

MINUTES ADOPTED BY THE GREENVILLE BOARD OF ADJUSTMENT
February 28th 2019

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 - *	
Nathan Cohen - X	Christopher Lilley - *
Michael Glenn - *	Rodney Bullock - *
Ann Bellis - *	Hunt McKinnon - *
James Moretz - X	Dillion Godley-*
Sharon Evans-*	Stephen Atkinson -*

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

VOTING MEMBERS: Johnson, Glenn, Bellis, Lilley, Evans, McKinnon, Bullock and Godley

OTHERS PRESENT:

Ms. Elizabeth Blount, Planner II.	Ms. Camillia Smith, Secretary, Notary
Mr. Donald Phillips, Assistant City Attorney	Ms. Cathy Meyer, Civil Engineer
Kelvin Thomas, Communications Technician	Ms. Chantae Gooby, Chief Planner

MINUTES

Mr. Hunt made a motion to approve the January 24th, 2019 minutes as presented, Ms. Evans seconded and the motion passed unanimously.

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

- A. The Board of Adjustment is a quasi-judicial body that makes a decision concerning an application, petition or appeal based on the evidence presented by those in favor as well as those in opposition.
- B. The members of the Board of Adjustment are lay persons and as such, the rules of evidence that are followed in a court are relaxed for cases heard before this body.
- C. Though the rules of evidence are relaxed, it does not mean they are ignored. Only evidence that is material, competent, and substantial will be considered and may be used by the Board in its decision-making process.
- D. The Board may not consider, nor is it admissible to present or offer affidavits, letters or other writings in support of or in opposition to a matter before the Board unless the person who prepared the writing is testifying. These writings are considered hearsay.

1. Statements by a person such as “In my opinion, the application will create a traffic hazard,” is not an admissible opinion and may not be considered by the Board.
 - a. However, such an opinion may be admissible if it is made by an expert or a person who is qualified to give opinions concerning traffic hazards, is making a presentation to the Board concerning his or her investigation and the basis for his or her conclusion in the report.
 - b. A lay person can give an opinion but he or she also must present facts to show how the proposal affects his or her piece of property specifically and not just in a general way.
2. A statement that another person who is not present and not testifying either supports or doesn't support the petitioner or application is hearsay and is not admissible.
3. The same rule applies to both the applicant and those in opposition.

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

4-3. No member of the Board of Adjustment shall participate in either the discussion or vote on any special use permit, variance, or appeal from an administrative officer's decision in any manner that would violate the affected persons' constitutional right to a fair and impartial decision maker. Prohibited conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter and not willing to consider changing his or her mind; and undisclosed ex parte communications with the person before the Board, any witnesses, staff, or other Board members. Decisions on either a request for recusal by a member or objections by a person appearing before the Board shall be decided by a simple majority vote.

4-4. No Board Member shall take part in the hearing, consideration, or determination of any matter in which that Board Member is involved or has a financial or personal interest. Personal interest shall be defined as having a family member involved in the project under consideration, a neighborhood association involvement where a Board Member is on the governing body of such association, or where the Board Member is involved in a conflict or dispute with the applicant on a matter unrelated to the application. 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.

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

NEW BUSINESS

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY DAWN COX

The applicant, Dawn Cox, desires a special use permit to operate a Childcare Facility pursuant to Appendix A, Use (8) a. of the Greenville City Code. The proposed use is located at 1304 N. Greene Street. The property is further identified as being tax parcel numbers 18302 and 18279.

Ms. Blount delineated the property located in Northern portion of the city. The .277 lot holds a 22,000 sq. feet building zoned as Commercial Downtown Fringe. And has 90 feet of frontage along North Greene Street. The property is identified as Commercial character type by the Horizon 2026 Greenville Community Plan.

Zoning of Property: CDF (Downtown Commercial Fringe)

Surrounding Zoning:

North: CDF (Downtown Commercial Fringe) and CH (Heavy Commercial)
South: CDF (Downtown Commercial Fringe), CH (Heavy Commercial) and R6
(Residential)
East: CDF (Downtown Commercial Fringe) and R6 (Residential)
West: IU (Unoffensive Industry)

Surrounding Development:

North: Vacant commercial building and lot
South: Vacant commercial building and lot
East: Vacant lot and childcare
West: Perdue Agricultural Grain and GUC electrical station

Description of Property:

The subject property is 0.27 acres in size with approximately 90 feet of frontage along N. Greene St. The applicant wishes to operate a child day care facility within the existing building.

Comprehensive Plan:

The property is located within the Commercial character types as designated by the

Horizon 2026 Greenville Community Plan. The proposed use is in compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on February 14, 2019. Notice of the public hearing was published in the Daily Reflector on February 18 and February 25, 2019.

Related Zoning Ordinance Regulations:

Definition:

Day care; child. An establishment which provides for the care and supervision of six or more children away from their homes by persons other than their family members, custodians or guardians for periods not to exceed 18 hours within any 24-hour period.

Specific Criteria

- (1) All accessory structures, including but not limited to playground equipment and pools must be located in the rear yard.
- (2) The minimum lot size shall be increased by a ratio of 100 square feet per child in excess of five.
- (3) Outdoor play area shall be provided at a ratio of 100 square feet per child and shall be enclosed by a fence at least four feet in height. Further, all playground equipment shall be located in accordance with the bufferyard regulations.
- (4) If located in a residential district, a residential appearance of the site shall be maintained to the greatest possible extent.
- (5) Employee parking shall be at the rear of the structure when a child day care facility is located in a residential district.

Staff Recommended Conditions:

Day care facility shall comply with city code requirements, all state licensing regulations and NC Department of Health and Human Services regulations prior to operation.

Site plan and parking plan approval for required parking shall be obtained prior to operation of the business.

Other Comments:

The proposed project must meet all related NC State fire and building codes for the associated use 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. McKinnon asked is there enough outdoor space for 100 sq. feet per child.

Ms. Blount replied yes.

Ms. Dawn Cox, applicant, spoke in favor of the request. She stated she has a location on Mumford Rd. and would like a second location across the river near her home and family. She was looking to expand her business.

Mr. Steve Spruill, surveyor for the applicant, spoke in favor of the request. He said that he thought it was a great idea and at a great location.

Mr. Jackie James, owner of the property, spoke in favor of the request. He stated that he intended to work with Ms. Cox to grow her business.

No one spoke in opposition of the request.

Chairman Johnson closed the public hearing and asked for staff's recommendation.

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

Chairman Johnson read the criteria.

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

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

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY SXCW PROPERTIES II, LLC

The applicant, SXCW Properties II, LLC, desires a special use permit to operate an automobile wash with gasoline sales as an accessory use pursuant to Appendix A, Use (10) b. of the Greenville City Code. The proposed use is located at 0 W. Fire Tower Rd. The property is further identified as being tax parcel numbers 08387 and 13361.

Mr. Lilley asked to be recused due to his involvement with the project.

Mr. Glenn made the motion to recuse Mr. Lilley. Ms. Evans seconded the motion. Motion passed unanimously

Ms. Blount delineated the property located in southern portion of the city in the extraterritorial jurisdiction of the city. The proposed use is located at the North West corner of the intersection of Whitley Drive and W Fire Tower Rd. The proposed location will only occupy 2.56 acres of parcels 08387 and 13361 which total 47.41 acres. This portion of land has 300 feet of frontage along Whitley Drive and 345 Feet of frontage along W. Fire Tower. The property is characterized as Mixed Use, High Intensity in the Horizons 2026 Greenville Community Plan

Zoning of Property: CG (General Commercial)

Surrounding Zoning:

North: CG (General Commercial)
South: Winterville Jurisdiction
East: CG (General Commercial)
West: CG (General Commercial)

Surrounding Development:

North: Vacant lots
South: Nail lounge, State Farm, Lemon Grass, Mathnasium Learning Center
East: Vacant lot, Wendy's and Speedway
West: Meineke Car Care Center, multi-unit shopping center

Description of Property:

The subject property is 2.56 acres in size with approximately 345 feet of frontage along W. Fire Tower Road and 300 feet of frontage along Whitley Drive. Automobile wash is permitted out right in the CG zoning district. Gasoline fuel sales is permitted with a special use permit.

Comprehensive Plan:

The property is located within the Mixed Use, High Intensity character types as designated by the Horizon 2026 Greenville Community Plan. The proposed use is in compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on February 14, 2019. Notice of the public hearing was published in the Daily Reflector on February 18 and February 25, 2019.

Staff Recommended Conditions:

Final platting, annexation, stormwater management, erosion control and site plan approval is required prior to issuance of a building permit.

Parking shall satisfy both auto wash and gasoline fuel sales requirements.

Other Comments:

The proposed project must meet all related NC State fire and building codes for the associated use 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. Glenn asked was there a traffic light already at the intersection.

Ms. Blount answered yes.

Mr. Andrew Denton, Overton Group representative for the applicant, spoke in favor of the request. He stated that SXCW Properties had about 23 locations in the state, with the closest one in Rocky Mount and they would like to open a location in Greenville. The applicant is a car wash business with a fueling aspect. The business will be open 7 days a week with fuel from 6 am to 10 pm and car washing from 7:30 am to 9 pm.

No one spoke in opposition of the request.

Chairman Johnson closed the public hearing and asked for staff's recommendation.

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

Chairman Johnson read the criteria.

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

Mr. Godley made a motion to approve the petition with the conditions, Mr. McKinnon seconded the motion and it passed unanimously

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY ELLEN SHEFFER

The applicant, Ellen Sheffer, desires to amend a special use permit to operate a personal service not otherwise listed (spray tanning and teeth whitening) pursuant to Appendix A, Use (15)a. of the Greenville City Code. The proposed use is located at 802 Dickinson Ave. The property is further identified as being tax parcel number 13964.

Ms. Blount delineated the property located in central portion of the city. She identified the property as being within the West Greenville Certified Redevelopment Area. The proposed location is 0.02 acres in size, has a 1060 sq. foot building and has 23 feet of frontage along Dickerson Avenue.

Zoning of Property: CD (Downtown Commercial)

Surrounding Zoning:

North: CD (Downtown Commercial)
South: CD (Downtown Commercial) and CDF (Downtown Commercial Fringe)
East: CD (Downtown Commercial)
West: CD (Downtown Commercial)

Surrounding Development:

North: Blick Law Office, Grandpa’s Garage, Vacant Lot
South: Halo Home Decor, Jack Brown’s Beer & Burger Joint, Beyond the Borders Outreach Ministries, The Hobbyhorse Metal Shop, Melt Fitness Studio
East: Michael Brandon Styling, Luna’s Pizza, Pitt Street Brewery, Ford & Shep
West: Stumpy’s Hatchet, Mpourium Wine and Craft Beer, and vacant commercial units

Description of Property:

The subject property is 0.02 acres in size with approximately 23 feet of frontage along Dickinson Ave. The proposed use is located within the West Greenville Certified Redevelopment Area.

Comprehensive Plan:

The property is located within the Uptown Edge character types as designated by the Horizon 2026 Greenville Community Plan. The proposed use is in compliance with the Future Land Use Plan which recommends commercial development for the subject property.

Notice:

Notice was mailed to the adjoining property owners on February 14, 2019. Notice of the public hearing was published in the Daily Reflector on February 18 and February 25, 2019.

Staff Recommended Conditions:

Services shall be limited to spray tanning and teeth whitening only and shall not include body art, body piercing services or other types of tattoos.

Other Comments:

The proposed project must meet all related NC State fire and building codes for the associated use 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.

Ms. Ellen Sheffer, the applicant, spoke in favor of the request. She stated that she was the owner of Southern Soleil - a spray tanning part-time business that is now her full time business. Ms. Sheffer said she intends to do spray tans and teeth whitening.

Mr. Bullock asked Ms. Sheffer if she was required to be licensed by the North Carolina State Board of Cosmetology

Ms. Sheffer replied that she wasn't because she never has to physically touch her clients.

Ms. Bellis asked if that was the case with teething whitening.

Ms. Sheffer answered yes, with teeth whitening the client purchases the whitening kit, opens it, places it on their teeth and they sit under the light.

No one spoke in opposition of the request.

Chairman Johnson closed the public hearing and asked for staff's recommendation.

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

Chairman Johnson read the criteria.

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

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

2018 ANNUAL REVIEW OF PUBLIC/PRIVATE CLUBS, DINING AND ENTERTAINMENT ESTABLISHMENTS AND MICROBREWERIES OPERATING PURSUANT TO AN APPROVED SPECIAL USE PERMIT

The annual review served as a compliance check of private/public clubs, dining and entertainment establishments and microbreweries that operate under the guidelines of a Special Use Permit.

Ms. Blount stated the material that was provided to the board members - a packet that contained Alcohol Law Enforcement, EMS, Fire and Rescue and Police Reports associated with the establishments. She displayed a map of the location of the establishments.

Mr. McKinnon asked if the issues at parcel #12848 been resolved.

Ms. Blount replied that yes they have.

Mr. Glenn asked how to treat the calls initiated by the public verses by the establishment, are we patting them on the back for calling the police, if the police calls is a report card on the establishments or are we penalizing them for having so many calls.

Officer Tyndall stated that some of the calls are street markers and that some of the numbers are skewed. If an incident happened near the establishment, the establishment could be used because it's in the vicinity. The police does look at if there is over intoxication, underage drinking, etc. involved with the calls which will raise a red flag.

Mr. McKinnon asked should we be concerned with 511 S. Cotanche Street.

Officer Tyndall stated that 511S. Cotanche Street is a main location that officers are stationed. If a fight is located in the vicinity, that address would be used.

Ms. Evans replied that the capacity of businesses must be considered when relating to the number of calls. The bigger the facility probably the more the calls.

Officer Tyndall reiterated don't be fooled by the number of calls but rather the police comments. The police review comments actually drills down into what happened at the location.

Mr. McKinnon asked so should we be concerned with ten reports involving assault and intoxication.

Office Tyndall replied that it is definitely something to look at. If the police are going to a location that involves intoxication, then we need to make some type of adjustment.

Attorney Donald Phillips provided clarity on the procedures for a rehearing.

Mr. McKinnon replied if we use the stated rules by the attorney, then 511 Cotanche should be a concern.

Office Tyndall stated that he can go through the list and cross some of the calls off because it wasn't attributed directly to the establishment. Out of the 96 calls for 511 S. Cotanche Street, 10 were attributed directly to the business. Downtown is unique because once the club lets out, all the patrons gather in a centralized locations and then the calls come in. They try to find out if the incidents can be contributed to a certain club. If they cannot, they will not just pin it on somebody.

Mr. Glenn asked of the 10 that are associated with the establishment if they were isolated incidents or an ongoing trend that's increasing in number.

Officer Tyndall replied that the ultimate goal would be to have no reports by the establishments which may be farfetched for an alcohol establishment. He would like for it to be 0 but 10 is too many if someone is overserving. Unfortunately it does happen but it doesn't make it acceptable.

Mr. Glenn asked what about the 2 calls that happened at 218 E 5th St that happened at closing. Are we seeing a trend of fights at closing?

Officer Tyndall replied that they do see a trend with fights at closing at certain locations. The reports show 2 assaults at that location.

Mr. Glenn asked if ALE would answer some questions. He asked what concerns ALE had with Pantana Bob's and other ALE violations.

Officer Eric Swain, supervisor of Alcohol Law Enforcement in Greenville introduced himself. He mentioned that the reports from ABC showed some incidents from 2019 that was consistent with incidents in 2017 and 2018. He stated his biggest concern was with the public safety of the patrons of the establishment. The reports show a consistent pattern.

Mr. McKinnon asked about any issues with 511 Cotanche St.

Mr. Swain replied that ALE does not track arrest as it relates to individual ABC outlets. The agent tracks incidents by case number and it is manually inputted. They are not able to extract hard fact data; therefore, ALE made vague comments concerning fake ids and underage drinking a Still Life. The other issue is a minor administrative violation at the establishment. There is no assaultive behavior from ALE. He stated he did do not see an issue with Still Life like he does with Pantana Bob's.

Ms. Evans asked why Sup Dogs isn't on this list.

Ms. Blount replied because Sup Dogs is a restaurant.

Ms. Evans asked about the restaurants on the list.

Ms. Blount stated that those establishments are dining and entertainment establishments and Sup Dogs does not have a Special Use Permit as a D&E.

Ms. Evans asked if the board can hear from the owner of Pantana Bob.

Attorney Phillips replied that the presentation is just a review and not a public hearing. The owner would be able to speak if a rehearing is requested for another meeting.

Chairman Johnson asked what would happen to the establishment if the board called for a rehearing.

Attorney Phillips stated that the business would continue on.

Chairman Johnson asked for a motion to have rehearing on any of the establishments.

No motion was made.

Chairman Johnson made a motion based on staff report that a rehearing is not required for any of the specified establishments, seconded by Mr. McKinnon. Motion passed unanimously

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

Meeting adjourn at 6:57 pm.

Respectfully Submitted

**Elizabeth Blount
Planner II**