

MEETING HANDOUT

(Rev. 10/2013)

To: ALL INTERESTED PARTIES

From: Chairman, Board of Adjustments

Subject: **Staff Role, General Procedures and Required Findings**

I. STAFF ROLE

A. The staff assists the Board by presenting information that the applicants have provided in their applications and by providing additional information from zoning maps, adopted plans of the City of Greenville, zoning and subdivision regulations and other codes and ordinances that may be applicable.

B. At the end of the hearing on an item, the staff will be requested to give their opinion on the application. The opinion though referenced as a recommendation is not and may not be considered or interpreted as the City of Greenville's support for the application.

C. If staff is of the opinion that the information submitted in the application does not conflict with existing ordinances or the application requirements or city plans, then the staff will note the application has satisfied those requirements or it may state "No objection". It still means the applicant must satisfy its burden of proof and the board will hear additional evidence to determine if the applicant can satisfy the requirements set out in the ordinance.

D. If the staff is of the opinion that the application has failed to address or provide information concerning one of the required findings or that the application violates a specific ordinance or planning section, then it will state an "Objection to the application." However, the Board will consider additional evidence by the applicant and others before a decision is made on the application.

II. ADVISE THE PUBLIC OF THE GENERAL PROCEDURE AND VOTING REQUIREMENTS

A. When an agenda item is called for hearing, the persons wishing to speak either in support of or in opposition to the application, will be requested to come forward and be sworn or affirmed prior to speaking.

B. I remind all applicants and opponents that the applicant has the burden

to demonstrate compliance with the standards and conditions required by the ordinance. The burden of persuasion on specific requirements such as compliance with lot area and compliance with specific criteria for particular use is on the applicant. The burden of persuasion on general requirements such as Health and Safety or Detriment to public welfare is on the opponents. The applicant has the burden of proving by the greater weight of the evidence that it has met each criteria required to satisfy the special use permit or variance request.

C. After the staff provides this foundational information, the applicant or applicant's representative will be requested to come forward and present the facts, documents and other evidence to support the application. The Board may ask the applicant or representative any questions relevant to the evidence provided either from the presentation or the application. The applicant then may present any additional witnesses to support the application. The Board may also question the witnesses when they are through.

D. When the applicant finishes, anyone who wishes to speak in opposition may do so. Those in opposition may also ask the applicant or any of the applicant's witnesses any questions concerning their proposed action. After each person in opposition speaks, the applicant or representative may ask questions of the witness. The Board may then ask the witness any questions they may have.

E. When those in opposition have spoken, the applicant will be given a brief opportunity to rebut the evidence presented by those in evidence.

F. It is up to the parties, whether in support or opposition, to present their cases. The staff may not help you present your case or ask you questions to make sure you are presenting a complete case. The Board is entitled to ask questions of each party, it is not there to make sure one side or the other presents their full case.

III. EVIDENCE BEFORE THE BOARD OF ADJUSTMENT

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 of Adjustment 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 they also must present facts to show how the proposal affects their 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 not admissible as hearsay.

3. The same rule applies to both the applicant and those in opposition.

IV. CLOSING THE PUBLIC HEARING AND VOTING

A. At the conclusion of the presentation, the staff will make its final report.

B. The public portion of the hearing will then be closed. The Board will deliberate and discuss the application. At the conclusion of its discussion, there will be a request if any of the members desire to add any conditions if the permit is granted. Then, the required finding criteria will be read.

C. Any criteria not receiving a majority vote, then the permit does not pass and is denied. Any criteria in a request for variance that does not receive a 4/5ths majority vote, then the variance does not pass and is denied. If all of the criteria are passed, then there will be a motion and vote on the permit or variance along with any conditions. The application for permit must receive approval of a majority; the application for a variance must receive approval of a 4/5^{ths} majority vote.

D. Any decision to grant or deny a permit or variance may be appealed to the Superior Court.

V. THE CRITERIA

A. A YES vote is in support of the criteria. A NO vote is in opposition to the criteria. Each criteria for a permit must receive a majority. For a request for variance, each criteria must receive a 4/5th majority (6 out of 7) or (6 out of 6 if only 6 present).

B. If a criteria fails to obtain the required vote, each member voting

NO must state the facts he or she relied on in making his or her decision.

SPECIAL USE PERMITS

VOTE (a) Conditions and Specifications.

That the proposed use meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a special use permit. Such conditions and specifications include but are not limited to the following:

1. Compliance with lot area and dimensional standards.
2. Compliance with setback and other locational standards.
3. Compliance with off-street parking requirements.
4. Compliance with all additional specific criteria set forth for the particular use, Section 9-4-84, of this Article.
5. Compliance with all application submission requirements.

VOTE (b) Comprehensive Plan.

That the proposed use is in general conformity with the Comprehensive Land Use Plan of the City and its extraterritorial jurisdiction.

VOTE (c) Health and Safety.

That the proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use.

- a. Such health and safety considerations include but are not limited to the following:
 1. The safe and convenient location of all on-site parking and drives.
 2. The existing vehicular traffic on area streets.
 3. The condition and capacity of area street(s) which will provide access to the proposed development.

4. The visibility afforded to both pedestrians and operators of motor vehicles both on-site and off-site.
5. The reasonably anticipated increase in vehicular traffic generated by the proposed use.
6. The anticipated, existing and designed vehicular and pedestrian movements both on-site and off-site.

VOTE

(d) Detriment to Public Welfare.

That the proposed use will not be detrimental to the public welfare or to the use or development of adjacent properties or other neighborhood uses.

VOTE

(e) Existing Uses Detrimental.

That the proposed use would not be adversely affected by the existing uses in the area in which it is proposed.

VOTE

(f) Injury to Properties or Improvements.

That the proposed use will not injure, by value or otherwise, adjoining or abutting property or public improvements in the neighborhood.

VOTE

(g) Nuisance or Hazard.

That the proposed use will not constitute a nuisance or hazard. Such nuisance or hazard considerations include but are not limited to the following:

1. The number of persons who can reasonably be expected to frequent or attend the establishment at any one time.
2. The intensity of the proposed use in relation to the intensity of adjoining and area uses.
3. The visual impact of the proposed use.
4. The method of operation or other physical activities of the proposed use.
5. The noise; odor; smoke; dust; emissions of gas, particles, solids or other objectionable or toxic characteristics which are proposed or that can reasonably be expected to be a result of the operation of the proposed use.

6. The danger of fire or explosion.

SPECIAL USE PERMIT – REASONABLE ACCOMMODATION

VOTE

1. **Is It Reasonable**

That the Board of Adjustment may grant an exception to the ¼ mile separation for family care homes as an accommodation where the proposed home meets all criteria for a family care home upon a finding that to grant this exception is reasonable.

Such factors in determining whether the request is reasonable may include but are not limited to:

- a. The legitimate purposes and effects of the current zoning regulations are not undermined by the accommodation.
- b. The benefits that the accommodation provides to individuals with disabilities.
- c. Alternatives to the accommodation do not exist which accomplish the benefits more efficiently.
- d. A significant financial and administrative burden is not imposed by the accommodation on the City.

VOTE

2. **Is It Necessary**

That the Board of Adjustment may grant and exception to the ¼ mile separation for family care homes as an accommodation where the Board finds not only is reasonable to grant the exception but also necessary.

Such factors in determining whether the request is necessary may include but are not limited to:

- a. That the direct or meaningful amelioration of the effects of the particular disability or handicap is provided by the accommodation.
- b. That individuals with disabilities are afforded by the accommodation equal opportunity to enjoy and use housing in residential neighborhoods.

VARIANCE REQUESTS
(Requires 4/5ths majority vote)

VOTE

1. Conditions and Specifications.

That the application filed as Request # _____ meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a variance application.

VOTE

2. Notice.

That those persons owning property adjacent parcels of the proposed development or use, as listed on the current tax records, were served notice of the public hearing by mail in accordance with applicable requirements; and that notice of a public hearing to consider the special use permit was published on _____, 200____ and _____, 200____ in The Daily Reflector, a newspaper having general circulation in the area, as required by law.

VOTE

3. Unnecessary Hardship.

That the applicant would suffer an unnecessary hardship if a strict application of the ordinance is applied. Not necessary to show that in the absence of the variance, no reasonable use could occur.

VOTE

4. Unique Circumstances.

That the hardship of which the applicant complains results from unique circumstances related to the applicant's land – location, size, topography. It is not a unique circumstance if the hardship is caused by the personal actions of the applicant or is a hardship common to others in the development or the general public is not a basis for granting a variance.

VOTE

5. General Purpose of the Ordinance.

That if granted, the variance would be in harmony with the general purpose and intent of the Zoning Ordinance and would preserve its spirit.

VOTE

6. Safety and Welfare.

That the granting of the variance secures the public safety and welfare and does substantial justice.

