prior to the development of the lot and why this wasn't hashed out before the building was constructed.

Mr. Mulligan stated there was submission, discussion and evaluation. It was decided to be consistent and maintain that all new development include sidewalks. It will not be built in the bottom of the ditch.

Mr. Taft asked Mr. Mulligan to explain further.

Mr. Mulligan stated the ditch is where storm water collects. The sidewalk will be set back from the drainage swall which is in the right-of-way. DOT requires the sidewalk to be placed at the back of the right-of-way.

Mr. McKinnon asked if Mr. Mulligan had any pictures of sidewalks without curb and gutter.

Mr. Mulligan stated they exist along the greenways.

Mr. Faison asked if there were any other development in the ETJ that is installing sidewalks.

Mr. Mulligan stated FedEx is building on Industrial Road that is in the ETJ and an industrial site. All new or expanding developments require sidewalks.

Ms. Bellis stated it would require a rezoning change to have residential in this area. Otherwise it will remain industrial and never need mixed used.

Mr. Weitnauer stated that ECVV, which is connected to the Aquatics Center, received a special use permit to operate as an elementary, middle and high school. They have an expansion plan and with that comes more interest in other types of development.

Mr. Goodwin spoke in rebuttal. He stated when he originally submitted the site plan it was without the sidewalk. During the course of the process he was delayed due to a late return on comments about the storm water detention pond. His engineer was able to work it out but he had to buy additional land to do so. He was doing this project in five months rather than the usual eight months. He had to include the sidewalk in order to get final site plan approval. He didn't have the time to plead his case about the sidewalk prior to the site plan. He said the sidewalk wouldn't be in the middle of the ditch, but it would be right next to it. It will be a challenge to install an ADA compliant sidewalk and at this time will not serve any function. If ECVV is to grow, they shouldn't be on the sidewalk across the street. The sidewalk would go to the non-encroachment area and then have to cross the road. It doesn't seem safe. He asked Mr. Mulligan if it would be a priority for the City to put in sidewalks here in the next five years and if his sidewalk would be altered or torn up in order to connect to it.

Mr. Mulligan stated the future City installment of sidewalks there is not germane to this appeal. He stated he does not think it would have to be torn up.

Ms. Bellis asked how long this ordinance has been in place.

Mr. Mulligan stated since 2014.

Ms. Bellis asked if there has been any new buildings in industrial areas where sidewalks were installed.

Mr. Mulligan stated yes.

Mr. McKinnon asked for examples.

Mr. Mulligan stated FedEx on Industrial Boulevard which is also in the ETJ.

Mr. Goodwin stated there is developable properties around the FedEx on Industrial Blvd. Staton Road is very different.

Mr. Mulligan stated the code has not changed since the plans for this property were submitted.

Mr. Goodwin stated that the deferment in the ordinance applies to this situation.

Mr. McKinnon stated he thought that once the site plan is approved there can't be variances from it.

Ms. Blount stated a minor alteration request can be done to alter the site plan.

Mr. Goodwin stated he needs to get his tenant in the building by December 20, 017. He asked, in case the decision is not reversed, if they would allow him to get a temporary certificate of occupancy.

Chairman Johnson stated the Board can reverse, affirm or modify. He stated they will do their best to not leave him hanging. He asked for closing arguments.

Mr. Mulligan stated that he would work with the applicant regarding occupancy. In the past if work was not completed by a certain time, the applicant would put up a bond and be granted occupancy.

Chairman Johnson stated they would be willing to issue a bonded certificate of occupancy.

Mr. Mulligan stated the sidewalk needs to meet ADA requirements. There are many segments in and out of the City that are not connected. At some future point there will be sidewalks on Staton Road. The focus is on improved pedestrian safety.

Mr. Goodwin stated he puts in sidewalks all the time. This is an exception because of the non-encroachment area making it a sidewalk to nowhere. This is an industrial park and there is no reason the general public should be walking in this area. There is no curb and gutter for the installation of the sidewalk and makes it an atypical situation. It will be extremely difficult to make the sidewalk off center of the right-of-way storm well area ADA compliant. He stated per his conversations with DOT, there have been no incidents of pedestrians being killed or hurt in automobile accidents here in the last ten years.

Chairman Johnson closed the hearing.

Attorney Phillips stated to Members of the Board that all of the evidence is before you to make your decision. Tonight, based upon the evidence presented and the record before this Board, the Board should make its decision to either 1) Affirm, 2) Reverse or 3) Modify the decision of the administrative official. The Chair will call for a motion to either affirm, reverse, or modify the decision of the Administrative Appeal. A second is required on any motion. When the motion and second is made, the Board will then discuss on the record the objective facts that are found to support or defeat the motion. When all discussion is completed, the Chair then will call for a vote on the motion on the floor to: a. To reverse or modify the Administrative or Zoning officer's decision requires a simple majority OR b. To affirm the Administrative or Zoning officer's decision requires a simple majority. The Board should then instruct counsel to the Board to draft a proposed Decision including Findings of Fact and provide the proposed Decision to the Board for its consideration at the next meeting of the Board.

Mr. Taft stated this Board is to look at the blanket zoning designations and other items of that nature and decide under a specific case if there is something that could be done differently. This is a great example. Sidewalks are a City-wide requirement. We heard specific reasons why this doesn't make sense for this specific property. It is this Board's duty to hear the facts and make an informed decision.

Mr. Taft made a motion to reverse the Zoning Administrator's decision and not require the applicant to have a sidewalk. Motion seconded by Mr. Faison. Mr. Taft stated his decision is based on the fact that the sidewalk would terminate into the non-encroachment area and force pedestrian traffic to cross the street which would create a

public safety hazard. **Vote. In favor to reverse: Bellis, Johnson, Taft, Faison, and Glenn. Oppose reversing: McKinnon and Winkler. Motion carried 5-2.**

Ms. Blount stated that based on the Board's decision, the Planning Division will need a minor alteration to the site plan be submitted.

Attorney Phillips stated the City could appeal the decision to Superior Court.

ANNOUNCEMENT-2018 BOARD OF ADJUSTMENT CALENDAR

Ms. Blount stated a copy of the 2018 Board of Adjustment meeting dates was included in their packets. Please make note of these dates.

With no further business, Mr. Winkler made a motion to adjourn, Mr. Taft seconded and it passed unanimously. The meeting adjourned at 7:56 pm.

Respectfully submitted,

Elizabeth Blount
Planner II