

MINUTES
BOARD OF ADJUSTMENT
City of Burlington, NC
October 11, 2016

Members Present

City:

Mr. Ed Wilson, Chairman
Mr. Eric Grant (Alt.)
Mr. Robert Giles II (Alt.)

Members Absent

City:

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

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 interrupts, disturbs, or disrupts to leave the meeting. Any person who fails to comply with this order is guilty of a class 2 misdemeanor. 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.

MEETING MINUTES

Board Member Mr. Eric Grant made a motion to approve the minutes with the changes. Board Member Mrs. Sylvia Greenson seconded the motion. The Board voted unanimously to approve the September 13, 2016 Meeting Minutes.

ITEM NO. 3:

CASE NO. 10-16 SPECIAL USE PERMIT (City)

AOSK Child Care Facility

3549 S. Mebane St.

Alamance County Tax Map number 3-21-23

§ Section 32.13.W

Child Care Facility

EVIDENCE PRESENTED: Chairman Mr. Ed Wilson asked, if you could explain to the applicant the procedures for a Board of 4 members, it's a majority vote? Zoning Administrator Mr. Joey Lea stated, our normal procedure is that you would instruct the applicant that you only have 4 members, only a quorum of 3 is needed but we do not have a full Board, normally we will ask them to give them the option if they would want to wait until we do have a full Board. Chairman Mr. Ed Wilson stated, right but to pass the Special Use Permit today how many member have to agree is 3 of the 4 sitting Members. Zoning Administrator Mr. Joey Lea stated, its majority for the Special Use Permit.

Zoning Enforcement Officer Mr. Chris Marland stated, case 10-16 for AOSK Child Care Facility. This will be at 3549 South Mebane Street. I know on your application there you see the street address being South Mebane with a pin number. However, checking the address coordinator the address will be 3549 South Mebane Street. What they are here asking for today is to get a Special Use Permit for a child care facility. They are asking for a child care facility that has 130 children and up to 3 shifts. They have previously submitted their plans to the Technical Review Committee and they have passed the Technical Review Committee, they do meet all requirements and specifications that is set forth by the City.

Mr. Lawson Brown stated, for the record my name is Lawson Brown, I practice with the Vernon Law Firm and we have an office at 522 South Lexington Avenue. I swear and affirm everything I tell you the truth to the best of my knowledge. It's my pleasure to be representing Ms. Whittaker and her child care facility; I would just ask the City's staff is they have an opinion if it would materially endanger the public health or safety if it is approved. Zoning Enforcement Officer Mr. Chris Marland stated, I don't believe so. Zoning Administrator Mr. Joey Lea stated, it's a little unorthodox; staff does not give an opinion. Mr. Lawson Brown stated, ok, members of the Board my previous comments on this to remind you Mr. Grant and I were on a Board of Adjustment together and I had the pleasure of dealing with for 15 years. Here is the architect addition of this, Ms. Whittaker I will have her sworn in and answer any questions you might have I can answer, she has had some health issues and if I can speak for her I would appreciate it. This property is under contract to sell to Ms. Whittaker for a child care facility with 130 children. The site plan has gone through the Technical Review Committee and if you will note particular the traffic

pattern that comes off the side street and not off Mebane Street so it is very much designed to meet the requirements of the Technical Review Committee but basically for safety issues not only for the folks that are using this facility but also for the traveling public there on Mebane Street. The speed limit is 35 miles per hour. I was fortunate enough to do the work for the adjoining facility 20 or so years ago and so with my mother-in-law being in that facility I have been in and out of here the last few months and it's really not any real issue on Mebane Street in my professional opinion but the staff has recommended the side and for the children's benefit and the benefit of the traveling public that is the way the traffic pattern developed. You will also notice from the site plan that it is approximately a 6,000 sq. ft. building originally Ms. Whittaker desired to only have 1 shift and after consideration she has considered putting in a second shift however we are asking for approval for a 3 shift operation even though this is not anticipated that she will get there. I would submit to you that not only does it not materially endanger the public health or safety located where it is proposed and developed according to the plans specification but as the Technical Review Committee has stated the use meets all requirements and conditions and specifications. In view of the fact there is an office and institutional use to the west of the Brookdale facility and a public school to the north and separation by street to residential I would submit to you based on my education training and experience of 41 years doing basically real estate and commercial real estate and in particular it will not injure the value of any adjoining properties and I think the absence of any effective folks here is certainly an indication there are no concerns there. I think that the location and character of the use 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 the City of Burlington and its environs and so I think those are things you need to be looking at and I'm happy to answer any questions, Ms. Whittaker is here to answer any questions that I can't answer, she has other facilities and is based out of Greensboro. I think that this will be a great use for this property based on the fact that it has been sitting there for such a long period of time. I know that it was considered for rezoning years ago I think for apartments possible but it will be a nice compliment to what is already there. Chairman Mr. Ed Wilson asked, do you have the hours of the daycare? Mr. Lawson Brown stated, the hours of the daycare are basically going to be 7am to 8pm.

Ms. Jacqueline Whittaker stated, I swear and affirm everything I say is the truth to the best of my knowledge.

Chairman Mr. Ed Wilson stated, I think I'm ok if you want to answer the questions Mr. Brown. 7-8pm with 3 shifts, do you know how many children per shift? Mr. Lawson Brown stated, maximum of 130. Ms. Jacqueline Whittaker stated, it should be, once the roads are in place it will not be more than 130/140 children. Zoning Administrator Mr. Joey Lea asked, which one is it? It's tied to a number so you have to give a certain number. The plans that were submitted and approved by TRC are 130 children. Mr. Lawson Brown stated, 130 children in addition to what you all if you rule successful in convincing you this should be done and it meets all the requirements. There is also the state license and 130 children is what it has been so we will go with 130 children. Chairman Mr. Ed Wilson asked, Ms. Whittaker is aware that there is a state license and it has to comply with all the license requirements? Mr. Lawson Brown stated, yes our appeal to you today is subjected to that requirement that she be compliant with all State regulations. Chairman Mr. Ed Wilson asked, the size of the fenced in playground of the backside is how large? Mr. Lawson Brown stated, the playground area is 10,000 sq. ft. which is consistent with the requirements of the state statute. The facility itself again is a 6,000 sq. ft. and the total

area is 1.7 acres for the entire property which is 75,000 sq. ft. or more. Again y'all understand that anything that should come up must comply in terms of the building code and must comply with all state and federal and local rules and regulations regarding maximum coverage of the lot for impervious surface and also water and certainly the application is subject to compliance with all other building code requirements. Chairman Mr. Ed Wilson asked, Mr. Marland is the application complies with the 100 sq. ft. per child fenced in area at 130 children? Zoning Enforcement Officer Mr. Chris Marland stated, yes in the past we have allowed and the State also allows them to take the children out in shifts so there will not be a 130 children on the playground at one time so we have allowed that in the past and the State allows it as well so we are good with it. Chairman Mr. Ed Wilson asked, they are in compliance there? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir. Chairman Mr. Ed Wilson stated, Mr. Brown you addressed vehicle circulation, the parking and loading can you tell us how the parking and loading will happen on the property? Mr. Lawson Brown stated, it shows on the site plan as a car exits onto Cardwell Drive from Mebane Street a right in at that point, the vehicle will be making a left into the parking lot and go up to the front door to drop off the children and under the overhang if you will patio area and then that vehicle will continue in a westerly direction turn left then go southerly across the parking lot and exiting at the same entrance; it's one lane in and one lane out. There is adequate stacking according to the Technical Review Committee of about 8 cars I believe that has been considered and the building has been located in such a fashion that it is well away from Cardwell Drive. The service parking will be to the east of the building and based on services times it's my understanding there will be very little if any conflict with dropping off the children first thing in the mornings and picking them up in the late evenings. Chairman Mr. Ed Wilson asked, is that where your waste management is also? Mr. Lawson Brown stated, that is correct. Chairman Mr. Ed Wilson asked, is that a fence I see around all that, a privacy fence or something? Mr. Lawson Brown stated, yes. Chairman Mr. Ed Wilson stated, you will probably have all that screened and fenced in, ok. In signs and lighting can you us what you intend to do with your exterior lighting and signage? Mr. Lawson Brown stated, I'll defer to Ms. Whittaker on the exterior.

Ms. Jacqueline Whittaker stated, the lighting as far as the parking, there are lights on the west end of the property commercial style lights on the back of the building and on the side located very close to where parents would pull up. We also have in the circular drive area, one on each corner; there is also a light by the dumpster area and I think there is one more light near the front east end. Chairman Mr. Ed Wilson asked, all the lighting will be focused on your property and not on adjacent properties? Ms. Jacqueline Whittaker stated, correct and we have not submitted any plans as of now for a sign. Chairman Mr. Ed Wilson stated, ok. So you don't know what you are going to do yet for a sign? Ms. Jacqueline Whittaker stated, no. Chairman Mr. Ed Wilson asked, you are aware there is a regulation that control the signage and agree with them? Ms. Jacqueline Whittaker stated, I am and yes I understand it has to be submitted and approved before any signs can be allowed on the property. Chairman Mr. Ed Wilson stated, ok thank you Ms. Whittaker. Well, wait does anyone have any questions for Ms. Whittaker or Mr. Brown? Board Member Mr. Eric Grant asked, where do you live? Ms. Jacqueline Whittaker stated, I live in Greensboro. Board Member Mr. Eric Grant asked, what made you decide to do this in Burlington? Ms. Jacqueline Whittaker stated, I have customers from Burlington that actually live in Burlington and work in Greensboro and do to the number of request that we have a facility in Burlington I figured over the past 20 years now would be a good time to put one here. It's a great community and it is growing and looks like a great opportunity, I found the perfect parcel of land

and I thought let's try it. Board Member Mrs. Sylvia Greeson asked, you say you have other facilities in Greensboro, how many other facilities do you operate? Ms. Jacqueline Whittaker stated, I sold one now I have one that has a capacity over 200 so I've had 3 total. Board Member Mrs. Sylvia Greeson asked, 3 total and you have been in this business how long? Ms. Jacqueline Whittaker stated, 20 years. Chairman Mr. Ed Wilson asked, does the Board have any more questions for Ms. Whittaker? Board Member Mr. Eric Grant stated, it appears she has done her homework. Ms. Jacqueline Whittaker stated, I generally build from the ground so I'm very familiar with the building process and zoning too. Chairman Mr. Ed Wilson asked, does the Board have any more questions for Ms. Whittaker or Mr. Brown? Ok thank you. Does the Board have any questions for the City? Is there anybody from the public that wishes to comment? The Board will now close for discussion among ourselves.

DISCUSSION & FINDING OF FACTS: Chairman Mr. Ed Wilson stated, I will remind the Board this is a Special Use Permit and we have the format for approving the Special Use Permit template. It appears that the applicant I can agree has done their homework and this is very well prepared to come before us this morning. The City has testified this has been through the Technical Review Committee and has passed for the City and their codes. We only have the general visions in here that Mr. Lawson addressed and some of the questions about vehicle circulation, parking and loading, effect on adjacent properties, service and entrance area, the utility screening, signage and lighting and it appears they met or exceed all those general restrictions. Mr. Lawson Brown through testimony and through questioning did testify as did Mr. Marland about the restriction to requirement to meet the State's Health Department requirements and the building size and the square footage of the building size and the 100 sq. ft. per child for the fenced in area. They have testified the child care facility meets all the particular in 32.13.W requirements through receive a child care facility Special Use Permit.

DECISION: Chairman Mr. Ed Wilson 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, this is zoned for this commercial type use that Mr. Lawson stated in his opinion did not believe it would endanger the health or safety and we had nobody from the public to refute those comments.
2. ***the use meets all required conditions and specifications;***
the findings of fact are, testimony by Mr. Marland and Mr. Lawson that it went through and met the Technical Review Committee and questioning by the Board it met all the specific requirements of Section 32.13.W and all the general requirements for a Special Use Permit.
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 is in an area that has facilities similar to this and that there is no one here to refute the negative effect on the adjoining property values or a negative effect on the area.

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, this is in an area that has facilities similar to this and that there is no one here to refute the negative effect on the adjoining property values or a negative effect on the area.

Board Member Mrs. Sylvia Greeson seconded the motion.

AYES: Grant, Giles, Wilson, Greeson

NOES:

Chairman Mr. Ed Wilson stated, I would like to make a motion to approve the Special Use Permit for AOSK Childcare Facility to be located at 3549 South Mebane Street, Burlington, North Carolina due to the previously stated Findings of Fact and that the applicant be required to complete the development in accordance with the plans submitted and approved by this Board and if any of the conditions affixed hereto or any part thereof shall be held invalid or void, then this permit shall be void and of effect.

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

AYES: Grant, Giles, Wilson, Greeson

NOES:

NEW BUSINESS: None

MEETING ADJOURNED

H.E. Wilson III, Chairman

Kelly Peele, Secretary