

MINUTES ADOPTED BY THE CITY OF GREENVILLE BOARD OF ADJUSTMENT
December 20th 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 - X	
Nathan Cohen - *	Christopher Lilley - *
Michael Glenn - *	Rodney Bullock - *
Ann Bellis - *	Hunt McKinnon - *
James Moretz - *	Dillion Godley-X
Sharon Evans-*	

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

OTHERS PRESENT:

Ms. Elizabeth Blount, Planer II.	Ms. Camillia Smith, Secretary
Mr. Donald Phillips, Assistant City Attorney	Ms. Cathy Meyer, Civil Engineer
Mr. Tom Barnett, Director of Community Development	
Mr. Kelvin Thomas, Communication Technician	

MINUTES

Mr. McKinnon requested changes be made to November 15 minutes. The changes were documented and will be made.

Mr. Bullock made a motion to approve the November 15, 2018 minutes with the requested changes, 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.

NEW BUSINESS

DECISION AND ORDER OF THE SPECIAL USE PERMIT FROM NOVEMBER 15, 2018 HEARING

This agenda item is to ensure that the written order memorializes the decision made by the Board of Adjustment on November 15 2018.

Mr. Phillips read the written order to the board.

Mr. Bullock made the motion to approve the order as it is was presented by Mr. Phillips. Mr. Moretz seconded the motion. The motion passed unanimously.

PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY OSAMA BADER AND EMAD WESHAH

The applicants, Osama Bader and Emad Weshah, desire a special use permit to a minor repair facility pursuant to Appendix A, Use (9) b. of the Greenville City Code. The proposed use is located at 400 S. Memorial Drive. The property is further identified as being tax parcel number 10608.

Mr. Glenn asked to be recused due to his ownership of the property.

Mr. Moretz made the motion to recuse Mr. Glenn. Ms. Bellis second the motion.

The absence of Chairman Johnson and the recusal of Mr. Glenn required that a temporary Chairperson be elected. Under the guidance of Attorney Phillips, Mr. Bullock was nominated and elected temporary Chairman.

Ms. Blount delineated the property, located in the Northwest portion of the city. The multi-tenant building is zone CDF (Downtown Commercial Fringe). The applicants unit is located next to Paige Drive and has 148 feet of frontage along S Memorial Drive. The property is identified Office Institutional character type in the Horizon 2026 Greenville Community Plan.

Zoning of Property: CDF (Downtown Commercial Fringe)

Surrounding Zoning:

North: R6 (Residential)

South: CDF (Downtown Commercial Fringe)

East: R6 (Residential)

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

Surrounding Development:

North: Single Family Residences and a vacant lot

South: La Sinaloense store and restaurant, Jiffy Mart Convenience store and gas station, and a vacant commercial unit

East: Thomas Foreman Park
West: Moyewood apartments and a vacant lot

Description of Property:

The subject property is 0.46 acres in size and has 148 feet of frontage along S Memorial Drive and 200 feet of frontage along Paige Drive. The proposed unit is located in a multi-unit building. The applicant wishes to use the unit closest to Paige Drive.

Comprehensive Plan:

The property is located within the Office Institutional character type as designated by the Horizon 2026 Greenville Community Plan. While the proposed use is not in compliance with the Future Land Use Plan which recommends office and institutional development for the subject property, the use is allowed in the existing commercial zoning district with a special use permit.

Notice:

Notice was mailed to the adjoining property owners on December 6, 2018. Notice of the public hearing was published in the Daily Reflector on December 10 and December 17, 2018.

Related Zoning Ordinance Regulations:

Definition:

Repair; minor. The following activities shall be considered minor repair:

- (1) Engine tune-up; changing of plugs, filters, oil, lubricants, belts, adjustments;
- (2) Change and rotate tires;
- (3) Brake services;
- (4) Electrical system services;
- (5) Radiator services;
- (6) Muffler services; and
- (7) Battery service.

Specific Criteria:

- (1) All wrecked or damaged motor vehicles and parts shall be screened so as not to be

visible from adjoining property lines and street right-of-way.

- (2) All vehicles on the premises for repair shall be stored at the rear of the principal structure.
- (3) No vehicle shall be stored on the premises for more than 15 days.
- (4) There shall be no exterior storage of items other than vehicles.
- (5) Sale of vehicles shall be in accordance with Article B, section 9-4-22, definition of automobile, truck, recreational vehicle, motorcycle and boat sales, contained therein.
- (6) Rental or utility trailers, cars and trucks shall be permitted as accessory uses, provided that all units in excess of four shall be screened from adjoining street right-of-way and property lines in accordance with Bufferyard C or with a bufferyard of greater intensity as required by the bufferyard regulations.
- (7) Outdoor displays of products such as tires, oil, wiper blades or other similar products shall be permitted provided they are not closer than ten feet from the principal structure and shall not be more than twenty feet from the principal structure and must be outside of required bufferyards. Signage and tires displayed in conjunction with such shall be in accordance with the sign and tire storage regulations.
- (8) All services except fuel sales shall be performed within a completely enclosed building.
- (9) Tires stored outside must comply with the following standards to minimize their visual impact and reduce their potential as a public nuisance and fire hazard:
 - (a) The maximum area devoted to tire storage shall be limited to 10% of the property area or 25% of the building from which the business operates, whichever is less;
 - (b) The maximum number of tires stored outside shall not exceed 300;
 - (c) Tires must be stored behind required bufferyards and located where they are not visible from a street right-of-way or adjacent property through the installation of opaque fencing and/or landscaping or placement of tires behind buildings;
 - (d) All tires must be placed on racks in the upright position;
 - (e) There shall be a minimum separation of 20 feet between tire racks and property lines, street right-of-way, and buildings;
 - (f) Rows of tire racks shall be separated from one another by a minimum of five feet;

- (g) The placement of tires stored outside shall be placed and maintained in accordance with this subsection (9) and the North Carolina Fire Code, as amended. The more restrictive provisions shall prevail between the NC Fire Code and tire storage standards of this section; and
- (h) Notwithstanding the provisions related to nonconforming uses and situations contained in Article C of this chapter, the requirements contained in this subsection (9) shall be applicable to all existing and future major and minor repair facilities.

Staff Recommended Conditions:

Parking plan approval required prior to occupancy for ADA spaces, signage and accessible route to entrance of building. Parking spaces must be delineated on the plan.

All vehicles on the premises for repair shall be stored and worked on at the rear of the principal structure.

A complete visible fence shall be installed if services to damaged or wrecked vehicles are rendered.

Staff Comments:

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

The applicant will need to obtain building permits for all new work for the proposed use.

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. McKinnon asked if the building was in the flood zone.

Ms. Blount replied no it wasn't

Mr. Moretz asked if fencing would be required if anything other than tire repair was done at the facility, and if the driveway at the back be fenced as well.

Ms. Blount replied that yes screened fencing would be required if he did anything other than tire repair.

Chairman Bullock opened the public hearing.

Mr. Osama Bader, applicant, spoke in favor of the request. He stated that he intended to open a minor repair facility for tires.

Mr. Glenn, property owner, spoke in favor of the request. He spoke favorably about the work done to the building which had been boarded up for 20 years. He also stated that he and Mr. Bader have discussed how important to keep all cars and repairs in the rear of the building.

Ms. Bellis asked if a condition could be made for repairs to be made inside the building.

Ms. Blount replied yes, that is allowed.

Mr. Bader replied that the condition wouldn't be a problem for him.

Mr. Glenn said that he was fine with it if Mr. Bader was okay with it.

Mr. Glenn as the building owner was asked to consent and agree to the conditions

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

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

With no further business, Mr. Moretz made a motion to adjourn, Mr. Bullock seconded and it passed unanimously.

Meeting adjourn at 6:35 pm.

Respectfully Submitted

**Elizabeth Blount
Planner II**