

ADOPTED MINUTES OF THE GREENVILLE BOARD OF ADJUSTMENT
January 28, 2021

The Greenville Board of Adjustment met electronically on the above date at 6:00 PM from different locations due to Covid 19 protocols.

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

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|-------------------------------|---------------------|
| Michael Glenn – Chairman - * | Nathan Cohen- * |
| Christopher Lilley- * | Stephen Atkinson- * |
| Rodney Bullock - Co-Chair - * | Ann Bellis - * |
| Hunt McKinnon - * | John Landrine - * |
| Sharon Evans-* | |

VOTING MEMBERS: Glenn, Bullock, Bellis, Lilley, Evans, Atkinson, Landrine

OTHERS PRESENT: Elizabeth Blount, Lead Planner; Donald Phillips, Assistant City Attorney; Tony Parker, Planner I; Thomas Barnett, Director of Planning and Development Services; Les Everett, Assistant Director of Planning Services; Kelvin Thomas, Communications Specialist

OPENING STATEMENT: Mr. Glenn read the following statement:

I would like to start by acknowledging that we are conducting this meeting using a remote, electronic platform. I would ask for your patience today as we proceed. There may be slight delays as we transition between speakers, participants and presentations.

The Board of Adjustment is a quasi-judicial body that is governed by the North Carolina General Statutes and the City's Code of Ordinance. We conduct evidentiary hearings on requests for special use permits, variances, appeals of administrative decisions and interpretations.

Before we begin the evidentiary hearings on today's agenda, I would like to provide some important information about the steps taken to ensure that each parties' due process rights are protected as we proceed in this remote platform.

First, today's meeting will be conducted in accordance with the newly enacted statutes in Session Law 2020-3, which allow for remote meetings and quasi-judicial hearings during declarations of emergency.

Second, each applicant on today's agenda was notified before being placed on the agenda that this meeting would be conducted using a remote, electronic platform. Every applicant on today's agenda has consented to the Board conducting the evidentiary hearing on their request using this remote platform. We will also confirm today at the start of each evidentiary hearing that the participants in the evidentiary hearing consent to the matter proceeding in this remote platform. If there is any objection to a matter proceeding in this remote platform, the case will be continued.

Third, notice of this meeting was provided to the applicants and the public in numerous ways, well beyond the legal requirements for noticing this meeting and the evidentiary hearings.

Specifically, notice of today's evidentiary hearings was provided by mail to all property owners within 250 feet of each subject property. The mailed notices were sent two weeks in advance of the meeting date and within the law to provide such notice – and each notice letter notified the recipient of the remote meeting platform.

Notice was also provided by posting signs on the site of each property, publishing notice in the newspaper and providing notice on the City's website. Each of these notice methods were also done within the legal requirement to provide such notice.

The notices for today's meeting contained information about the means by which the public can access the remote meeting, as the meeting occurs.

Fourth, any individual wishing to participate in today's evidentiary hearings was required to sign-up prior to the meeting to participate. Information about this sign-up requirement, along with information about how to sign-up to participate, was included in the mailed notice letters sent to each property owner within 250 feet of each subject property. This information was also included on the Board's website and, among other information, a link to the Board's website was included in all methods of notice.

All individuals participating in today's evidentiary hearings were also required to submit a copy of any presentation, document, exhibit or other material that they wished to submit at the evidentiary hearing prior to today's meeting. All materials that the City received from the participants in today's cases, as well as a copy of City staff's presentations and documents, were posted online on the Board of Adjustment Meeting Schedule and Agenda prior to this meeting. All materials that will be discussed today can be viewed at any time during today's meeting by visiting <https://www.greenvillenc.gov/government/city-council/boards-and-commissions/board-of-adjustment/2021-board-of-adjustment-meeting-schedule-and-agendas> and clicking the January 28, 2021, Agenda and Meeting packet link. No new documents will be presented at today's meeting. All decisions of this board are subject to appeal with the Pitt County Superior court.

Finally, all individuals who signed-up to participate in an evidentiary hearing on today's agenda, as well as all City staff participants, were emailed a witness oath form prior to today's meeting. Any individual planning to testify or submit evidence in an evidentiary hearing was notified that they must sign the oath form prior to today's meeting. We will also reaffirm everyone's oath on the record at today's meeting.

MINUTES:

Motion made by Mr. Bullock, seconded by Mr. McKinnon, to approve the December 17, 2020. Motion passed unanimously.

Chairman Glenn swore in presenting staff members-, Elizabeth Blount.

Assistant City 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

1. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY CREIGHTON COMPANIES LLC

The applicant, Creighton Companies LLC, desires to operate a convenient store with gasoline sales pursuant to Appendix A, Use (10)b. of the Greenville City code. The proposed use is located at 3750 S. Memorial Drive. The property is further identified as being tax parcel numbers 16368 and 06399.

Chairman Glenn stated that the applicant has withdrawn their request for a Special Use Permit. No further action was required.

2. PUBLIC HEARING ON A REUEST FOR A SPECIAL USE PERMIT BY WEST PARK MOTOR COMPANY AND ALLIGOOD REAL ESTATE LLC.

The applicants, West Park Motor Company and Alligood Real Estate LLC, desire a special use permit to operate automobile, truck, recreational vehicle, motorcycle and boat sales and service pursuant to Appendix A, Use (11)f. of the Greenville City Code. The proposed use is located at 1221 Portertown Road. The property is further identified as being tax parcel number 69656.

Chairman Glenn confirmed and swore in one registered speaker – Kyle Alligood.

Ms. Blount delineated the area on the map. She stated that the request is located in the eastern portion of the City.

Zoning of Property:

CG (General Commercial)

Surrounding Zonings:

North: CG (General Commercial)
South: CG (General Commercial)
East: CG (General Commercial)
West: RA20 (Residential Agricultural)

Surrounding Developments:

North: Sheetz Convenience and Gasoline Store
South: Vacant Lot
East: The Shops at Hardee Village
West: Pinewood Cemetery

Description of Property:

The subject property is 1.22-acres in size with approximately 235 feet of frontage along Portertown Road. The property contains a 3,874 square foot commercial building which use to house East Carolina Bank.

Comprehensive Plan:

The property is located within the Commercial character type as designated by the Horizon Plan. The proposed use is in compliance with the Future Land Use Plan which recommends commercial for the subject property.

Notice:

Notice was mailed to the adjoining property owners on January 14, 2021. Notice of the public hearing was published in the Daily Reflector on January 17 and January 24, 2021.

Related Zoning Ordinance Regulations:

Definition:

Automobile, truck, recreational vehicle, motorcycle and boat sales. Establishments engaged in the retail and/or wholesale of new and/or used automobiles, trucks, recreational vehicles and campers, motorcycles and motor boats including other watercraft, trailers, marine supplies and outboard motors, collectively referred to as vehicles for purposes of this definition. These establishments frequently maintain repair departments (see also major and minor repair) and carry stocks of replacement parts and accessories. For purposes of interpretation, the concurrent display for sale of not more than any five such vehicles upon a lot containing a legal nonresidential principal use may be considered an accessory use in accordance with applicable conditions set forth by definition. Specifically, the concurrent display for sale of not more than any five such vehicles upon any lot containing a legal vehicle-related major or minor repair establishment, or a bank, savings and loan or other lending institution engaged in the repossession of vehicles shall be considered an accessory use to the principal use.

Staff Recommended Conditions:

Site plan approval is required before occupancy.

Display of automobiles for sale in the right-of-way or bufferyards shall not be permitted.

Staff Comments:

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 Glenn opened the public meeting.

Mr. Alligood, applicant, spoke in favor of the application. He said that he would like to open a retail car business at this location. He currently owns another location in Washington, NC. Mr. Alligood said that he has been in business for fourteen years. Mr. Alligood said that the building and property have been vacant for some time.

Mr. McKinnon asked how the applicant will handle the service aspect of the business.

Mr. Alligood stated that there will be no onsite service at this location. All of the service would be handled by his Washington, NC location. He said the proposed site would only be for sales.

Ms. Bellis asked Mr. Alligood what he planned to use the building for.

Mr. Alligood stated he intended to use the building as an office to close transactions and conduct other business as needed.

No one else spoke in favor of the request.

No one spoke in opposition of the request.

Chairman Glenn asked for staff's recommendation.

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

Chairman Glenn closed the public hearing and open up for Board discussion.

No board discussion.

Chairman Glenn read the criteria and the board's silence was a vote in favor of the criteria.

Mr. Bullock made a motion to adopt the Finding of Facts, Ms. Bellis seconded the motion and it passed unanimously. Vote: 7 to 0

Mr. Bullock made a motion to approve the petition, Mr. Lilley seconded the motion and it passed unanimously. Vote: 7 to 0

Chairman Glenn announced that Kyle Alligood's special use permit had been granted.

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

Respectfully submitted

Elizabeth Blount
Lead Planner