

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**City of Burlington, NC**  
**June 14, 2016**

**Members Present**

**City:**

Mr. Ed Wilson, Chairman  
Mr. Mike Gee, Vice-Chairman  
Mr. Todd Smith  
Mrs. Joyce Lance

**Members Absent**

**City:**

Mr. Robert Giles II (Alt.)  
Mr. Eric Grant (Alt.)

**ETJ:**

Mrs. Sylvia Greeson (Alt. ETJ)

**ETJ:**

Mr. David McDevitt (Alt. ETJ)

Also present were Mr. Joey Lea, Zoning Administrator and Mr. Chris Marland, Zoning Enforcement Officer.

Chairman Mr. Ed Wilson called the meeting of the Board of Adjustment to order at 8:30 a.m. Chairman Mr. Ed 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. Chris Marland, Zoning Enforcement Officer 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. 3:**

**CASE NO. 03-16 VARIANCE (ETJ)**

**Glen Raven Mills**

1831 N. Park Ave.

Alamance County Tax Map number 12-37-430

§ Section 32.8.E(5)(d)

Permitted encroachment on required yards

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, Glen Raven Mills at 1831 North Park Avenue is seeking a 20 ft. encroachment variance, as well as a variance to the width of the steps allowed in such encroachment area from 10 ft. to 12 ft. They are doing an expansion and will be constructing a skywalk or walkway across the road to get back to the main building. The steps will be located here and that is where the encroachment begins, you can see the right-of-way out here. As you see, when they are coming across they will have to exit the steps here right in the setback. This is why they are asking for the variance. Board Member Mrs. Sylvia Greeson asked, where is the right-of-way? Zoning Enforcement Officer Mr. Chris Marland stated, see here, they show the 40 ft. setback line here. Mrs. Sylvia Greeson asked, ok that's the setback off the right-of-way? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Vice-Chairman Mr. Mike Gee asked, so they are 17 ft. from the right-of-way? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Here you will see the 12 ft. width of the steps; in the ordinance it says no more than 10 ft. in width. You are allowed to have a 3 ft. encroachment, so you see the 23 ft. encroachment and they are allowed the 3 ft., so they are asking for the 20 ft. encroachment. Chairman Mr. Ed Wilson asked, and that's a front yard setback? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, what is the purpose of the ordinance with the 10 ft. of width verses 12 ft. of width on the steps? Zoning Administrator Mr. Joey Lea stated, I have been here a long time, but not that long, and we honestly don't know why. Board Member Mrs. Joyce Lance asked, does anybody know? Zoning Administrator Mr. Joey Lea stated, probably not. Chairman Mr. Ed Wilson stated, 10 ft. was adequate back in the day and it's not any longer. Vice-Chairman Mr. Mike Gee asked, what's the purpose of a restriction on where a stairwell can be inside of the encroachment? Zoning Administrator Mr. Joey Lea stated, the intent, or purpose of the encroachment, is to keep sight distance down the street. Now this is a little unusual, you would not have this problem in an industrial situation, mostly in residential, but the ordinance does not distinguish between the two. Chairman Mr. Ed Wilson asked, there is no parking lot entrance anywhere near the steps is there? Zoning Administrator Mr. Joey Lea stated, no, the entrance is just outside of the parking area. Chairman Mr. Ed Wilson asked, it's not blocking the view turning off of and onto Glen Raven Road? Zoning Administrator Mr. Joey Lea stated, no, you can see how far back it is from the right-of-way and the actual physical road is beyond that. Board Member Mrs. Sylvia Greeson asked, the gray shaded area is part of an existing road? Zoning Administrator Mr. Joey Lea stated, correct. Board Member Mrs. Sylvia Greeson stated, so we are, as you say, a good distance from an entrance to the road. Chairman Mr. Ed Wilson stated, do we have any more questions for the City; we are looking at a 20 ft. encroachment into the right-of-way and a 2 ft. variance for the width of the steps.

Mr. John Plageman stated, historically, Glen Raven has been on both sides of the Glen Raven Road, from what I understand for the last couple of years they have had 2 or 3 employees hit on Glen Raven Road at this crossing. So as part of the conception with this expansion, which is a town-hall for Glen Raven use, they want to connect the existing building, which is a column roundhouse, to the other building over Glen Raven Rd. We've received approvals verbally from NCDOT that will allow this to happen. When we met with the building officials here and also with NCDOT the travel distance required a set of stairs needed a mid-point. That's the closest to

mid-point that we could get without hurting their existing parking or anything. We have tried to pull it as far away from the setback that we can. Those dimensions show the best limits that we've got for the best scenario and also for existing conditions on the east side of Glen Raven Road. The purpose of the sky bridge is to help keep the drivers on Glen Raven Road safe so they do not hit anybody and also the employees of Glen Raven from being hit and it's more out of a public safety issue than anything else. They've made the commitment to build this very expensive pedestrian bridge which is kind of nice to get rid of that issue, which is why we're here to get the encroachment on the set of stairs. Board Member Mrs. Sylvia Greeson asked, where is the exit and entrance to the parking lot itself out to Glen Raven Road? Mr. John Plageman stated, by the tree shown on the plan. It is the exit and entrance off of Glen Raven Road. Board Member Mr. Todd Smith asked, there's another one on the back street? Mr. John Plageman stated, on Cadiz Street, yes sir. If you go down Cadiz Street you will see where that road allows another entrance in. Board Member Mrs. Sylvia Greeson asked, so really the stairs aren't at all in anybody's line of sight? Mr. John Plageman stated, no ma'am. Board Member Mr. Todd Smith stated, the reason you don't put it 20 ft. over, is because of architectural proposes, it needs to be closer to the middle? Mr. John Plageman stated, exactly right. Chairman Mr. Ed Wilson asked, that's a NC building code? Mr. John Plageman stated, yes sir it is. Chairman Mr. Ed Wilson asked, so you are caught between 2 sets of codes? Mr. John Plageman stated, yes I am. Vice-Chairman Mr. Mike Gee asked, can you explain to us what you think the unnecessary hardships are in carrying out the strict letter of the ordinance? Mr. John Plageman stated, the first hardship is because Burlington has grown. The outer districts of Burlington have grown and people have been using Glen Raven Road more often at a higher rate of speed. There is a slope that comes as you approach Park Ave. from Glen Raven Road. You are on an up-slope so the visibility at the railroad gate-crossing isn't the greatest. There have been instances where their employees have been hit. That's the first hardship. They are trying to alleviate that by building the pedestrian bridge. Historically Glen Raven has been on both sides of the road and their purpose is to maintain that. They don't have the ability to consolidate to one side or the other. Vice-Chairman Mr. Mike Gee asked, so you are stating there the hardship is kind of particular to the property? Mr. John Plageman stated, yes sir that is correct. Again the pedestrian bridge is a solution to safeguard its employees and also the general public driving vehicles on the road. That's pretty much the hardship. Board Member Mr. Todd Smith asked, did the DOT tell you how high it has to be? Mr. John Plageman stated, 17 ft. 6 in. from the road surface to the underside of any structure. That's for both visibility driving up and also driving under for any truck to get under there. Board Member Mrs. Sylvia Greeson asked, you will of course, meet all regulations and specifications of the NCDOT? Mr. John Plageman stated, absolutely. Vice-Chairman Mr. Mike Gee asked, so truthfully, I'm not trying to beat a dead horse here, but you are saying the biggest issue is the increase in traffic volume given the nature of the way Glen Raven Mill is on their existing campus and they created an issue that is trying to be addressed? Mr. John Plageman stated, that is correct; also their growth in their company. More people are crossing the road than they did before. Board Member Mr. Todd Smith asked, they not only own that piece of property but the property across Cadiz Street too is that correct? Mr. John Plageman stated, yes that is correct. The purpose of this is, they are moving most of the Sunbrella and the leadership of the company, over to the original mill, which is across the street and taking technical fabrics that are occupying the roundhouse. It would free up space in the manufacturing facility. We will have over 100 employees traveling across Glen Raven Road when this project is done. Board Member Mrs. Sylvia Greeson asked, I assume right now, there is simply a marked crosswalk there? Mr. John Plageman stated, yes that's it. Board Member Mrs. Joyce Lance asked, I don't think you have any studies regarding how fast the cars are going but if you had to estimate, since we know that most people speed, what do you think the cars are going here? Mr. John Plageman stated, by the time they hit the crosswalk they are approaching the crosswalk above 35mph. Chairman Mr. Ed Wilson asked, is that the posted speed limit there? Mr. John Plageman stated, yes it's 35mph. Board Member Mrs. Joyce Lance asked, you mentioned several

employees have been hit, I'm assuming there hasn't been any fatalities? Mr. John Plageman stated, I don't believe there have been fatalities. I did not ask that question of the Glen Raven folks. Zoning Administrator Mr. Joey Lea stated, to further point your question, I think from staff perspective, not only with that, but one of the main points is that the building code requires a travel distance to the steps, along with the physical constraints of the property this about the only place it could be. Board Member Mrs. Joyce Lance asked, would part of the hardship would be the slope or the grade of the road? Mr. John Plageman stated, I wouldn't say it's a relative hardship, I would say it's more of a hazard. It increased the hazard on the road. Board Member Mrs. Joyce Lance asked, but that's not something you created? Mr. John Plageman stated, no, it's not. Board Member Mrs. Sylvia Greeson asked, can you speak to why the stairwell is being designed at 12 ft. as opposed to 10ft? Mr. John Plageman stated, I can, the building code also has a required width of stairs, and to get the volume of people off the pedestrian bridge in the event of an evacuation or anything, we are required to have a certain width. That width is 6 ft. clear on each side, which includes handrails. That's what is driving the width to be 12ft. Vice-Chairman Mr. Mike Gee asked, is that a code issue? Mr. John Plageman stated, it is a code issue, yes sir. Chairman Mr. Ed Wilson asked, to be in compliance with the NC building code, you have to violate the City's ordinance here? Mr. John Plageman stated, that is correct. Board Member Mrs. Joyce Lance asked, so the 12 ft. is more for an emergency in an evacuation and has nothing to do with it simply being bigger? Mr. John Plageman stated, correct.

**DISCUSSION:** Chairman Mr. Ed Wilson stated, again there are 2 variances here being requested. A 20 ft. variance to the encroachment into the right-of-way and a 2 ft. variance on the width of the steps. Board Member Mr. Todd Smith asked, does anybody think this is a bad idea? Chairman Mr. Ed Wilson stated, no, anyway you look at it, it's obviously an improvement on the safety in the area. Board Member Mr. Todd Smith stated, better than getting hit on the roadway. Board Member Mrs. Joyce Lance stated, as a driver I like it too, I mean if I zone out and speed through there, I really don't want to hit anybody. Chairman Mr. Ed Wilson stated, I do, for the record, think the hardships were stated by Mr. Plageman and by the City, to be the existing campus of Glen Raven and its historical use of both sides of Glen Raven Road. The increase in traffic on Glen Raven Road, with the increase in employment and an increase in the foot traffic and ultimately the NC building codes and the DOT requirements for this walkway are at odds with our zoning ordinance. In my opinion this improves the public safety to put the walkway over the road. Board Member Mrs. Joyce Lance stated, am I correct that the slope of the road is a hardship? Board Member Mr. Todd Smith stated, I would agree with that. Chairman Mr. Ed Wilson asked, is there any other discussion? With that, and those comments of mine, I would propose that as my motion. Board Member Mr. Todd Smith stated, seconded. Zoning Administrator Mr. Joey Lea stated, the motion needs to be a little clearer. You need to stipulate the hardship in the motion. You did all that during the discussion. Chairman Mr. Ed Wilson stated, at the request of the City I will restate my motion. I move that we grant a 20 ft. encroachment right-of-way variance and a 2 ft. width of steps variance to Glen Raven Mills located at 1831 North Park Ave. in Burlington, NC., and that the hardship that was testified to by Mr. Plageman and by the City and noted in the discussion by the Board is the historic character of the campus of Glen Raven Mills being located on both sides of Glen Raven Road, that the slope of the road and the poor visibility caused by the increase of employees at Glen Raven Mills, have created hardships that needs to be addressed with the walkway. The design of the walkway, as required by the NC building code and the NCDOT, have caused for these variances to be necessary.

**DECISION & FINDINGS OF FACT:** Chairman Mr. Ed Wilson stated, due to the following findings of fact:

- 1) ***Unnecessary hardship would result from a strict application in the ordinance.***

the hardships that I just previously stated in the first half of my motion I would like to apply to 1 and 2 of the findings of fact.

2) **The hardship results from conditions that are particular to the property.**

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3) **The hardship did not result from actions taken by the applicant or the property owner.**

the campus and the road were in place long before the ordinance was and the increase of traffic by employees and cars have caused this, so this was not result of the applicant.

4) **The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured and financial justice is achieved.**

the City, as well as the Board, do believe that the safety is enhanced by putting in the walk way and moving pedestrian traffic off of crossing Glen Raven Road.

Vice-Chairman Mr. Mike Gee seconded the motion. The Board voted unanimously to approve the variance.

**AYES: Lance, Gee, Wilson, Smith, Greeson**

**NOES:**

**ITEM NO. 4:**

**CASE NO. 04-16 SPECIAL USE PERMIT (City)**

**Rasanda Mitchell**

1313 Plaza Dr.

Alamance County Tax Map number 12-7-91

§ Section 32.13.W

Child Care Facility

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, Ms. Mitchell has been before you a couple times for what she is seeking to do. She currently has a Special Use Permit that she received in 2014 for 75 children. She wants to increase that to 125 children at this daycare. She will be starting with 25 kids for now but she does want to ask for 50 so she doesn't have to come back and do this all over again. She has permits in the inspection department now to up fit this location to expand her daycare. Chairman Mr. Ed Wilson asked, so the Special Use Permit applies to the existing daycare as it stands now? Zoning Enforcement Officer Mr. Chris Marland stated, the current one, yes sir. This Special Use Permit will cover all of what you see. Board Member Mrs. Sylvia Greeson asked, how much more fenced in outside area will be required? Zoning Enforcement Officer Mr. Chris Marland stated, no more, she takes them out in shifts. She previously had a fenced in area there at 5,000 sq. ft. Board Member Mrs. Sylvia Greeson asked, so the existing playground area will still comply with the increased space? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Vice-Chairman Mr. Mike Gee asked, they will meet the minimal lot area for a childcare facility this size? Zoning Enforcement Officer Mr. Chris Marland asked, lot area? Vice-Chairman Mr. Mike Gee stated, this says a minimal lot area for a child care facility that cares for 10 children or less shall be the same for a single-family dwelling that the facility is located or 6,000 sq. ft. Zoning Enforcement Officer Mr. Chris Marland stated, yes. Vice-Chairman Mr. Mike Gee stated, so the minimal lot area is good,

the fencing is good. Board Member Mrs. Sylvia Greeson asked, so #3 at least 100 sq. ft. per child of that outside play area shall be provided, that is also met? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Zoning Administrator Mr. Joey Lea stated, we have allowed them this way in the past. It says 100 sq. ft. per child. However, the State allows them to take the children outside in shifts, so we applied that 100 sq. ft. per child to the number of children that are in the fenced area at one time. So it doesn't necessary have to be 100 sq. ft. per child in the daycare. Board Member Mrs. Sylvia Greeson asked, ok and the NC Childhood Regulations takes care of that and makes that compliant, correct? Zoning Administrator Mr. Joey Lea stated, the State only requires 80 sq. ft., we require 100 sq. ft. Chairman Mr. Ed Wilson asked, ok is there any other questions for the City?

Ms. Rasanda Mitchell stated, we have started to take kids 3 to 4 years old, to school age kids, but since I have been here, I've been steady growing and need more space. During the daytime, with preschool kids, we have kids come in from Head Start and pre-k so it limits us to the number of kids we can keep during the day. We want to get more space, so we could take more kids during the day time like preschool kids and move some school age to the other side and give us more room. We have a lot of kids about ready to go to school so I won't have anywhere to place them for after school because we don't have any more room left. I need space so that they can come back after school. Chairman Mr. Ed Wilson asked, ok and you are in good standing with everything now on your inspections? Ms. Rasanda Mitchell stated, yes sir. Chairman Mr. Ed Wilson asked, you are aware that you have to maintain that standards established by the Health Department and Human Services, and you are aware of the lot area and fenced in area regulations? Ms. Rasanda Mitchell stated, yes sir. Chairman Mr. Ed Wilson asked, you will testify that you will comply to those as well? Ms. Rasanda Mitchell stated, yes sir. Vice-Chairman Mr. Mike Gee asked, if we grant this, in your opinion, will you materially injure the public health and safety? Ms. Rasanda Mitchell stated, no sir. Vice-Chairman Mr. Mike Gee asked, do you feel that this would be in harmony with the rest of the area the proposed facility will be located in? Ms. Rasanda Mitchell stated, yes sir. Vice-Chairman Mr. Mike Gee stated, I would say given the fact that you have an existing facility right there beside it that it would be in harmony. Board Member Mr. Todd Smith asked, just for the record, this is at the Burlington Outlet Mall so there is parking and options for 100's of cars? Ms. Rasanda Mitchell stated, right now it's just me and the gym on the end. Board Member Mr. Todd Smith asked, and unfortunately the mall is not that full right now and there's light traffic all through there and so it's really designed for lots of traffic, you testified there's not that much anymore, right? Ms. Rasanda Mitchell stated, right, correct. Board Member Mr. Todd Smith asked, I couldn't tell from the pictures is the fenced in area outside of your current location? There's a grass patch showing in the picture. Ms. Rasanda Mitchell stated, yes, it's fenced in on the side of the building. Board Member Mr. Todd Smith asked, you also run the one that's over on Chapel Hill Road that's about 2 blocks over? Ms. Rasanda Mitchell stated, yes. Board Member Mr. Todd Smith asked, and the expansion, all you are doing is taking the unit next to it and using it for size then? Ms. Rasanda Mitchell stated, yes sir.

**DISCUSSION & FINDING OF FACTS:** Chairman Mr. Ed Wilson stated, this is an application for a Special Use Permit to expand the footprint of the daycare as noted in the attached plans and to expand from 75 children to 150 children. Is there any discussion? Board Member Mr. Todd Smith stated, I don't see any reason not to do it. Clearly she has been doing a good job running her 2 other places over there. It seems like an almost ideal location for it right next to the one she has there now. Board Member Mrs. Sylvia Greeson stated, we're just expanding what's there, not changing anything.

**DECISION:** Vice-Chairman Mr. Mike 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 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, testimony from the applicant, and nothing contradicting to her testimony, that there will not be any endangerment to any public health or safety; this is just an expansion of the facility.
2. **the use meets all required conditions and specifications;**  
the findings of fact are, testimony from the applicant and from the City when the specific requirements that were noted in the ordinance, along with just testimony regarding traffic circulation, parking, and all that stuff.
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, testimony from the applicant telling us there will be no detrimental effect on the adjoining properties and also, just the fact that this is a location that I think is looking for additional tenant space, and so the expansion here will probably have a positive impact instead of a negative impact.
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, as the applicant has testified, we do believe that this will be in harmony and I agree with that position, again just given the fact that this is an expansion of an existing facility and nothing new to the area.

Board Member Mrs. Joyce Lance seconded the motion.

**AYES: Lance, Gee, Wilson, Smith, Greeson**

**NOES:**

Vice-Chairman Mr. Mike Gee stated, I would like to make a motion to approve the Special Use Permit for Like My Own #3 to be located at 1313 Plaza Drive due to the previously stated Findings of Fact and that the applicant be required to comply with all the State licensing requirements for the additional space and that the applicant shall complete this in occurrence to the plans submitted to be approved by this Board and if any of the conditions affix here to or any part there of shall be held invalid or void as this permit shall be void and have no effect.

Board Member Mrs. Sylvia Greeson seconded the motion. The board voted unanimously to approve the Special Use Permit.

**AYES: Lance, Gee, Wilson, Smith, Greeson**

**NOES:**

**NEW BUSINESS:** None

**MEETING ADJOURNED**

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H.E. Wilson III, Chairman

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Kelly Peele, Secretary