

**MINUTES
BOARD OF ADJUSTMENT
City of Burlington, NC
June 11, 2013**

Members Present

City:

Mr. H.E. "Ed" Wilson, Chairman
Mr. Mike Gee, Vice Chairman
Mrs. Joyce Lance
Mr. Eric Grant

Members Absent

Mr. Todd Smith

ETJ: (Not voting)

Mrs. Sylvia Greeson
Mr. Chalmers Brumbaugh

Also present was Mr. Joey Lea, Zoning Administrator for the City of Burlington and Mr. Chris Marland, Zoning Enforcement Officer for the City of Burlington.

Chairman Ed Wilson called the meeting of the Board of Adjustment to order at 8:30 a.m. Mr. Wilson stated the city representatives to the Board of Adjustment are appointed by the City Council. This is a quasi-judicial hearing. Everyone speaking before the board should state their name, sign the log on the podium, and swear or affirm that everything they say is true to the best of their knowledge. Appeals of the Board's decisions may be taken to the Alamance County Superior Court. The City will state their position because of their knowledge of the case and the technical codes. The applicant will state their case, and then anyone from the public may speak. After the city, applicant and the public have presented all evidence the board will then close the meeting to the public and discuss the case and vote. An affirmative four-fifths vote is required to grant a variance, special use permit or an appeal. This morning we are a Board of only four sitting members. Because of that, it will take a unanimous vote from the Board to approve each case. The applicants have the option of moving forward with the case, or postponing it until next month when we could possibly have our fifth member here.

MEETING MINUTES

Board Chairman Wilson asked the Board if there are any proposed changes to the meeting minutes from May 14, 2013. Chairman Wilson stated he would like to make a motion to approve the minutes as amended with the amendment being on page three as stated. Mr. Eric Grant made a motion to approve the minutes. Vice Chairman Gee seconded the motion. The board voted unanimously to approve the May 14, 2013 Meeting Minutes.

DUE PUBLICATION

Mr. Joey Lea, Zoning Administrator with the City of Burlington, stated, due notice and publication of this meeting of the Board of Adjustment has been made, and all contiguous property owners were mailed a notice advising of this meeting.

SWORN TESTIMONY

Prior to testifying before the Board, each party was sworn in or affirmed that the testimony they were about to give was true to the best of their knowledge.

ITEM NO. 1:

CASE NO. 04-13 – SPECIAL USE PERMIT (CITY)

Annie's Child Care

509 North Church St.

Alamance County Tax Map 28-100-51 & 55

§ Section 32.13.W

Child Care facility in B-2 Districts

EVIDENCE PRESENTED:

Mr. Joey Lea stated, Ms. Annie Woods is applying for a Special Use permit for a child daycare to be located at 509 N. Church Street. This facility will have a maximum of forty children with five staff members which will require nine parking spaces. They are providing 12 parking spaces. This plan did not go to the Technical Review Committee because it is an existing facility. I did, however, take it to our traffic engineer and he stated there will be no issues in regards to traffic. All other requirements are being met including the fencing area and storm water. I did have one phone call from Mr. George Hill who represents the Beverly Hills neighborhood association. I told him that it was going to be a daycare and he said that was a good thing.

Ms. Annie Woods stated, I currently have a daycare in my home and would like to open a larger one and run two shifts. Vice Chairman Gee asked, Ms. Woods have you received your permit from the state for the larger facility? Ms. Woods stated, no. Chairman Wilson asked, are you currently permitted for your in home daycare? Ms. Woods stated, yes. Vice Chairman Gee asked, Mr. Lea, are there additional requirements? Mr. Lea stated, she cannot receive any permits from the state until she gets the Special Use permit. Also, she will need to get building permits through the inspections department. Chairman Wilson asked, Ms. Woods do you understand that and are you willing to comply with those requirements? Ms. Woods stated, yes. Chairman Wilson asked, what are your two shifts and their hours? Ms. Woods stated, six until three and three until eleven thirty. Chairman Wilson asked, about how many kids per shift? Ms. Woods stated, they said I can have forty so I guess forty. Chairman Wilson asked, you currently have that many? Ms. Woods stated, no, I'm only licensed for eight per shift because I am in my home. Mr. Eric Grant asked, Ms. Woods, how long have you been a licensed daycare provider? Ms. Woods stated, eight years. Mr. Grant asked, have you had any complaints against you in that time? Ms. Woods stated, no. Mrs. Joyce Lance asked, you stated you will be licensed for forty children, will that be forty per shift? Ms. Woods stated, I guess so, I don't know exactly what the state is going to require me to do. Mrs. Lance asked, Mr. Lea, do you know? Mr. Lea stated, if this is approved it will be for a maximum of forty per shift. Mrs. Lance asked, I know you have twelve parking spaces and Mr. Lea stated there are no issues with traffic, so you are not concerned with the safety of the children with cars pulling in and out? Ms. Woods stated, no. Mrs. Lance asked, what are the ages of the children? Ms. Woods stated, zero to twelve. Mrs. Lance asked, and when you say five staff do you mean five total or five per shift? Ms. Woods stated, five per shift. There will be one for each child age group. Mr. Lea stated, I would like to clarify one thing, in your packet there is an aerial photo of the property showing two parcels. It is actually only one parcel. The properties were combined in 1986. Vice Chairman Gee asked, Ms. Woods, just bouncing off of Mr. Lea's comment, are the twelve parking spaces directly in front of the building or on the other side in the lot? Ms. Woods stated, there is some in front of the building and in the rear where the existing parking lot is. Chairman Wilson asked, where is the fenced in play area? Mr. Lea stated, the fenced in play area will be down along Fonville Rd. There is an erosion control measure that will be separating two fenced in play areas.

However, the play area might not be that large due to state requirements, as well as our own, that state she needs fenced in area based on the number of children in the area at one time. Obviously there won't be forty children out there at one time, so there will be a certain number of kids allowed out there per shift. Mr. Grant asked, we have no questionable problems with her having a daycare in this building as far as City and State building codes go as far as you are aware? Mr. Lea stated, that is correct. She will have to comply with all building and state codes. Mrs. Lance asked Ms. Woods, you said you have eight in your home now, do you only have day shift now? Ms. Woods stated, no, I have all three shifts. Mrs. Lance asked, and how many employees do you have now? Ms. Woods stated, just one, me. Mrs. Lance asked, do you already have your staff lined up for the new place? Ms. Woods stated, yes, I have a lot of people I need to call back. They need to be qualified in order to work in the center. Mrs. Lance asked, and does the state have regulations about their qualifications? Ms. Woods stated, yes ma'am.

DISCUSSION & FINDINGS OF FACT: Chairman Ed Wilson stated, this is an application for a Special Use permit for a child care facility that, by all testimony, seems to meet all of our requirements.

DECISION: Mrs. Joyce Lance stated, I would like to make a motion that the four required conditions for issuing a Special Use Permit in accordance to Section 32.13.B(1)(a) are met due to the following Findings of Fact:

1. **the use will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved;**
the findings of fact are that as Mr. Lea testified there are no safety issues or traffic issues identified. There will be adequate fencing, storm water requirements are met, and they have more parking than what is required;
2. **the use meets all required conditions and specifications;**
the findings of fact are that once Ms. Woods gets her Special Use permit for this endeavor she will be able to continue with her application for the state permit, which as she testified, is more rigorous than getting the Special Use permit;
3. **the use will not substantially injure the value of adjoining or abutting property or that the use is a public necessity;**
the findings of facts are that Ms. Woods has run a daycare center in her home for eight children for the past eight years and she is growing her business. She is going to run two shifts and have up to forty children per shift along with five employees. There is nobody here to suggest in any way that this will injure the value of adjoining or abutting property and we all know that a daycare is a public necessity;
4. **The location and character of the use if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Burlington and its environs;**
the findings of fact are that these plans have been submitted and it will be expected that these plans will be followed as submitted.

Mr. Eric Grant seconded the motion.

AYES: Wilson, Gee, Lance, Grant

NOES:

Mrs. Joyce Lance made a motion to approve the Special Use Permit for Annie's Child Care to be located at 509 N. Church St. in Burlington, due to the previously stated Findings of Fact and the applicant shall complete the development in accordance with the plans submitted and approved by this Board and if any conditions affixed hereto or any part thereof shall be held invalid or void then this permit shall be void and of no affect.

Mr. Eric Grant seconded the motion. The board voted unanimously to approve the Special Use Permit.

AYES: Wilson, Gee, Lance, Grant

NOES:

ITEM NO. 2:

CASE NO. 05-13 – SPECIAL USE PERMIT (CITY)

Meredith Webb Printing

334 N. Main St.

Alamance County Tax Map 28-96-60

§ Section 32.9

Printing Shops in B-2 Districts

EVIDENCE PRESENTED:

Mr. Joey Lea stated, Meredith Webb Printing located at 334 N. Main St is applying for a Special Use permit for an addition to their building. It will be a new warehouse that will be on the W. Holt Street side. This plan did go before the TRC and it does meet all requirements and specifications and did receive TRC approval. The original Special Use permit for the printing business was approved in 1977. The new addition is for the loading and unloading of trucks off of Sellars Street. Chairman Wilson asked, is this an amendment to the 1977 permit or a whole new one? Mr. Lea stated, it is an amendment. Part of the building is on a separate lot and is allowed as a matter of right and therefore it is not part of the Special Use permit. Chairman Wilson asked, and it is because it is a printing shop that you need a Special Use permit? Mr. Lea stated, printing shops are considered to be a form of manufacturing, and manufacturing in a B-2 district requires a Special Use permit. Chairman Wilson asked, but not a warehouse? Mr. Lea stated, correct, not a warehouse. The addition is part of the business that is under the Special Use permit. I did receive a phone call from one neighbor who said they might be here today.

Mr. Kelly Webb stated, I would like to point out a couple of things about Meredith Webb. My father started the company in 1952 and we have been in downtown Burlington ever since. Over the last few years we have done some considerable expansion. We demolished the old Boone cleaners building recently. This past December we purchased the old Chrysler-Plymouth building and demolished the old gas station on the property. So we are committed to downtown Burlington and improving our area. We run three shifts and are a commercial printing company. This warehouse expansion project is very critical to our business because we need more space for shipping and receiving. Chairman Wilson asked, so the space indicated on the site plan is being used for a warehouse? Mr. Webb stated, that is correct. Mrs. Lance asked, so the loading and unloading of trucks, that is off of Sellars Street? Mr. Webb stated, that is correct. Vice Chairman Gee asked, so it would be re-orienting them from where they are now, correct? Mr. Webb stated, we will be moving the storage trailers and adding up to four new docks.

Chairman Wilson asked, so is the traffic pattern going to stay the same, or is it going to change? Mr. Webb stated, it will be the same traffic pattern. Vice Chairman Gee asked, with the building coming further out, is it going to impede any sight lines of the two streets it is on the corner of? Mr. Webb stated, I don't think so, no. Mrs. Lance asked, was there any planning changes that you had to make to get TRC approval, or was it approved as submitted? Mr. Webb stated, it was approved as submitted. Vice Chairman Gee asked, your booklet that you have given us showcases some of the work you have done in the area. In your opinion do you think this expansion will substantially injure the value of adjoining or abutting property? Mr. Webb stated, I don't anticipate that, no. Mrs. Lance asked, is this needed because your business has grown so much in the past or are you predicting future growth? What I am getting at here is traffic. Mr. Webb stated, our growth this year has been crazy. We are even looking at additional space for our manufacturing area. This is critical for our shipping side. We own the whole block there and I don't see any cause for concern for the traffic pattern. To answer your question, it is continued growth and new opportunity we are seeing for the needed expansion. Mrs. Lance asked, if I lived close to your business I probably wouldn't notice any difference in your day to day operations? Mr. Webb stated, I don't think so. Some of the improvements we have made actually made our area much safer. Mr. Grant asked, this proposed construction is merely just to facilitate an improvement in your shipping and receiving area, and you really won't affect traffic flows at all? Mr. Webb stated, no sir.

Ms. Dianne Neece stated, I want to start by saying they have done an excellent job over there cleaning up the area. They got rid of the old Laundromat building that was an eyesore. That being said, I own two of the houses on Sellars Street and my sister owns one of the other ones, so pretty much we own that whole block, just like he owns the other side of the street. I heard twice a statement made that traffic will increase and then I just heard that it will not. My question is how much traffic will be increased on Sellars Street? Right now, and it's not all the time, but big trucks will park right on Sellars street in front of our house with the engines running. It is so loud that you cannot sleep. At my sister's house, sometimes those trucks will drive right up in her yard and tear it all up. We maintain our houses and yards very well and have improved our property tremendously since we bought them. We do have a pretty good working relationship with Meredith Webb for the most part. When we ask them to do something they do it. My main concern is if they are going to increase the traffic they need to have some type of communication with the truck drivers and their employees about realizing that, yes, you are an industry over here, but right across the street is residences with people that live there and take great pride in their property. They could park on Ruffin Street around the corner where there are no houses and we probably couldn't hear them. Mrs. Lance asked, even if they pulled onto Meredith Webb property and got out of the street, you would probably still hear them, right? Ms. Neece stated, oh yes. And it's not all the time but when it is you can't get any sleep. Mrs. Lance asked, how often is it? Ms. Neece stated, I would say it probably happened about four times this winter that they were parked in front of my house. I don't know how many times they were parked in front of my sister's house. Vice Chairman Gee asked, have you addressed this with Meredith Webb? Ms. Neece stated, yes, by email and I have gotten no response. Chairman Wilson asked, Mr. Lea is this an allowed activity for these trucks? Mr. Lea stated, you can have temporary parking on the street, you can't have permanent parking or storage for trucks of this size. Chairman Wilson asked, is overnight parking a temporary activity? Mr. Lea stated, I am going to have to assume that these trucks are coming in very early so that would be temporary parking if they are gone the next day. The running of the engines is probably against our noise ordinance, but that is handled by the Police Department. Mr. Webb could probably ask them to park on the other street at property he owns, but technically and legally there is nothing stopping them from being able to park on the street. Mr. Grant asked, this is an existing condition you are referring to? Ms. Neece stated, yes.

Mr. Grant asked, as a board does this affect this application at all because this is something existing and not a part of this application? Ms. Neece stated, except for the fact that somebody stated the traffic will increase. Mr. Lea stated, I believe the statements were that it would not increase the traffic. Ms. Neece asked, so there won't be any more trucks, it will be the same number of trucks that it has always been, is that correct? Chairman Wilson asked, Mr. Webb could you come back up and address two questions? The first being, will the traffic increase? And second, what can or will your company do to address this truck issue? Mr. Webb stated, a lot of times we have independent contract drivers our customers hire that haven't been to our location. We try to talk to them but they don't always tell us exactly when they are coming. We have had to repair their yards in the past. A benefit with this new layout is that it will push the shipping and receiving area further away from their homes. We will continue to stay in contact with current carriers. The object of this is to grow our company, but to say there will be a big change in truck traffic, I just don't see it. Mrs. Lance asked, is your company open 24 hours a day? Mr. Webb stated, yes it is, but shipping and receiving is seven to five thirty. Mrs. Lance asked, sleep deprivation is a threat to public health and welfare, so is there something you can do or suggest to fix this? Is there someone there to monitor these truckers and ask them to move if they are sitting there? Mr. Webb stated, we will be proactive and get with our carriers on that. We will set up a place to park if it is going to be overnight. Mrs. Lance asked, how much authority do you have over the drivers, will they listen to you? Mr. Webb stated, I don't know how much authority we have in the street because it is a public street. Vice Chairman Gee asked, Mr. Lea, I understand where Ms. Neece is coming from, but if a truck arrives at four a.m. and parks on the street in the middle of winter, are they breaking the law by doing that? Mr. Lea stated, I do feel the noise from the trucks is an issue, and being that it is parked in the street the only recourse here would be to call the police. We could ask the traffic commission to do a study on the issue, but I don't think it will help. Chairman Wilson asked, there is no such thing as no truck parking is there? Mr. Lea stated, yes. Chairman Wilson asked, is that up to the traffic commission? Mr. Lea stated, if we go that route, yes, it would need to go through them to get approved for parking on the street. Vice Chairman Gee asked, that would apply to any parking? Mr. Lea stated, that would apply to any parking anywhere, that is correct. Vice Chairman Gee asked, Mr. Webb, is your company willing to post loud and clear signage that no parking is allowed in this location, please re-direct to another location? Mr. Webb stated, my only concern with that is, generally the ones that sleep back up to the dock, which is still going to be loud, but it's on our property. With a bigger dock, I don't think there will be many staying on the road. I'm not sure what I can do about that. Chairman Wilson asked, so you're saying the expansion may get the trucks off of the road from in front of her house and put them at your loading dock? Mr. Webb stated, that is correct. Chairman Wilson asked, and that is around the corner from their houses? Mr. Webb stated, no, the engines would still be facing their houses, however they will be further away from them. Vice Chairman Gee asked, Ms. Neece, how often does this happen? Ms. Neece stated, you get used to it after a while and you really notice the bad ones, but I'm going to say it probably happened four or five times this winter that I am aware of. Vice Chairman Gee asked, so four days out of ninety? Ms. Neece stated, yes, but that is just the ones that disrupt sleep, the trucks are always coming in and out and you hear all that and all the banging when they are unloading. It is just the all night long that bothers us. Chairman Wilson asked, how long have you been there? Ms. Neece stated, I have been there about eleven or twelve years. Mrs. Lance asked, I think it would be fair to point out that they have been doing business there a long time and you bought there knowing that this manufacturing plant was there right? Ms. Neece stated, yes, but it was much smaller, about one fifth the size when I moved there. Mrs. Lance asked, are you testifying that it never occurred to you that the business might grow? Ms. Neece stated, actually, no it never really did. It was always just woods over there and some old dilapidated buildings. He did improve all of that. Mr. Grant asked, how many houses are along that side of Sellars Street?

Ms. Neece stated, there are four and we own three of them and one is vacant. Mr. Grant asked, there are seven parcels of property shown on the zoning map, are some of them vacant? Ms. Neece stated yes, and one is an apartment that nobody ever lives at. Mr. Grant asked, you live in one of the homes, who lives in the other? Ms. Neece stated, I do, I live in both of them. Mr. Grant asked, who occupies the fourth home? Ms. Neece stated, my sister owns the third home and the fourth home is not occupied, it's on the corner. Mrs. Lance asked, Mr. Lea, if they took this to the traffic commission and they recommended putting up no truck parking signs and the trucks parked there could they then call the police? Mr. Lea stated, yes, however if the trucks are there running their engines they could call the police without that. The issue is not the trucks parking there, because they are allowed to do so temporarily, the issue is the noise from the engines. They can call the police about the noise because that is detrimental to the residents there. The trucks coming in and out of here have been a part of this business since 1977. The business has expanded over the years, but the traffic pattern is going to move further towards Holt Street. You have the authority to add conditions to the Special Use permit, however I think you would find it hard to come up with one to alleviate this problem. If you disallow the parking of trucks here, I think that would be detrimental to his business. Mrs. Lance asked, Ms. Neece have you ever called the police? Ms. Neece stated, no. Mrs. Lance asked, is that something you would consider doing, because it seems like at this point that might be your only alternative? Ms. Neece stated, it's not my intention to stop their expansion, but you keep mentioning signs and it seems to me like that would at least help. If Mr. Webb could at least put up some signs on his property saying please don't run engines all night long, or something like that, it would really help. Mrs. Lance stated, Mr. Webb, would you be willing to put signage up, and I know you can't enforce it, but to help alleviate this problem no one can fix, would you be willing to attempt to put up the signage? Mr. Webb stated, we can do that and communicate with our carriers.

DISCUSSION & FINDINGS OF FACT: Chairman Wilson stated, there seems to be only the one issue here and I don't think this board has the authority to remedy it. It seems like both of them are trying to be good neighbors. For them to continue to be good neighbors the police might have to get involved as it is a police problem. Mrs. Lance stated, I would like to make the signage a condition of the Special Use permit. Mr. Lea stated, if you do that, you will have to be very specific as to what the signs say. Mr. Grant stated, my thoughts now are that this entire matter is outside the scope of this application, and we need to keep it outside of it. I also think, based on Mr. Webb's testimony, that he will address the issue to the best of his ability. Mr. Lea asked, Mr. Webb, did you testify that you would put up signage? Mr. Webb stated, yes. Mr. Lea stated, I believe as long as it is on the record that he will put up signage to help alleviate the issue, then I think that's all that needs to be done.

DECISION: Vice Chairman Gee stated, I would like to make a motion that the four required conditions for issuing a Special Use Permit in accordance to Section 32.13.B(1)(a) are met due to the following Findings of Fact:

1. ***the use will not materially endanger the public health or safety if located where proposed and developed according to the plans as submitted and approved;***
the findings of fact are that testimony from Mr. Webb show that there has actually been improvement in this area and that this addition to this facility would be consistent with those improvements. There has been discussion about existing issues with the business in relation to drivers that are not employees of Meredith Webb, parking on the street and running their engines from time to time. I do not feel that there was any expert testimony to say that it is an endangerment to public health or safety.

The existing traffic patterns will remain the same, there will be no additional sight line issues created with the new structure;

2. **the use meets all required conditions and specifications;**
the findings of fact are that as testified by Mr. Lea it does meet all the requirements and specifications and has been submitted to the TRC and received full approval;
3. **the use will not substantially injure the value of adjoining or abutting property or that the use is a public necessity;**
the findings of facts revert back to the testimony from Mr. Webb along with some of the presentations given by Meredith Webb that show some of the improvements the company made to their surrounding area over time. Testimony, again from Mr. Webb, that he does not believe it will injure the value of adjoining property. There was also discussion from the public, including Ms. Neece, regarding the noise issues associated with some of the trucks. Again, the testimony seems to indicate that it is a limited issue. There has been agreement that there will be improved communication between the applicant and Ms. Neece and there has been no expert testimony otherwise to show that there has been injury to the value of the properties;
4. **The location and character of the use if developed according to the plan as submitted and approved, will be in harmony with the area in which it is to be located and in general conformity with the plan of development of Burlington and its environs;**
the findings of fact are that this is an existing business operating at this location since 1977 and it's an expansion that is consistent with the existing operations of the business and is in harmony by those findings.

Mr. Eric Grant seconded the motion.

AYES: Wilson, Gee, Lance, Grant
NOES:

Vice Chairman Gee made a motion to approve the Special Use Permit for Meredith Webb warehouse addition to be located at 334 N. Main St. in Burlington, due to the previously stated Findings of Fact and the applicant shall complete the development in accordance with the plans submitted and approved by this Board and if any conditions affixed hereto or any part thereof shall be held invalid or void then this permit shall be void and of no affect.

Mr. Eric Grant seconded the motion. The board voted unanimously to approve the Special Use Permit.

AYES: Wilson, Gee, Lance, Grant
NOES:

NEW BUSINESS: None.

MEETING ADJOURNED

Ed Wilson, Chairman

Chris Marland, Secretary