

MINUTES
BOARD OF ADJUSTMENT
City of Burlington, NC
July 14, 2015

Members Present

City:

Mr. Ed Wilson, Chairman
Mr. Mike Gee, Vice-Chairman
Mr. Todd Smith
Mr. Eric Grant (Alt. City)

ETJ:

Mrs. Sylvia Greeson (Alt. ETJ)

Members Absent

City:

Mrs. Joyce Lance
Robert Giles II

ETJ:

Mr. David McDevitt (Alt. ETJ)

Also present was Mr. Joey Lea, Zoning Administrator.

Chairman Mr. Ed Wilson called the meeting of the Board of Adjustment to order at 8:30 a.m. Chairman 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 applicant and the public have presented all evidence the Board will then close the meeting to the public and discuss the case and vote. During this time no more evidence shall be admitted nor any other arguments made unless the Board wishes to ask the Applicant a question pertaining to the evidence already presented. Anyone that tries to make an argument or present any evidence at this time will be out of order. The Chairperson may order any individuals who willfully interrupt, disturb, or disrupt to leave; failure to comply with this order is punishable by imprisonment up to 60 days, a fine of up to \$1000.00 or both. An affirmative four-fifths vote is required to grant a variance. A majority vote is required to grant a Special Use Permit or to determine an appeal.

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.

MEETING MINUTES

Board Member Mrs. Sylvia Greeson stated, I have a few minor corrections. Board Member Mr. Eric Grant made a motion to approve the minutes as corrected. Board Member Mr. David McDevitt seconded the motion. The Board voted unanimously to approve the May 12, 2015 Meeting Minutes.

ITEM NO. 1:

CASE NO. 09-15 Special Use Permit (CITY)

Annette Marie McDow

809 Virginia Ave.

Alamance County Tax Map numbers 52-216-24

§ Section 32.13.W

In Home Child Care Facility

EVIDENCE PRESENTED: Zoning Administrator Mr. Joey Lea stated, Ms. McDow is seeking a Special Use Permit for an in home child care facility at 809 Virginia Ave. She is requesting to care for up to eight children per shift for three shifts. The specific requirements of the ordinance as far as her licensing and the area for the outside play area all have been met. The parking is no greater than what would be required for a single-family dwellings so it also had been met. As you see by the plan approximately 4500 sq. ft. for the outside play area, where only 800 sq. ft. would be required. Chairman Mr. Ed Wilson asked, is that fence existing? Mr. Lea stated, that is correct. Board Member Mrs. Sylvia Greeson asked, you said the fenced in area is only required to be 800 sq. ft.? Mr. Lea stated, 100 sq. Ft. per child is our requirements. This particular property is already fenced in. Vice-Chairman Mr. Mike Gee asked, the minimum lot area is met? Mr. Lea stated, that is correct. Board Member Mr. Eric Grant asked, no objections or any problems from the City of Burlington point? Mr. Lea stated, no.

Ms. Annette McDow stated, I would like to provide quality home day care for the area at 809 Virginia Ave. That particular area is in need of quality daycare and I want to start this at that location. Chairman Wilson asked, have you operated a day care before? Ms. McDow stated, yes. Chairman Wilson asked, do you currently operate one? Ms. McDow stated, no I don't. Chairman Wilson asked, I saw in the packet a letter from your landlord, have you discussed this with him? Ms. McDow stated, yes. Chairman Wilson asked, you are aware of all the state requirements and are willing to meet those? Ms. McDow stated, yes. Board Member Mrs. Sylvia Greeson asked, you said you have previously operated a daycare before, was it an in-home daycare as well? Ms. McDow stated, yes. Board Member Mrs. Sylvia Greeson asked, licensed? Ms. McDow stated, licensed. Vice-Chairman Mr. Mike Gee asked, are you licensed now? Ms. McDow stated, not yet. Vice-Chair Gee asked, traffic around the house, do you anticipate any issues? Ms. McDow stated, no issues. Vice-Chair Gee asked, dropping off and picking up that kind of thing? Ms. McDow stated, no it's a lot of space, a lot of space as far as the driveway so there shouldn't be any problem of getting kids in or out. Vice-Chair Gee asked, are you operating three shifts or do you just want the ability to do that? Ms. McDow stated, I want the ability to operate three shifts if needed. Member Greeson asked, do you plan on having other employees there with you? Ms. McDow stated, yes.

Chairman Mr. Ed Wilson asked, is there anyone from the public that wishes to speak to this matter? If you could state your name and affirm that you will tell us the truth.

Mr. George S. Hill stated, I live at 236 Highland Ave., and I have a statement that I would like to read if that is permissible. Chairman Mr. Ed Wilson stated, sure. Mr. Hill stated, my name is George S. Hill and I live at 236 Highland Ave., Burlington, NC 27217, my telephone number is

336-222-0027. I'm currently the president of the South Beverly Hills Neighborhood Association. The association was formed in 2002 to help residents living in this area to better the living conditions and to better the neighborhood. I've been living in the neighborhood since 1987, this was a very nice neighborhood when my wife and son moved in. Over the past 28 years I've seen changes in most cases it's not for the better. Elderly residents have moved out, gone to nursing homes or die over the span. We have seen our community as a whole consumed by family care facilities, boarding and rooming homes along with other care facilities. Along the way the property values have declined because outside businesses coming in to a residential area for financial gain. The South Beverly Hills Association did make a few changes with the City Council in 2007 that no longer allows boarding homes to come into a residential R-9 district.. For some reason this community continues to be targeted by landlords and slumlords. I don't call them landlords because they are slumlords because they won't keep their properties up, they won't answer letters, and they won't do anything. The community is tired of being dumped on and I'm tired of being dumped on. We have a petition for the people that live close to this. I didn't sign the petition because I live down on the far end but I am a representative of the community. We are trying to bring it back to a community. We have seen our home values just drop drastically and they are continuing to drop. That's why the neighbors have wanted me to come today. They signed a petition because they felt like we have enough abandoned properties or properties for rent. If a person wants to do a commercial business let them go into a commercial area; this is a residential area. Our main concern is we have enough available commercial property to put daycares in and that's what the problem comes down to. It's not that we don't want a daycare, just put it in the right spot. When I see something going wrong with the City, I call and let them know this is not the right avenue to take. People can say what they want but take a look and you see that all the rest homes are on the east side of town. You don't see them in the west side of town. I'm 65 years old. I'm too old to move out now. I want to keep my property nice but when we start bringing in outsiders this is what we get. Like I said, neighbors have decided to sign the petition and said this is affecting them because they are in that close proximity of Virginia Road, Rolling Road and Highland Avenue. This was a community and wasn't a commercial area, if it was a commercial area then they wouldn't have a complaint here. That's our biggest complaint and really appreciate being able to talk. You can ask me questions but I do have the petitions here that were signed by the residents in close proximity. Chairman Mr. Ed Wilson asked, how many signatures do you have on your petition? Mr. Hill stated, I think its 15 signatures here. Chairman Wilson stated, ok, we'll take the petition. How many daycares do you have in what you define as your neighborhood? Mr. Hill stated, daycares, I have no idea how many we have. I know on the corner of Farmville and Church Street there is a facility and it's vacant and someone has petition for a Special Use Permit for that and when I called Joey he told me that was going to be a daycare. I said great that's a nice place for it. But that fell through and I don't know the reason for it. Chairman Wilson asked, what other residential businesses do you have in your neighborhood? Mr. Hill stated, we have residential business on North Main Street. Chairman Wilson asked, in the three streets you named you don't have any residential businesses? Mr. Hill stated, no it's a neighborhood, it's a community. Like I said its homes and we've been invaded by landlords that have taken those larger homes and chopped them up and use them for apartments and all. Like I said, that is one of the boarding houses. Like I said, it's one of the things that made us go to the City Council. We said listen we are tired of that. Right now the City can't even tell us how many boarding houses they have in the City. That's appalling for a city this size that can't tell you how many boarding houses they have. What we did is they passed the ordinance for no boarding or roomy houses allowed in R-9 district but at the same time there is no enforcement behind that because they don't make boarding houses to require any permits or anything. It's getting to the point that that you can be a homeowner but at the same time not going to hear you say anything, we don't listen to you. That's what we are just getting tired of. We get tired of the City not listening to the homeowners. Chairman Wilson stated, thank you Mr. Hill.

Vice-Chairman Mr. Mike Gee asked, Ms. McDow, are you going to be living in the house? Ms. Annette McDow stated, my sister-in-law lives in the house. So it is a home daycare and falls into the category as a home daycare. I don't actually have to live there as long as it is a living dwelling and it is. Chairman Wilson asked, how long has she resided there? Ms. McDow stated, not long. I've only had the property a few months. Zoning Administrator Mr. Joey Lea stated, Mr. Chair, I would like to remind the Board that the petition is hear-say evidence. You can accept it into the record but you should not use it as a basis for your decision. Chairman Wilson stated, thank you sir.

Board Member Mr. Todd Smith asked, Mr. Hill, you said there are no daycares in your neighborhood? Mr. George Hills stated, not in my community but like I say you've got to remember we have a large surrounding community, North Church Street, North Main Street, we have close proximity to businesses that if you want to start a daycare it's a lot of variety available. Board Member Mr. Todd Smith asked, I guess my question is, we've approved these all across the City from the east to the west side of town and it never appeared to reduce land values any. I was wondering if you had any reason to think it was going to reduce your land values and I know you have had bad experiences with boarding houses and I can understand that's a different issue but my experience with daycares is that they don't really decrease the value of land. I was wondering if you had any basis for your statement? Mr. Hill stated, no I don't but in this neighborhood we don't have a lot of kids in that area. These kids will be coming from outside of the neighborhood. We don't have small kids in this area. Board Member Mr. Todd Smith asked, I just saw that you guys felt like your property values were going to drop and I was wondering why you thought that. Mr. Hill stated, how many people do you know that once you open a daycare you put daycare furniture out there, you've got swings and stuff for kids, how many people do you know that want to purchase next to that, I know I wouldn't. You've got to really look at it and think about it; it's a residential area not a commercial area. Vice-Chairman Mr. Mike Gee asked, if you had a family with four children move in next door to you and they had a swing set and play equipment in the back yard and the kids are out there playing, does that decrease the value of the neighborhood? Mr. Hill stated, no because that person purchased that house. Vice-Chairman Gee asked, but somebody coming to look doesn't know that four children out there playing are the children of the homeowner or children that in the care of the homeowner, isn't that right? Mr. Hill stated, right. Vice-Chairman Gee asked, is there a difference? Mr. Hill stated, I don't know if there difference. I would think so because that person is a resident of the community. Vice-Chairman Gee asked, but if the occupant of the house is a resident of the community does it matter whose children are in that yard playing? Mr. Hill stated, I don't think that would matter at all unless for some reason they became a nuisance. Vice-Chairman Wilson asked, if the homeowners children became a nuisance that would be the same issue, correct? Mr. Hill stated, right to me it would be the same issue. Vice-Chairman Wilson stated, so I guess that's really, your argument is kind of contradicting to itself in my opinion, does that make sense where I'm coming from? Mr. Hill stated, it could be contradictory but like I said we just don't have residential children in there right now. Vice-Chairman Wilson stated, let me ask you in another way, would you prefer to have Ms. McDow's sister-in-law living in that house watching a handful of children every day or would you rather have someone in that house that is known to be dealing drugs or something of that nature? Mr. Hill stated, I would take the children. Vice-Chairman Wilson stated, ok, in this case I understand your frustration but the reality is in your neighborhood individuals who are not homeowners have purchased those properties and they have the right to use that property anyway they see fit. In this situation would you agree that you are getting the better of two possibilities? Having somebody that is living and occupying the house and caring for children who need to have care during the day as opposed to having somebody who is not treating the house that way? Mr. Hill stated, I probably would; but at the same time here Ms. McDow, she doesn't even live there and it's another person's home.

Why isn't that person applying for the permit? You bring up some good points. My thing is I'm here on behalf of association because like I said I live down the far end, I live down closer to Saint John's so it's not going to affect me personally but at the same time it is affecting our longtime residents in the community. Vice-Chairman Wilson stated, just to clarify here, what is effecting the residents is non-residential homeowners own the property as opposed to investors owning the property. The use in that house is not the problem as much as ownership of the house. Mr. Hill stated, I think so. Vice-Chairman Ed Wilson stated, that is something that we can't address. I understand the frustrations but I think that they're two separate issues. Mr. Hill stated, I kind of agree because I felt like the ones that were adjoining this property should be here. My frustration is that when you speak in reference to an association you should have supporting evidence and people here decided not to show up except for one neighbor and that's my frustration that I always go through when you are doing these types of things.

Chairman Mr. Ed Wilson asked, Mr. Lea, could you quickly go over the ordinance as it relates to this daycare, I guess it's an R-9 district; and what the ordinance says is allowed and not allowed in terms of in-home daycare facility. Zoning Administrator Mr. Joey Lea stated, in your packet you should have a copy of the Table of Permitted Uses where it lists childcare facility. Childcare facilities in a residential neighborhood require a Special Use Permit. Special Use Permits are for uses that would not necessary be allowed in a certain district but can be allowed if they meet certain requirements. There are three specific requirements required for in-home daycare or any daycare actually. One is that they meet the State requirements from The Department of Health and Human Services and licensing requirements, a minimum lot size, a minimum area for outside play area for the children and parking requirements. As I stated earlier these requirements have been met. Chairman Wilson asked, so the City has rules and regulations it causes an ordinance and in that ordinance it's an in-home childcare facility that is allowed by ordinance if it receives this Special Use Permit and the purpose of the Special Use Permit is for us to make sure that the applicant is willing to follow the rules that are the specific requirements of the permit including the State inspections and the lot size and the fencing. Zoning Administrator Mr. Lea stated, that is correct and for the applicant to prove they meet the requirements of the ordinance. And then there are four general standards that you will have to meet to make finding of facts for. I would like to make one more statement in relation to what George has said and I know it may be a little difficult to understand but just like a family care home a daycare is considered a Single-Family Use. It's still occupied as a Single-Family Use; it's not a Commercial Use. In a residential area if they wanted to care for eight, ten, fifteen children and no one lived there that would be commercial, that would not be allowed; that's the difference between what a commercial daycare and a residential daycare is. The number of children also is an indicator because in-home daycares are capped at twelve children per-shift; above that it's commercial and if no one lives there its commercial but eight children per-shift is a residential use. Chairman Wilson stated, ok, I think we would like to bring Ms. McDow back up.

Ms. Annette McDow stated, I just want to say I understand the frustration in the community not wanting to be a dumping ground but I have seen children in the community and it's a lot of streets in that area and I see children over there. The same way they are frustrated with their community being a dumping ground for boarding houses and people like that in the area I'm frustrated in the community with children not having quality care. I'm wanting to make a difference on that line, my passion is children. Like I've said, I've ran a daycare before, I was successful with it. I was a foster mom and did really good with my foster children. I got out of that but it had nothing to do with the children. The reason I got out of it was the reasons because of the system and how the children were being treated. I'm also a mother of three adopted children and a grandson. I'm wanting to bring back values with the children, moral values and education. I'm on a mission to do that and that's why I'm in a neighborhood and not to make

money but to make a difference with the children; that's my reasons for being there. I work and already make money but my passion is children. The older I get the more I want to go back to investing in the children and that starts when they are young; that's why I'm there. Chairman Mr. Wilson stated, thank you. Board Member Mr. Eric Grant asked, will you be working in this? Ms. McDow stated, yes. Vice-Chairman Mr. Mike Gee asked, your sister-in-law is living in the house, is there a reason she is not applying for this Special Use Permit versus you applying for it? Ms. McDow stated, because I want to be in control of how things are ran. It's a certain way I want it taken care of. Things I want to do with the children, with the babies and with the little older kids, I can only keep up to eight kids. I will have some school age kids in there. It's my vision that I'm wanting to do. She is there and living there and she will be helping. Board Member Mrs. Sylvia Greeson asked, she will be an employee? Ms. McDow stated, yes she will be my other employee.

Mr. George Hill stated, I just heard what Joey said that you can keep up to eight children and not consider a commercial venture but is this going to be a free daycare? I just don't know how you come up with these things. You've got a daycare most of the time parents are paying something so is this going to be a free daycare or are parents paying for the care of the children? That's what I don't understand. Chairman Mr. Wilson stated, just because someone is paying for the care, I would presume that the people that leave their children there would pay for their care, doesn't make it a commercial venture. It is still residential permitted use according to our ordinance. If it were over twelve children that makes it a commercial venture. Mr. Hill asked, once money changes hands it's still considered a residential use? Chairman Wilson stated, that's correct. Mr. Hill stated, ok I don't agree with it but I understand it's the law.

DISCUSSION & FINDING OF FACTS: Chairman Mr. Ed Wilson stated, guys this is a Special Use Permit so we do have the four Finding of Fact and the two part motion that we need to adhere to. We have heard a lot of testimony here and it certainly seems that Ms. McDow is aware and is willing to comply with the ordinance; her landlord is in support of this venture; the fencing is existing and the lot size exceeds its minimum. We're aware that you have to have this permit in place before the State will permit her. She has operated a daycare before. It seems to me that she is willing to do her part. Mr. Hill has a legitimate concern but following the ordinance I'm not really sure how we can help in this situation because it is a permitted use by the City and so Ms. McDow is following the City's ordinance by applying for a Special Use Permit here. That is the way I see it. Board Member Mr. Eric Grant stated, question for the Board, do we have any duty to consider input such as from this homeowner association in making a determination on a case like this? Vice-Chairman Mr. Mike Gee stated, I think that we have to; it is evidence that has been presented but they are not here to testify directly so you don't necessarily consider those individuals on that petition. I don't know of any expert opinion that was offered. The statement on injuring value to the property, I don't know if that is true or just an opinion from Mr. Hill. Board Member Mr. Todd Smith stated, well I think we can consider Mr. Hill's opinion because he was here and testified but I don't think we can consider the opinion of the other people that signed the petition because there is no opportunity to cross examine them or listen to what they have to say other than they signed this petition and they might change their mind if some detail changed but we don't know that because they are not here, we can take his opinion but not theirs. Zoning Administrator Mr. Lea stated, just remember it is just an opinion. Board Member Todd Smith stated, correct and honestly I disagree with Mr. Hill; I appreciate what he is saying and I am very familiar with the Beverly Hills neighborhood and I do think it has had hard times but I don't think it's the City's fault. I think the City has torn down that horrible apartment complex on the corner; it used to be called Autumn Lane which actually increased the values of the area. I'm very familiar with the area and I'm over there all the time and I think it didn't change or solve all the problems but I think it greatly changed the flavor of what's going on in of the neighborhood. I do think boarding houses can be trouble if

they are not taken care but I see a childcare development especially in neighborhoods like this, it's a good thing. Neighborhoods have older people who are the rock that has been there for 25-30 years and they are definitely important and should be considered but if you are going to have a living neighborhood then it has to have new people coming in and that includes kids, and if you don't have any then you have got to get them from somewhere. That's it, they are nuisances sometimes; I've got kids, friends of kids and they will drive you nuts but they are also the good and the good that is coming later. I actually think it adds value to the neighborhood to have kids in there, running around, doing their thing as long as it is being taken care of responsibly and that's what the state guidelines are for. I understand how people over there feel like a lot of things have been put over there like housing and boarding house and things like that. Sometimes those things are problems; I don't necessarily think this is going to be a problem. I know people on the east side of town. I lived on the east side for many of years feel like everything bad that is happening is on the east side and it happens on the west side but I can tell you we have granted permits just like this for people on the west side. I don't think this is a target to put a commercial venture in this neighborhood. They are going to make some money but I don't want to quibble about what's commercial or not; I don't think that's what we are doing here but I don't think this lady came and said I want this neighborhood because I'm going to make a bunch of money here. I think she just wants to take care of kids and this just happens to be the area it is. And like I said there is some frustration with that but you've got to put them somewhere; if you have kids you've got to put them somewhere and in a neighborhood is a good place. This seems like a good neighborhood, I hope that the kids that grow up here would love these people that are around and want to buy these houses and grow up and live in these houses and make a better neighborhood. I think we ought to grant the Special Use Permit. I don't think it will decrease the values. I'm not trying to disrespect your opinion but you know as much about land value as I do probably but my experience has been it don't decrease land value. We've granted them all over the City and no one has ever complained about land values dropping so I don't think that is the case. I actually think it might add to the community. I want to see Beverly Hills be a great community in the future too but I think this might be a way to do that. With new people coming in that aren't thugs, that aren't in trouble; you don't know this but I happen to be a criminal attorney and I know where criminals are all over town, I know that is what you don't want and I know kids are what you do want. I think we ought to grant the permit even though I understand there are some issues in the neighborhood. Chairman Wilson asked, is there any other discussion?

DECISION: Board Member Mr. Todd Smith 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 Finding 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, Ms. McDow has gone to the State, gone through the State requirements, has met the City code requirements including the fencing and the overview by the City. There is no evidence contrary to believe the public will be in danger.
2. **the use meets all required conditions and specifications;**
the findings of facts are, Mr. Lea has said all the requirements have been reviewed by the City and have been met.
3. **the use will not substantially injure the value of adjoining property or that the use is a public necessity;**

the findings of fact are, this one has been the most interesting. I don't think the value of adjoining properties will be injured. I think there is some evidence that it will increase or remain the same. There is certainly nothing to contrary to that.

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, we have to have daycares and we have to put kids somewhere. I think that is a good thing, I hope it's a good thing in this neighborhood and I hope it brings a lot to the neighborhood.

Board Member Mrs. Sylvia Greeson seconded the motion.

AYES: Grant, Gee, Wilson, Smith, Greeson

NOES:

Board Member Mr. Todd Smith stated, I would like to make a motion to approve the Special Use Permit for Ms. Annette McDow at 809 Virginia Ave. due to the previously stated Finding of Facts, and the applicant shall complete in accordance with the plans submitted and approved by this Board and if any of the conditions affixed hereto or any part therefore shall be held invalid or void then this permit shall be void and of no affect.

Vice-Chairman Mr. Mike Gee seconded the motion. The board voted unanimously to approve the Special Use Permit.

AYES: Grant, Gee, Wilson, Smith, Greeson

NOES:

Board Member Mr. Todd Smith stated, Mr. Hill, you could tell your people in the neighborhood that I really do think it is a nice neighborhood and I know it's not fancy as it once was but I think it's a lot nicer than what it was maybe ten years ago and it's probably because of efforts like you and all these people signed this thing but I notice you are the one that came out here and that says a lot about you and about what's going on over there in the neighborhood there. I do think the City can help you guys; don't think the City is trying to dump on you but I think they are trying to make it nicer. Mr. George Hill stated, as the president I will go back and tell them because their voices were not heard. When your voice is not heard you get what you get. Board Member Mr. Todd Smith stated, tell them this might be the opportunity to have new blood

NEW BUSINESS: None

MEETING ADJOURNED

Ed Wilson, Chairman

Kelly Peele, Secretary