

MINUTES
BOARD OF ADJUSTMENT
City of Burlington, NC
May 9, 2017

Members Present

City:

Mr. Ed Wilson, Chairman
Mr. Eric Grant (Alt.)
Mrs. Joyce Lance
Mr. Todd Smith

ETJ:

Mrs. Sylvia Greeson (Alt. ETJ)

Members Absent

City:

Mr. Mike Gee, Vice-Chairman
Mr. Robert Giles II (Alt.)

ETJ:

Mr. David McDevitt

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 required 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 per corrections. Board Member Mr. Todd Smith seconded the motion. The Board voted unanimously to approve the February 14, 2017 Meeting Minutes per corrections.

ITEM NO. 3:

CASE NO. 03-17 SPECIAL USE PERMIT (City)

Work of God Church

1401 Tucker St.

Alamance County Tax Map number 107-451-120

§ Section 32.13.O

Church in residential area

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, your first case today is 03-17, this is for Work of God Church to be located at 1401 Tucker Street. You will note it is a wooded lot on Chapel Hill Road and Tucker Street. They have applied for a Special Use Permit to operate a church. They have submitted plans through the TRC process which have been approved. We received a good number of calls on this one once the signs and letters went out. Everybody that called was in favor of the church being there.

Chairman Mr. Ed Wilson asked, what is the property zoned? Zoning Enforcement Officer Mr. Chris Marland stated, the property is zoned MF-A and B-2. It's B-2 down at the tip by Chapel Hill Road, but the majority of it is zoned MF-A. Chairman Mr. Ed Wilson asked, a church can operate in those zonings with a Special Use Permit? Zoning Enforcement Officer Mr. Chris Marland stated, that is correct. Chairman Mr. Ed Wilson asked, is there any other part of the ordinance that we need to be aware of or just our general findings with a Special Use Permit? Zoning Enforcement Officer Mr. Chris Marland stated, just the general findings for a Special Use Permit. It has passed through the TRC process, so a lot of the technical requirements have already been met. Chairman Mr. Ed Wilson asked, does anybody have any questions for Mr. Marland? Board Member Mr. Todd Smith asked, TRC includes review for parking, egress, and lighting? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir.

Mr. Omar Pablo stated, I've been working in this church since 2010. I would like to give you a little background on this church. The church has been there since 1999 and the pastor that has started this group was Marcos Mejia but he has some problems with his family and he decided not to minister anymore. The church is affiliated with the National Pentecostal of Churches. My pastor sent me there and I didn't want to go because I grew up in a Christian family where my farther is a pastor. I grew up with the idea that being a pastor is a very hard job. We have been growing and we are open to everybody. We would like to be a church that is for everyone in the community. We are growing and have been growing. The church has been looking for a property to buy and we saw this property on Tucker Street. We talked with Mr. Grey the owner of this property who is here today. We asked if we could buy half the property and he said yes he could work with that. We've been going through this process for two years but I hope that we can get the Special Use Permit today. Mr. Ed Wilson stated, you said your church has been in ministry since 1999? Mr. Omar Pablo stated, correct. Chairman Mr. Ed Wilson asked, where have you been located? Mr. Omar Pablo stated, 230 Hawkins Street. Chairman Mr. Ed Wilson asked, you

have a peaceful relationship with your neighbors in that area? Mr. Omar Pablo stated, yes we don't have any troubles. Chairman Mr. Ed Wilson asked, based on your plans what are your church hours going to be? Mr. Omar Pablo stated, we have service on Wednesday at 7:00 p.m. and Thursday at 7:00 p.m. Friday we have a regular service, and Sunday we have a fast to pray for this City, this nation, from 8:00 a.m. until 9:00 a.m. and then we have Bible school from 9:00 a.m. until 11:00 a.m. We also have service from 11:30 a.m. to around 2:30 p.m. Chairman Mr. Ed Wilson asked, how many members do you have in your congregation? Mr. Omar Pablo stated, our membership goes up and down but we maintain membership right now around 75 adults and 14 young people and we have a lot of children, about 45. Chairman Mr. Ed Wilson asked, and how many people attend those services? Mr. Omar Pablo stated, the average is around 70 to 75 people. Chairman Mr. Ed Wilson asked, the church you are planning on building is going to accommodate how many people?

Mr. Aden Stoltzfus stated, the seating in the main sanctuary is currently setup for 412 people, that is a multi-use purpose facility so that's actually the max capacity. However, it maybe a little less than that depending on how they setup the internal part of the church. Chairman Mr. Ed Wilson asked, can you tell us a little bit about the parking and the ingress and egress and the lighting on the property? Mr. Aden Stoltzfus stated, the church itself is setup for two phases; first phase is still a growing congregation. We don't anticipate having 412 folks out there at once. We staged the entrance to be away from Chapel Hill Road just based on some of the improvements that we anticipate NCDOT to make to that intersection so we pulled all the driveways back as far as Fairfield Street to make sure we don't get into stacking on Chapel Hill Road and Tucker Street. We've got one drive, and as far as ingress and egress, you can see that we've got some one-way drives at the canopy area on the right-hand side of the church that we tried to keep traffic from making a left as that got in the drive-way. They will have to go all the way around, getting into the backside and kind of loop back into the church. We worked with TRC on traffic flow, that was their main concern. We had three driveways at one time; we eliminated the one that was closest to Chapel Hill Road. Currently the site is a pretty large site consisting of a flood plain, so we are actually low density on the site right now with a phase two build out. We anticipate, from an environmental impact, to be very little to low density for a commercial site. We've got some playground area in the back, a picnic shelter and a maintenance building. Some things that we put on the site plan he may not do right away. The main thing is to build a sanctuary then the first phase of parking area. We are showing the building being sprinkled, there is an 8 inch water line on Tucker Street and the sewer is adjacent to the site. Chairman Mr. Ed Wilson asked, what about your lighting? Mr. Aden Stoltzfus stated, we proposed cutoff fixtures close to Tucker Street. What we mean by cutoff fixtures is not to shine across the south side to the residential property. Chairman Mr. Ed Wilson asked, what about your signage? Mr. Aden Stoltzfus stated, the signage is a 90 degree sign that we are proposing on the right hand side of the driveway going in. Board Member Mrs. Sylvia Greeson asked, phase two is simply an extension of the parking? Mr. Aden Stoltzfus stated, that is correct. The building itself, they are not proposing to expand it but as they grow they will need some additional parking. So for now their plan is to just grade it and then seed it back down. Chairman Mr. Ed Wilson asked, any plans for the backside of the property? Mr. Aden Stoltzfus stated, it's primarily a flood plain so that would be a little tough to develop. It may be some recreation space back there.

Mr. Rodney Fugua stated, I live at 1319 Elder Way and I do confirm that I will tell the truth. Up to this point, I haven't seen the design of the building and space, it's more towards Chapel Hill Road. This whole property has always been known as Tigs Woods and I've played since I was a child out in those woods. I have no problems with the church but my big concern is, you see, Elder Way is a triangle between Tucker Street and Chapel Hill Road and as far as future development for this location my concern is the short cut from Trucker Street to Chapel Hill Road. They don't pay any attention to the speed limit on that stretch of road. I'm glad to have a church next to us, just concerned for this property as a whole. This property to me is a gem as far as natural area. I don't see a property as being developed. I see it as a natural asset. It's such wonderful property with wetlands for the frogs and salamanders breed in the wooded area. It was logged about 15-20 years ago and I was devastated by that. Anything developed there kind of gets me in my heart; so many memories there. I'm glad to have a church there, it's more towards Chapel Hill Road so I don't think that will affect our traffic as much.

Chairman Mr. Ed Wilson asked, Mr. Marland can you speak to the traffic and Elder Way and maybe some of the faults with TRC that changed a little bit as the process went through? Zoning Enforcement Officer Mr. Chris Marland stated, I know that as part of the TRC process Transportation for the City of Burlington did look at this. I know there were some issues with sidewalks and right-of-way along the property but I do not recall any discussions as far as traffic safety was concern.

Mr. Aden Stoltzfus stated, traffic was discussed as we had three driveways and one was closer to Chapel Hill Road and they did want to condense that down to two driveways and try and space those apart. We worked with the transportation folks to do that. It's well planned to get folks off the road and limit internal conflicts on church property. For instance, if someone drops off at the canopy they will have to turn into the church property and go all the way around the backside of the canopy and come back out so we are trying to alleviate stacking on Tucker Street as well. Chairman Mr. Ed Wilson asked, when you say stacking, you mean when cars come out at the same time and jam up the road? Mr. Aden Stoltzfus stated, that is correct; let's say for instance the canopy is on the right-hand side of the church there and so for somebody making a right off Tucker Street we had a longer drive-way stemmed to the first parking spaces to allow people to get off the road without causing congestions for the right turn in when they are slowing down. They go in and they go to the parking lot and they come back out. We spent some time working with transportation on just internal traffic flow to try and avoid transportation concerns on Tucker Street. I know there are some improvements scheduled at some point; I don't think it is on the TIP yet for Tucker Street and Chapel Hill Road. Then we also worked with them on sidewalk placement. Chairman Mr. Ed Wilson asked, that one that was removed was right there in the curve? Mr. Aden Stoltzfus stated, it was closer to the service station. Chairman Mr. Ed Wilson asked, so there is more visibility like this? Mr. Aden Stoltzfus stated, yes. Board Member Mrs. Sylvia Greeson asked, will you be leaving any of the existing trees and natural area or are you going to clear the entire lot? Mr. Aden Stoltzfus stated, no it's about 18 acres so there is a lot that will remain wooded. We will have to grade what you see will be the church and parking lot area but the surrounding sides we are not going to clear any more than we have to. Board Member Mr. Todd Smith stated, there is a significant drop-off in the back. Mr. Aden Stoltzfus stated, yes there is a flood plain area in the back. Chairman Mr. Ed Wilson asked, the whole

track is 43 acres? Mr. Aden Stoltzfus stated, yes. Chairman Mr. Ed Wilson asked, about how much of the 18 acres are you developing? Mr. Aden Stoltzfus stated, about 24% of the property.

Mr. Greg Spears stated, my name is Greg Spears and I'm the owner of the property. This property is zoned for apartments and being an owner-developer I thought the most non-intrusive use would be a church. This is MF-A so I could put a ton of apartments on the property. I don't think the back portion will ever be developed because of the way the flood plain is. It will always be the front portion even if you put apartments there. If we develop later on it's going to be towards Tucker Street and the back portion will be parking and we are going to leave where you see the creek, that is going to be fairly natural I think forever. I do agree with Mr. Fugua going with this church is the least intrusive type of development on this property of 18 acres. What I'm going to do with the rest, I have no idea. I don't get a lot of calls on it. I hope with whatever I finish off the property with is conducive to the City and to neighbors. I do different developments and this was one of my less harmful developments instead of trying to do commercial and apartments and things like that. Out of most the developments I've done, this has been the least intrusive and controversial as far as my developments.

Board Member Mrs. Joyce Lance asked, Mr. Omar Pablo, at your current location now do you offer daycare in your church? Mr. Omar Pablo stated, no. Board Member Mrs. Joyce Lance asked, is that a plan for the future here? Mr. Omar Pablo stated, we have comments from some members that we can do that but we haven't any plans to include that in our plans. I think we have a playground for children and we have Bible school for the children but no daycare. Board Member Mrs. Joyce Lance stated, I'm asking that because of the traffic issue that we have been discussing, because there would be more traffic that way. It doesn't mean that you wouldn't be permitted to do it, I'm just thinking about how much traffic. When you were telling us the hours you gave us Wednesday, Thursday then Friday you said regular service, what's regular service on Friday? Mr. Omar Pablo stated, I mean like for regular service we have a band that is playing, we have preaching then we share food after the service and dinner for everybody. Board Member Mrs. Joyce Lance asked, does that start at 7:00 p.m.? Mr. Omar Pablo stated, yes at 7 p.m.

DISCUSSION & FINDING OF FACTS: Chairman Mr. Ed Wilson stated, it seems the applicant, Work of God Church, has met all the requirements of the TRC and has indicated he is aware of all the requirements and have indicated they will adhere to those. We heard a little bit about traffic and maybe the change of the use of the property. I think those have been addressed as well. Is there any other discussion? Board Member Mr. Todd Smith stated, seems like a well thought out plan and it seems to fit well with the community and I recommend that we allow the Special Use Permit. Chairman Mr. Ed Wilson asked, would somebody like to make a motion?

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, they have clearly spent time with the City and with their engineer making sure that traffic patterns are not affected or only affected in a minimal way. They have adequate lighting and no other situation that would call for danger;

2. **the use meets all required conditions and specifications:**

the findings of fact are, it's clear they went through the City and had TRC review and met all those requirements;

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, I think a church is a public necessity but even if it's not, it's clear that it will not injure the value of adjoining properties. We heard from one property owner, and although it is always horrible to lose natural land, this appears to be the least damaging use for this plan;

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 a church in a residential area goes together like peanut butter and jelly; its good together.

Board Member Mrs. Sylvia Greeson seconded the motion.

AYES: Grant, Lance, Wilson, Smith, Greeson

NOES:

Board Member Mr. Todd Smith stated, I would like to make a motion to approve the Special Use Permit for Work of God Church to be located at 1401 Tucker Street, Burlington, North Carolina due to the previously stated Findings of Fact and that the applicant shall 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 Mrs. Sylvia Greeson seconded the motion. The Board voted unanimously to approve the Special Use Permit.

AYES: Grant, Lance, Wilson, Smith, Greeson

NOES:

ITEM NO. 4:

CASE NO. 04-17 SPECIAL USE PERMIT (City)

Annie's Blessed Child Daycare 2

725 Chapel Hill Rd.

Alamance County Tax Map number 107-451-78 & 107-451-77

§ Section 32.13.W

Child Daycare Facility

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, this is for Annie's Blessed Child Daycare 2, Ms. Annie Woods already has a Special Use Permit for another location. She has a home based daycare on NC HWY 62. What she has asked for today is at 725 Chapel Hill Road. When the signs went up here, we received numerous phone calls on this highly traveled area in the City. I did receive one call that said he did not think that this was a good area for a daycare. However, I did receive 7 other calls that had no problem with it, including adjoining neighbors. This previously has been used as a heating and air condition building. They have vacated and Ms. Woods would like to locate her second child daycare here. The fenced in play area that would be required has a door right on the side that will lead out to it. It's kind of hard to see in the photo but this is a circular drive, it comes in off of Chapel Hill Road and drives around back to Chapel Hill Road. The driveway then turns, goes around the fence area and there is some parking down in the bottom where you see some trucks in the picture. You can also go back around the house and out on to Chapel Hill Road so getting in and out of there doesn't seem to be a problem. Chairman Mr. Ed Wilson asked, its zoned B-2? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, both lots are zoned B-2? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, daycare is permitted in B-2 with Special Use Permit? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, is there any questions for the City? Board Member Mrs. Sylvia Greeson asked, just to clarify the circular driveway either goes completely in front of the house or around the fenced area to the back of the building? Zoning Enforcement Officer Mr. Chris Marland stated, yes ma'am then you can exit from the back around the other side of the house without driving back past the fence. Board Member Mrs. Sylvia Greeson asked, so there is clearance for ingress and egress on that side? Zoning Enforcement Officer Mr. Chris Marland stated, yes ma'am. Board Member Mr. Todd Smith asked, is there lighting back there? Zoning Enforcement Officer Mr. Chris Marland stated, yes there are some mounted lights that are already there; the applicant can testify to that. Board Member Mr. Todd Smith asked, are they on the side where the fence is? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir there is some mounted on the porch.

Chairman Mr. Ed Wilson asked Ms. Annie Woods, this is your second operation? Ms. Annie Woods stated, yes. Chairman Mr. Ed Wilson asked, you are going to operate 2 daycares? Ms. Annie Woods stated, yes but as soon as I can get this one up and running I'm going to close the one in my home. Chairman Mr. Ed Wilson asked, you live at the other address? Ms. Annie Woods stated, yes. Chairman Mr. Ed Wilson stated, tell us about the number of children you are planning on keeping, the shifts, the hours and such. Ms. Annie Woods stated, I have 8 children per-shift where I am at now; I run three shifts. In this building I'm looking to be licensed for at least 25 to 27 per-shift. I know I want to run 2nd shift also at this facility because there a lot of demand for 2nd shift, not everybody works first. Board Member Mrs. Joyce Lance asked, do you

mind repeating how many per shift that you are going to try and grow into? Ms. Annie Woods stated, 25 children. Board Member Mrs. Joyce Lance asked, you are basically tripling it? Ms. Annie Woods stated, yes. Board Member Mrs. Sylvia Greeson asked, not a third shift? Ms. Annie Woods stated, no I don't want to do third there. Board Member Mrs. Joyce Lance asked, you are doing third shift now where you are at but you aren't going to do that at the new place? Ms. Annie Woods stated, correct; I'm doing it now but not there. Chairman Mr. Ed Wilson asked, are you in good standing with the State? Ms. Annie Woods stated, yes my state consultant is Sally Allen. I've been looking for a commercial building but she told me if I could find a house I still could open up a center in the house. That's why my idea was doing this house. Board Member Mrs. Joyce Lance asked, how long have you been in the daycare business? Ms. Annie Woods stated, 12 years going on 13. I'm a 5-Star facility in my house. I graduated 2 years ago and got my associates degree. Chairman Mr. Ed Wilson asked, how do you envision the traffic coming into your facility and where they will park? Ms. Annie Woods stated, I talked with transportation and they told me I had to get a sign that one said enter and one said exit so they won't be coming in head on. Chairman Mr. Ed Wilson asked, do you know yet how you will arrange those? Ms. Annie Woods stated, facing the house, to the right will be the entrance and on the left side will be the exit going out. Chairman Mr. Ed Wilson asked, do you think people will circle behind the building or in front of the building? Ms. Annie Woods stated, in front of the building mostly. Chairman Mr. Ed Wilson asked, ok and where will they park? Ms. Annie Woods stated, in the front. If I have to have any more space I will let them park in the back but I don't think I will because they are not sitting there that long; they are going through and just dropping off. Chairman Mr. Ed Wilson asked, do you have someone that monitors carpool? Ms. Annie Woods stated, yes sir. Chairman Mr. Ed Wilson asked, do you think your operations will affect your adjacent property owners with noise or lights? Ms. Annie Woods stated, no. Chairman Mr. Ed Wilson asked, are you going to put up any signage? Ms. Annie Woods stated, yes. There is a pole out in the front yard near the street where you can have a sign, I will probably put my sign there. Chairman Mr. Ed Wilson asked, is that existing? Ms. Annie Woods stated, yes it is already there. Board Member Mrs. Joyce Lance asked, what kind of lighting is there? Ms. Annie Woods stated, there are lights on the outside with the porch lighting but I'm going to do some more lighting. I'm going to put up more lights because running second shift I'm going to have to have more lights because I want everybody to be safe. Chairman Mr. Ed Wilson asked, when you put the lights up are you going to make sure they only shine on your property and not your neighbors? Ms. Annie Woods stated, exactly. Chairman Mr. Ed Wilson asked, how many square feet are you planning on fencing in? Ms. Annie Woods stated, 1500 square feet but I will have twenty-some children but I will not have them all of them out at the same time; I will be doing infants also. Chairman Mr. Ed Wilson asked, you are aware that there is a regulation that determines how many square feet per child? Ms. Annie Woods stated, yes. Chairman Mr. Ed Wilson asked, you are planning on adhering to that regulation? Ms. Annie Woods stated, yes. Board Member Mrs. Joyce Lance asked, what age children do you have? Ms. Annie Woods stated, 0 -12 years of age. If I do the 1500 square footage and I have more children I still wouldn't take them out all at the same time. They will never be out at the same time. Chairman Mr. Ed Wilson asked, you will stay within the regulations? Ms. Annie Woods stated, yes. Chairman Mr. Ed Wilson asked, do you know of any other daycare in that area? Ms. Annie Woods stated, yes, Like My Own is in the Outlets and Little Thinkers is a little ways off on the other side. Chairman Mr. Ed Wilson asked, once you get your permit here I guess you will continue to get with the State and get their approval and permits? Ms. Annie Woods stated, yes.

Board Member Mrs. Joyce Lance asked, tell us just briefly in detail what you do to become a 5-Star facility. I haven't heard that before so I'm learning. Ms. Annie Woods stated, mainly you have to go to school; you get most of your points from education and how many children you have. I'm only licensed to do 2 babies per-shift; that made my star rating go up also. Then I graduated by going to school, it makes them go up even more. Having an education and a associates degree it really helps. You also have to pass a rating scale. Someone will come by and sit for two hours to watch you interact with the children and to make sure you are doing what you are supposed to including meals. Board Member Mrs. Joyce Lance asked, does it have anything to do with the building itself and following regulations or is it mainly education? Ms. Annie Woods stated, no you have to follow regulations also because they require safety of the children, we have to follow regulations. Board Member Mrs. Sylvia Greeson asked, are you concerned at all about the traffic on Chapel Hill Road because that is a fairly heavy traveled road? Ms. Annie Woods stated, yes it is a heavy traffic area. Board Member Mrs. Sylvia Greeson asked, you've got people coming in and out even if they are not coming in and out the same entrance are you going to discourage people from turning left back out onto Chapel Hill Road when they exit and try to cross traffic? Ms. Annie Woods stated, I don't know. It depends on that time they are coming in because I'm planning on opening the facility up at 6:00 in the morning. Shifts will be changing over at 3:30 – 4:00 in the afternoon. It's based on different times and depending on what the parent's schedule. Right now I have children coming in at 7:30 a.m. because I don't have any children coming in earlier right now. Chairman Mr. Ed Wilson asked, what time is your latest pick-up? Ms. Annie Woods stated, my latest pick-up will be at 12:00 at night. Chairman Mr. Ed Wilson asked, midnight? Ms. Annie Woods stated, correct; because some people work till 11:30 until 12:00 at night. I'm not expecting to have a lot of second shift but I do want to offer it in case someone needs it.

DISCUSSION & FINDING OF FACTS: Chairman Mr. Ed Wilson stated, this is an application for a Special Use Permit by Annie's Blessed Children Daycare 2, second operations, the applicant has testified that she meets all the specific requirements and the general requirements of Special Use Permit. Is there any discussion or comment? Board Member Mr. Todd Smith stated, seems like a good idea to me. You have one right up the road; I think we did that one not too long ago for all the same reasons. Good service, a little bit concerned about traffic but they look like they have done a lot to alleviate it and they have more room around back if they need it so I think it is a good idea. Board Member Mrs. Joyce Lance stated, she has been in business almost 13 years and she knows what she is doing. She answered all the questions that we need to know about. Board Member Mrs. Sylvia Greeson stated, hopefully the parents will figure out if they turned right and go with the flow they will be better off rather than going across the traffic, that's not on her, that's on them. Board Member Mrs. Joyce Lance stated, maybe if that becomes a problem then signage will work to guide them along.

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, it is on a commercial road that already has some businesses no more dangerous than any other businesses located there. I don't think it will change the traffic pattern anyway that would cause serious health or safety issues;

2. **the use meets all required conditions and specifications;**

the findings of fact are, this has gone through a review with the City and State Department that regulates daycares. The fact it has gotten a 5-star rating and higher training. All required conditions and specifications 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, a daycare is a public necessity also there is no evidence that any adjoining properties will have their value injured because of this. This will be used as a business like other properties adjacent to it and surrounding it;

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 use does fit in harmoniously with the other businesses in the area, it's a good place to put a day care and a good place to drop off their kids. There are also other similar businesses in the area.

Board Member Mrs. Sylvia Greeson seconded the motion.

AYES: Grant, Lance, Wilson, Smith, Greeson

NOES:

Vice-Chairman Mr. Mike Gee stated, I would like to make a motion to approve the Special Use Permit for Annie's Blessed Children Daycare 2 to be located at 725 Chapel Hill Road, Burlington, North Carolina due to the previously stated Findings of Fact and that the applicant shall 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. I would add the applicant will be required to get the States approvals for this Special Use Permit to be issued.

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

AYES: Grant, Lance, Wilson, Smith, Greeson

NOES:

ITEM NO. 5:

CASE NO. 05-17 VARIANCE (City)

Mark Harris

116 Hillside Dr.

Alamance County Tax Map number 95-410-45

§ Section 32.3.E(5)

Residential side yard setback

EVIDENCE PRESENTED: Zoning Enforcement Officer Mr. Chris Marland stated, this case is 05-17 at 116 Hillside Drive, Mr. Mark Harris is here before you today to ask for a variance for the carport on the side of his house. He will be asking for a variance to the side-yard setback. They removed the carport and found some deterioration underneath it and decided to rebuild it. What you see in the picture has been completely removed and in doing so they came in for a permit and realized that they are in the setback. Board Member Mr. Todd Smith asked, anyone complain about it? Zoning Enforcement Officer Mr. Chris Marland stated, no I received six phone calls on this one and nobody had any problems with it. The adjoining neighbor wanted me to say that he absolutely has zero problems with it. It's been there for a long time and he understands that Mr. Harris is trying to make it safe. Chairman Mr. Ed Wilson asked, that's the neighbor that the carport side is on? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, this is a side-yard setback? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, what is the setback? Zoning Enforcement Officer Mr. Chris Marland stated, 10 feet. Chairman Mr. Ed Wilson asked, how much does it encroach into the setback, what size variance is he seeking? Zoning Enforcement Officer Mr. Chris Marland stated, he is asking for the footprint of the carport as shown on the attached survey. Chairman Mr. Ed Wilson asked, do we know how far that extends into the setback? Zoning Enforcement Officer Mr. Chris Marland stated, I would say approximately 9.5 feet. Board Member Mr. Todd Smith stated, it's almost to the other property. Zoning Enforcement Officer Mr. Chris Marland stated, correct as you see on the survey the back corner of the carport is very close to the line there. Board Member Mrs. Sylvia Greeson asked, which was where it was before it was torn down? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Chairman Mr. Ed Wilson asked, in the building permit, they are not applying to expand or enlarge the carport? Zoning Enforcement Officer Mr. Chris Marland stated, no it will be the same size. Chairman Mr. Ed Wilson asked, if they made repairs to the carport in a different matter and not be in front of us today for a variance, could they have repaired the carport piece by piece and not have to apply for a building permit or a variance? Zoning Enforcement Officer Mr. Chris Marland stated, I don't think so. I think they still would have to come here. Board Member Mrs. Joyce Lance asked, they didn't know right, so they wouldn't know they've got to replace this piece by piece because if I go in there then I've got to get a variance? Zoning Enforcement Officer Mr. Chris Marland stated, correct. Board Member Mr. Todd Smith asked, what are the materials made out of? Zoning Enforcement Officer Mr. Chris Marland stated, it's a metal roof and metal pole structure with a concrete base. Board Member Mr. Todd Smith asked, as far as you know, they are going to build it just like it was, not going to be a different design or anything? Zoning Enforcement Officer Mr. Chris Marland stated, correct, they have the sections that you see in the photos just sitting there waiting. I believe the deterioration was on the footer for the driveway itself because there is a slope off the back of the driveway. Board Member Mr. Todd Smith asked, what's closer to the other house is not

flammable its materials that is unlikely to catch on fire? Zoning Enforcement Officer Mr. Chris Marland stated, correct, it's metal. Board Member Mrs. Joyce Lance asked, and I can ask the homeowners this but do you happen to know if it was there when he bought the house? Zoning Enforcement Officer Mr. Chris Marland stated, I believe it was, he can testify to that.

Mr. Mark Harris stated, I'm Mark Harris at 116 Hillside Drive and I affirm that I will tell the truth. As outlined in the application the structure was built when the house was built in 1951. When I acquired the house in 1999 the structure was there. Based on the way it was built the concrete slab and the foundation was cracking and failing per the attached engineers report. I hired my contractor to evaluate and propose the repair and replace the existing structure to exactly the same what was there from 1951, other than bringing it up to current construction standards with concrete footings with rebar for more stability. This will help in negating the safety hazard issue of the cracking and the failing foundation that is there now. My contractor began the work without pulling the permits and that's when I found out about the 10 foot setback. The structure will be returned exactly as original. The only thing that is being replaced is the concrete foundation slab with proper reinforcement and proper footings. The exact same awning will be put right back and the exact same steel frame work will be put right back in place on the exact same foot print as on the lot survey when I purchased the house. Chairman Mr. Ed Wilson asked, you have to take it down to make the repairs to the foundation? Mr. Mark Harris stated, that is correct, to avoid having to dig footings by hand, that was the contractors recommendation. Chairman Mr. Ed Wilson asked, you've had conversations with the neighbor on that side. Mr. Mark Harris stated, yes and all of my neighbors surrounding me frontwards, backwards and especially on that immediate side on that left side of the entrance of the property. They have lived on their property about the same time that I have, since 1999, and they are in full agreement and support of it being returned exactly the way it was. Board Member Mrs. Sylvia Greeson asked, the only thing you are replacing is the concrete slab under the structure? Mr. Mark Harris stated, correct. Chairman Mr. Ed Wilson asked, are you changing the slope of the slab to divert water on to your neighbor's property or anything like that? Mr. Mark Harris stated, no sir. Board Member Mrs. Joyce Lance asked, I have a question for the City; was the setback requirement active in 1951? Zoning Enforcement Officer Mr. Chris Marland stated, our current Zoning Ordinance dates back to 1972, so this is definitely prior to that. Board Member Mrs. Joyce Lance asked, Mr. Harris I wondering if you are disappointed that the contractor didn't get permits? Mr. Mark Harris stated, yes I am, because that is when it was discovered and then we could have possibly braced the structure without removing it or do something else to stabilize the cracking foundation. I do have additional photos from the engineer showing that damage, if you would like to see what that was before they dug into it. Board Member Mrs. Joyce Lance asked, you were trying to improve and maintain your property? Mr. Mark Harris stated, that is correct. Board Member Mrs. Joyce Lance asked, maybe I should say maintain because you are replacing and that's mainly maintenance. Mr. Mark Harris stated, yes and negating the safety hazard of the failing slab as seen in these photos. Board Member Mrs. Sylvia Greeson asked, basically your contractor removed the existing structure and then applied for a permit and discovered this and told you that there were problems? Mr. Mark Harris stated, that is correct. Board Member Mrs. Sylvia Greeson asked, by the time you found out about it your carport had already been dismantled and you were left with a cracked concrete slab? Mr. Mark Harris stated, actually I'm left with a pile of dirt right now because the slab had been removed as well as the structure. Chairman Mr. Ed Wilson asked, are you using the same contractor? Mr.

Mark Harris stated, so far yes. Board Member Mrs. Joyce Lance asked, the carport was removed for the convenience of the contractor, is that correct? Mr. Mark Harris stated, yes. Board Member Mr. Todd Smith asked, to get a backhoe in there? Mr. Mark Harris stated, correct. Board Member Mrs. Sylvia Greeson asked, the carport is in good structural condition if you intend to put it back in place, correct? Mr. Mark Harris stated, yes they have a master welder who will re-weld the structural beams attaching it and setting it back on the new slab. Board Member Mrs. Joyce Lance asked, I'm just wondering when your contractor didn't get the permits what was his reasoning for not doing that? Mr. Mark Harris stated, his blunt words were he screwed up and he accepted the responsibility for his error and then at that point it was figuring out what to do next, which was appearing here. Chairman Mr. Ed Wilson asked, how long has your project been on hold? Mr. Mark Harris stated, it's been on hold for about two weeks now. Chairman Mr. Ed Wilson asked, so in terms of hardships you would describe the existing structure and the size of the lot as your hardship to the repairs that you needed to make to this existing carport? Mr. Mark Harris stated, yes that is correct and the structure does provide shelter to the basement door and steps from water flooding and not coming in there which would then potentially cause other issues for the house itself. The second picture shows the rear elevation view showing that basement door there. Board Member Mrs. Joyce Lance asked, your contractor is not here today? Mr. Mark Harris stated, yes he is here.

Chairman Mr. Ed Wilson stated, seeing that we have no further comment we will close this to discussion among the Board.

DISCUSSION: Chairman Mr. Ed Wilson stated, again this is an application for a variance to place the existing carport back after making some repairs to the concrete and the foundation. There is a 10 foot side setback that this carport takes almost the whole 10 feet, so the application for variance will be for the existing foundation of the former carport. The applicant has said the hardship was the shape and slope of the lot. The carport was existing on the lot when he bought the home in 1999 and this carport was originally built with the construction in 1951 which predates our zoning ordinance. The adjoining homeowner, it has been indicated, that he is in agreement with this rebuilding of the carport as well. Board Member Mr. Todd Smith stated, I think he is just trying to maintain his property. I think the hardship is that it was built before the code. It doesn't seem to cause any danger and I think the setbacks are primarily designed for fire proofing at least one of primary reasons and that it's made out of fire resistant material and has been made out of since the 50's. All the neighbors have called and it doesn't appear to change property values or anything, in fact they all seem to be in support of this, so I think we should allow the variance.

DECISION & FINDINGS OF FACT: Board Member Mr. Todd Smith stated, I would like to make a motion to approve a variance based on the following relevant factors:

- 1) ***Unnecessary hardship in the way of caring out the strict letter of the ordinance it shall not be necessary to demonstrate that in the absence of a variance for reasonable use can be made of the property.***

I think that the unnecessary hardship is that this house was built before the prior code which appears to have been active since 1972 and so Mr. Harris bought a property that was already

built outside of compliance and that has created a hardship when he is maintaining his property by fixing the cracks that could cause structural damage and possible safety hazards;

- 2) **The hardship results from conditions that are peculiar to the property such as location, size, or topography. Hardships resulting from personal circumstance as well as hardships resulting from conditions that are common to the neighborhood of the general public may not be the best bases for granting a variance.**

The house was built and designed before the new code was enacted and this made it peculiar to this property because it already had a carport built and a driveway built and the landscaping built around those prior conditions;

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

It's clear that he testified the carport was built and done before he owned the house which he bought in 1999;

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

All the neighbors apparently had no problems with this particular case, especially the neighbor that lives right next to this and is closest to this. Also it is built from materials that aren't going to cause fire damage so public safety is secured. I think that the code wasn't designed for people not to maintain their house. I think this will be a proper use of a variance.

Board Member Mr. Eric Grant seconded the motion. The Board voted unanimously to approve the Variance.

AYES: Grant, Lance, Wilson, Smith, Greeson

NOES:

NEW BUSINESS: None

MEETING ADJOURNED

H.E. Wilson III, Chairman

Kelly Peele, Secretary