

**MINUTES**  
**BOARD OF ADJUSTMENT**  
**City of Burlington, NC**  
**August 8, 2017**

**Members Present**

**City:**

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

**Members Absent**

**City:**

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

**ETJ:**

Mr. David McDevitt

**ETJ:**

Mrs. Sylvia Greeson (Alt. ETJ)

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

Acting Chairman Mr. Mike Gee called the meeting of the Board of Adjustment to order at 8:30 a.m. Acting Chairman Mr. Mike Gee 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. Todd Smith made a motion to approve the minutes per corrections. Board Member Mr. Robert Giles seconded the motion. The Board voted unanimously to approve the June 13, 2017 Meeting Minutes per corrections.

### **ITEM NO. 3:**

#### **CASE NO. 08-17 SPECIAL USE PERMIT (City)**

##### **Divine Miracles Home Daycare**

709 Arden St.

Alamance County Tax Map number 112-464-89

§ Section 32.13.W

Child Daycare Facility

**EVIDENCE PRESENTED:** Zoning Enforcement Officer Mr. Chris Marland stated, this case before you today is 08-17 is at 709 Arden Street for Ms. Kimberly Rogers for Divine Miracles Home Daycare. She is here today in front of you asking for an in-home daycare for up to 8 children on up to 3 shifts. We have received quite a good number of phone calls on this case, more than we usually do, we usually get 2 or 3 calls. We received 31 calls on this case, 9 of those calls had no problem with the daycare but 22 calls said that they didn't care for it to be in their neighborhood. Acting Chairman Mr. Mike Gee asked, does this meet the requirements of the code? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir it does. They have enough fenced in play area for the number of children that they have. Board Member Mr. Todd Smith asked, is there a general reason why the 22 people said they didn't want it in their neighborhood? Zoning Enforcement Officer Mr. Chris Marland stated, it seemed to be the consensus of the calls we received that the problem was traffic. Arden Street is right off of Maple, when you turn down in there, there is really only 1 way out, you go all the way to the end it's a cul-de-sac and you come back out. This property is towards the end on the right hand side. The calls we received mostly were concerned with traffic and parking in the area. Board Member Mr. Todd Smith asked, do you know if there is any other daycares in the area? Zoning Enforcement Officer Mr. Chris Marland stated, I do not know that sir. Acting Chairman Mr. Mike Gee asked, as far as the required conditions, obviously a fenced in area is one of those. Have they met all the other required conditions? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir they have or they will, she can testify better to that. Board Member Mr. Todd Smith asked, isn't the City's traffic assessment part of that? Zoning Enforcement Officer Mr. Chris Marland stated, not part of it but it is something we do look at. Typically they have the parking that would be required for an in-home daycare that would be the same as a single family home.

Mr. Damion Simmons stated, I'm Damion Simmons of Divine Miracles and everything I say will be the truth to the best of my knowledge. As you know we are trying to do a home daycare with the maximum of 8 children. This gentleman here said we had ample backyard space, I believe ample parking and I don't believe the traffic will be a major factor. We are not starting night-shift right away obviously at all so most of the children will be extremely young; young children that wouldn't create too much noise, too much trouble from my belief. Acting Chairman Mr. Mike Gee asked, you are applying for 8 children per-shift, you just stated you don't plan on having a 3<sup>rd</sup> shift to this point. What hours do you anticipate operating?

Mr. Damion Simmons stated, I believe we are doing 6am – 6pm. She will be working during the day and I will be more on the technical side of things. Things that the daycare needs and will need I will be taking care of. Everything from construction paper to boards and rebuilding and things like that nature. Acting Chairman Mr. Mike Gee asked, 12 hours is what you are saying for the hours of operation, what do you anticipate being the pickup drop off kind of schedule for the children that will be in the daycare? Mr. Damion Simmons stated, pickup is going to be 6pm so parents are going to come in around that time or earlier like 5/5:30pm. I don't believe it will be that many cars or traffic. Acting Chairman Mr. Mike Gee asked, max at that time would be 8 vehicles coming in? Mr. Damion Simmons stated, I would say 6 or 7 at max and I don't believe they will all be at one time either, it never is. Acting Chairman Mr. Mike Gee asked, at this point I assume you guys are also coordinating with the state of North Carolina, has the permitting been approved? Mr. Damion Simmons stated, as part of our approval process we have to get a Special Use Permit. Acting Chairman Mr. Mike Gee asked, do you plan to comply with all the requirements put forth by the state? Mr. Damion Simmons stated, yes definitely. Acting Chairman Mr. Mike Gee asked, can you tell us a little bit about how you plan to have the parents circulate through the property when they are dropping kids off picking them up, how the parking is going to work that type of thing? Mr. Damion Simmons stated, as you can see we have a driveway there in the front that can probably fit 2 cars. We are pouring out rock to the front gate for possible 3 cars and in the front of the home possible 2 cars and maybe a little on the neighbor's yard. Possible about 5 cars at one time sitting but it is a quick process of being in and out by the time someone else comes for their kid. We don't live at the property so it will not be our vehicles along with the other cars so that space will be there. With the grass we could possible fit a 6<sup>th</sup> car there. From my belief that would be more than enough at any one time for 6-7 cars to be there. Acting Chairman Mr. Mike Gee asked, you kind of hit a point that I was going to ask on, you guys do not live at this property? Mr. Damion Simmons stated, no. Acting Chairman Mr. Mike Gee asked, is there any intention to move into the property? Damion Simmons stated, no we have a place we are going to be commuting to this property for the daycare, we have our own home. Acting Chairman Mr. Mike Gee asked, does the owner of the property are they aware of what you are proposing? Mr. Damion Simmons stated, yes sir. They actually before we even talked to them about it called, his name is Andy. He actually called and asked about it and let us know that it would be good for a daycare. He already called and asked the City to make sure, so he is well aware and updated on the entire process with everything that we will be doing. He has been included about this meeting.

Zoning Enforcement Officer Mr. Chris Marland stated, Mr. Gee, point of reference, it was under our understanding talking with Andy Andrews and Ms. Rogers that somebody was going to be living there and it was also out belief that one of the requirements from the state to get their state license is that somebody has to live at that location. It would be our requirement as well. Acting Chairman Mr. Mike Gee stated, ok understood.

Acting Chairman Mr. Mike Gee asked, Mr. Simmons in response to Mr. Marland, are you aware of that requirement from the state? Mr. Damion Simmons stated, I wasn't much aware of it but my fiancé probably was. If that adjustment needs to be made then that can be made done. I work a lot of hours in this area along with Durham and High Point so this would be easier for me. Acting Chairman Mr. Mike Gee asked, Mr. Simmons, I know you are referring to your fiancé on a couple of these things would it benefit us to have her come up and ask some of these questions? Mr. Damion Simmons stated, yes sir like I said before I do more of the construction part.

Ms. Kimberly Rogers stated, my name is Kimberly Rogers and everything that I say will be the truth to the best of my knowledge. Acting Chairman Mr. Mike Gee asked, Ms. Rogers during the application process were you made aware that the residency in the home was part of the Special Use Permit? Ms. Kimberly Rogers stated, when I called I think they did tell me that but I also stated that we would be back and forth because we have 2 residences. If we do 3<sup>rd</sup> shift we will be back and forth staying at both places.

Acting Chairman Mr. Mike Gee stated, I'm thinking that it is a requirement for the City for you to have permanent residence to obtain the Special Use Permit. This point I'm not sure, Mr. Marland does it make sense for us to continue to hear this and give them an opportunity to have us vote on this or have them come back at a future date if they can prove what they plan to do that will comply with the ordinance? Zoning Enforcement Officer Mr. Chris Marland stated, I think so yes. Zoning Administrator Mr. Joey Lea stated, my name is Joey Lea and I am the Zoning Administrator for the City of Burlington and I swear that everything I say to the best of my knowledge is the truth. Certainly in light of the testimony that they are not going to live there then I think you can't approve the Special Use Permit. I'm skeptical personally based on their situation if they said they were going to live there it sounds like she just said if they did live there it would only be on an as needed basis or temporarily. It was our understanding they/she were going to be living there leasing the house and running the daycare. Based on testimony they will not. If no one lives there it becomes a commercial operation, it's still residential under building code under all those requirements so as long as someone is living in the house.

Mr. Damion Simmons stated, like I said before if we can go at a later date because there can be very simple adjustments to be made to live at that property to apply by the code. Acting Chairman Mr. Mike Gee stated, I think that we will just continue with this process of hearing this application and then we will have to make a decision based on the testimony given and if in a future point in time you want to work with the City, I can't tell you what we will do until we do have a vote but are there any other questions for the applicant?

Zoning Administrator Mr. Joey Lea stated, if I may make a suggestion, are you planning on continuing the hearing? If you are going to continue, then we will need a date certain to hear it. I would suggest that the petitioners either, have something in writing along with something from the property owner that they are leasing the property and will be living on the property, and have it notarized. Board Member Mr. Todd Smith asked, is there a problem if we continue it and be there same 4 people to hear it or can the whole Board hear it, and does it constitute as that? Zoning Administrator Mr. Joey Lea stated, no because the minutes will be sent out and as long as those who have not been in attendance have read the minutes then legally they can sit. The reason I'm saying this is you said continued and I'm not sure which continued you meant. Acting Chairman Mr. Mike Gee stated, I was unsure, I was asking procedurally when I was getting your opinion. Zoning Administrator Mr. Joey Lea stated, you can at this point accept their testimony that they are going to live in the house. Board Member Mr. Todd Smith asked, get it conditioned like we did on another case? Acting Chairman Mr. Mike Gee stated, I'm inclined to move forward with the testimony as is and the application that has been presented and make a decision on the application as the testimony has dictated. If the applicant chooses to come back if we deny the Special Use Permit, that gives them the opportunity to prepare and apply again at a future date. Zoning Administrator Mr. Joey Lea stated, they won't be able to. Their only recourse would be to appeal your decision. Your decision is final unless it is appealed. Like I said you could go forward. Acting Chairman Mr. Mike Gee stated, I think that is what we may want to do because we can make that decision at any point during the hearing is that correct?

Zoning Administrator Mr. Joey Lea stated, yes. Acting Chairman Mr. Mike Gee stated, I think that we should finalize the testimony and then discuss this under the Board discussion and then make a decision at that point whether to continue or not. Any further questions for the applicant? Board Member Mr. David McDevitt asked, are you aware of any other daycares in the area? Mr. Damion Simmons stated, yes actually not in our neighborhood but in Burlington. Board Member Mr. Todd Smith asked, where would you say the closest one to you is? Mr. Damion Simmons stated, it would be Like My Own Daycare by the old outlets. Acting Chairman Mr. Mike Gee asked, it will be your opinion that there is a need for a facility like this? Mr. Damion Simmons stated, correct. Acting Chairman Mr. Mike Gee stated, I guess I'll ask a technical question; it sounds like many of the issues so far of what would be required for protection and that type of thing has been met. Do you feel, if this was granted, that there would be any endangerment to the public health or safety? Mr. Damion Simmons stated, no; I wouldn't open it if there were. Board Member Mr. Todd Smith asked, do you believe it will reduce land value across the street or next door? Mr. Damion Simmons stated, no not to my knowledge. Board Member Mr. Todd Smith asked, what kind of fence is in the back? Mr. Damion Simmons stated, it's a 6ft. wooden privacy fence. We are helping to rebuild the fence and painting it. If anything I would think it would raise the property values around that neighborhood. Acting Chairman Mr. Mike Gee asked, just to get it to the harmony of the neighborhood I know that an in-home daycare is a permitted use in a residential neighborhood, but are there any other childcare facilities other than the one you mentioned in this neighborhood? Mr. Damion Simmons state, no I haven't seen any. Acting Chairman Mr. Mike Gee stated, thank you we may call you up again with more questions. Acting Chairman Mr. Mike Gee asked, anything further from the City on this? Zoning Enforcement Officer Mr. Chris Marland stated, yes sir, I have a letter from one of the residents surrounding this. She sent it in and asked for it to be turned in to evidence. I would like to remind you that you can look at it and read it but this is hear-say evidence. Acting Chairman Mr. Mike Gee asked, anyone have any questions once they have finished reading the letter? Board Member Mr. Todd Smith stated, how big is the house? Is it a 3-bedroom? Mr. Damion Simmons stated, it is 3-bedroom and 1,000 sq. ft., 2-bathrooms. Board Member Mr. Todd Smith asked, do you have enough room in there to live and have some kids? Mr. Damion Simmons stated, yes. Acting Chairman Mr. Mike Gee asked, I guess that issue Mr. Marland would be the State making sure there is adequate space is that correct? Zoning Enforcement Officer Mr. Chris Marland stated, correct, that is a part of their process when they go look at the house. Acting Chairman Mr. Mike Gee asked, is there anyone from the public that would like to address this matter? Ms. Carmen Truitt McGinty stated, I'm Carmen Truitt McGinty and I swear to tell the whole truth and nothing but the truth so help me God. I live at 706 the corner property across the street. The traffic in the area scares me for my own child safety; people come flying in and out of that area as there is no outlet. The cul-de-sacs are the play areas where all the kids in the neighborhood want to play, so there is always a parent outside having to watch for the traffic. Recently in the last few months in our own neighborhood as y'all are probably already aware but on Mother's Day we had over 4 break-ins into vehicles and the last 2 months we have had 6 break-ins into homes. It's our neighborhood and turning it into a neighborhood that we don't feel the need for the traffic coming into a no-outlet area is unsafe for our families, it's unsafe for our children. The fence around 709 Arden Street is not complete. There is a creek in the back if you can pull that back up, there is no fence around the creek. I actually have pictures of that if you would like to see that. Acting Chairman Mr. Mike Gee stated, you can give them to us but we cannot give them back.

Ms. Carmen Truitt McGinty stated, they are on my phone I was going to show you that. You see the street on the screen, which was a slow day as far as parking goes. Most of the time that street is full of parking, people do not have enough parking at their own houses and park in their yards. If a child gets loose from the daycare when there is a lot of cars someone will not see the kid out in the road. I don't know how many times 2 year old Bentley ran across the road in front of cars and I was the one that ran across the street and stopped it from happening. It is very unsafe, there is a daycare on Chapel Hill Road, several of the churches in the area have daycares, the YMCA which is not that far has after school care/daycare so there is really not a need in this particular subdivision for a daycare; especially not one that is 24 hours a day. I also have this that you are more than welcome to add to your 22 people who called, this is a petition that I have gathered names from our neighbors that are also against a daycare in the neighborhood due to the safety of the children involved. Acting Chairman Mr. Mike Gee stated, and once again we cannot return this petition. Ms. Carmen Truitt McGinty stated, that's fine it's yours to keep.

Zoning Administrator Mr. Joey Lea stated, again, if I may remind you, that is hear-say evidence you can accept it to bring it into the record but you should not use it as the basis of your decision.

Ms. Carmen Truitt McGinty stated, the biggest reason I did this petition is because I've been in the house as previously stated and this rental, the people that rented it previously, their children were about my daughters age and she went over there to play so obviously I was over there; it is extremely small inside. I don't know how they are going to get 5 let alone 8 kids in there if they are living there as well. Just when there were 4 children all toddler ages from 2-6 years old there was no room to move once you add furniture and everything else. The layout is kitchen, living room, master bedroom on one side and the other 2 bedrooms on the other side of the house. Parking, they had a lot of people come over and you are lucky to get 1 car in front of the house on the street if it is a small car but most of the times they parked in the yard when they had people come over. I think you gentlemen should know and be aware of that. Like I said the fence in the back yard, you have 3 sides to it that is a 6 ft. wooden fence, several sides have holes and in the back the creek that has no fence. That is how their dogs and pig used to get out. Acting Chairman Mr. Mike Gee stated, thank you Ms. McGinty. Is there anyone else that would like to speak on this?

Mr. Doug Redington stated, my name is Doug Redington and I swear everything I say is the truth to the best of my ability. Two things; one I lived there for 12/13 years now and it is a relatively quiet cul-de-sac I actually live two doors down towards the dead end. There is a turn around and does not get very much traffic except from people that live there. The neighbors and I know the people who come down there. We feel relatively safe because we do know the cars of the people that live in those 8 houses from there down. You have 8 more people coming in on 3 different shifts you are talking about at least 24 cars if you actually go full board coming in at all times of the day and night. I know they say they are only going to go from 6am-6pm now but you've got an extra 6/8 cars coming in at 6/7:00am in the morning when people are trying to leave it's really difficult to drive out of there now. You add 6/8 cars it will be worse. You have school buses that can't even turn around because you have all the cars that park on the street, they don't even come down that far because it is so narrow. You also have a daycare that hasn't been pointed out that is behind the property that is up on a side street off of Maple Ave., I can't remember the street name but if you go off where Hess is and you go up that street there is a daycare there that is a 4 - Star Daycare. I can't remember the name of it but it has been there for years. You have a couple other daycares, local one that are not in this neighborhood itself but if you go about 6/8 blocks you will find a couple of them.

I live in actually one of the bigger houses in the neighborhood; it's my wife and I with our two kids. It's tiny; we are at each other backs all the time because we don't have room for two kid and I understand we have a lot of stuff in there that you won't have with a daycare but when you have 8 kids it's going to take up a lot of room; especially if you are talking about toddlers that are going to move around a lot. I simply don't see the space. The second thing in terms of parking you can fit 2 cars in the driveway and probably one car on the street. It's been pointed out before that is probably only about it. If you have someone living there they pointed out that you can have 6/7 cars if they added some space on the driveway by having 2 in front and maybe 2 in the rear. If you have people living there you are going to have 1 or 2 cars also as well as the 8 cars that are coming in; just wanted to point that out to you. Acting Chairman Mr. Mike Gee stated, thank you. Is there anyone else that would like to speak on this matter?

Ms. Pam Wiggins stated, my name is Pam Wiggins and I do swear that everything I say is the truth to the best of my knowledge. I live at 641 on the same side of the street about 3 houses up from this property. As it has been said before they mentioned that they are not planning on living in the house and now it can be arranged but if they live in the house you have to have all the things that come with living in a house; which would take up space for the daycare, so you have your living furniture, you have your bedroom furniture and that takes up part of the space that you would use for the daycare. It's said this house is 1,000 sq. ft., Zillow has this house being 960 sq. ft., my house is bigger than this house and with me living in that property and trying to operate 8 kids on a shift daycare I wouldn't do it in my own house, and it is bigger. There is a creek behind my house and my backyard is fenced in as well and it is not a wooden fence but there are neighbors in between my house and this house and we all have problems with lizards and snakes. The lizards get in the house and that's a problem for safety of the kids, lizards don't bite but it can scare them and they can fall and they can get hurt. As it has been stated the front yard is not fenced in so I guess as long as they don't have the kids out there in the yard it may be fine. My biggest thing is the safety of the kids and the driving in and out as the gentleman stated before me. The school buses do not come down there because it is hard to turn around in a car let alone a bus. The kids have to go up the street to catch the bus at the top of the subdivision so that's extra traffic for the kids that are trying to catch the bus at that time of the morning. Board Member Mr. Todd Smith asked, is there a lot of kids in that neighborhood? Ms. Pam Wiggins stated, yes there is a fair amount of kids. Board Member Mr. Todd Smith asked, enough for a bus to come down there for 5/6 kids? Ms. Pam Wiggins stated, yes sir. Like I said they all come from the cul-de-sac, this gentleman lives there and they all go to the top of the subdivision to catch the bus. There is an intersection right there at the top so the bus has to turn and go up this way and back-up to get in and out of the neighborhood. I just hope you guys take everything we have said into consideration, thank you. Acting Chairman Mr. Mike Gee stated, thank you. Is there anyone else from the public that would like to speak?

Ms. Cameron Truitt McGinty stated, I drive my daughter to school so I pass the bus every day. The elementary school bus actually turns on my side street and they have a hard time making that turn. They actually have to pull way up Arden Street up past the house in question, the 709 house, just to back up so they can try and get into my street then they go back up past the other one on the hill they were talking about with all the kids, there is at least 15 kids getting on that bus, there are a lot of children in the neighborhood. Thank You. Acting chairman Mr. Mike Gee stated, thank you. Are there any other public comments, any further questions for the applicant, and any other questions for the City? Having no further comment we will close this for Board discussion at this time.

**DISCUSSION & FINDING OF FACTS:** Acting Chairman Mr. Mike Gee stated, based on the applicant testimony and testimony from the City obviously we have a situation where they are not going to be able to meet the requirements for a Special Use Permit. Given the fact that they are not going to be living in the house, I guess what we probably need to decide here is do we want to provide an opportunity to extend this to a future date or make a ruling based on the evidence that has been presented today? Board Member Mr. David McDevitt stated, we heard conflicting statements and now they are saying they may or they will and that is not a positive. Everything else that has been brought up should be taken care of by the State and the City ordinance on the amount of space in the house and all that. Board Member Mr. Todd Smith stated, the fence needs to be fixed and parking seems to be a big issue. Nothing needs to be decided right now but it does seem to be there are not that many parking spaces for two people living there or maybe one person living there and drop off. I think we should give them time, it doesn't need to be decided today. Board Member Mr. David McDevitt stated, gives them a chance to prove their residency as well. Acting Chairman Mr. Mike Gee asked, can we address the City without having to open up from the discussion, again? I agree that if we are going to continue the hearing that we need to set a specific date and I don't know what exactly the reasonable time will be for this and will also ask for some guidance as far as how we would want to have residency proven to allow that to be a consideration for the application? Zoning Administrator Mr. Joey Lea stated, I would suggest moving it back up to the floor, bring the applicant back up, they need to testify to how and when they will be able to prove that. I think what you stated is true as far as the State requirements but I think also having to listen to the neighbors that the traffic is also an issue. Parking is relative because basically the only requirement is for a daycare is 1 space for every 10 children and 1 space for an employee, in this case what would be required as far as parking goes, would be no more than 2 spaces; which is the same requirement for single-family dwelling. This daycare is considered in the single-family uses. Also, I think typically the times of pick up and drop off of children are staggered so I think one of the considerations should be, what I'm trying to say is I think there is a little more to it than just the fact that they have already testified that they are not going to live there. Acting Chairman Mr. Mike Gee stated, and that was what I was going to come back to. We have heard multiple folks coming to testify before us, and unlike some cases we have where there is not a lot of additional information, we have been given a lot of information about egress, ingress, parking, safety concerns, and you know I think that does need to play apart in what we decide. Again, one piece we are looking at is just the residency factor, is that enough for us to move this forward and continue it another day or should we go ahead and look at it? That would be one factor and not doing it and not granting the Special Use Permit. Are there other issues that would prevent us from granting the Special Use Permit even if we do extend the hearing? Board Member Mr. Todd Smith stated, I think we should talk about making a condition to increase their parking even though it is not one of the conditions from the City, I'm sure we can do this but it may endanger the environment and that is one of the Special Use requirements. Acting Chairman Mr. Mike Gee stated, parking is kind of dictated by the residents. Board Zoning Administrator Mr. Joey Leas stated, they can park on the street. I guess what I was saying earlier was that they meet the minimal parking requirements. Now the question is, is that adequate? One other thing I would like to say is generally, as you know in-home child daycare are usually not an issue and a lot of that depends on the infrastructure, this is one of those cases where even people that have called I have told them that the way this process works is that you have to bring forward some



evidence to prove that this daycare should not be there and your personal opinion usually doesn't matter. But in this case, my personal opinion is that it does, and that is because of the way the streets are laid out, there is nobody that knows the traffic any better than the neighbors that live there. There is a court case I believe in Asheville in a college town and there was a single-family development that had transcended into a multi-family development and the traffic had just gotten horrendous. A developer came in wanting to build some more apartments for the students and the only testimony that was given was from those neighbors that were still living there. Their testimony was on how bad the traffic was and how bad the increase of traffic would be and their testimony was upheld. I'm not saying this is the same situation but I do believe that it is similar and in my opinion it is just the way the streets are laid out. That is for you to decide. Acting Chairman Mr. Mike Gee stated, I guess to Mr. Lea's point, we have a couple attorneys on the Board and you guys are more familiar with procedural issues. In this case I think it maybe pertinent to open back up and allow the applicant a chance to refute some of the testimony and statements that were given by the public. Again when you have multiple people that live there and see the traffic pattern on a daily basis telling you what happens there versus someone who is not living in the neighborhood that is looking to make a commercial enterprise I don't know if we can get their opinion then wave who has a more valid opinion on that subject. Board Member Mr. Todd Smith stated, I'm open to anybody that has opinion; anybody that is relevant to the issues. Board Member Mr. David McDevitt stated, the traffic since it was brought up the number one condition is the public safety and health. Acting Chairman Mr. Mike Gee stated, I would like to open the meeting back up and ask someone representing the daycare to come forward.

**EVIDENCE PRESENTED:** Acting Chairman Mr. Mike Gee stated, we have heard that there is what I guess we would consider a quality opinion of some of the issues that are associated with the Special Use Permit that are tied to safety issues. I think that personally, from the parking stand point, that is something that is really not an issue because that is permitted and its adequate parking for a residential facility there. Traffic and traffic patterns have been testified to by multiple individuals. Have you guys studied what the traffic looks like and can kind of give us your thoughts on whether that creates a safety issue for this request?

Mr. Damion Simmons stated, I can just tell you from the first time I actually came into this neighborhood, when I turned onto the street there was multiple signs saying drive like your children live here, slow down there is children playing and things like that. The first thing I noticed, and I actually spoke to her and said this is a great neighborhood, I can tell already that because they have signs here in the area. I would believe that other traffic coming in would see the same signs that I've seen and take caution in this neighborhood. It isn't like a fast food place where there is newer different people, mostly it's the same people with their children coming in day in and day out. We could speak to these parents and say hey, there are signs here and we can put up signs as well, take it slow here, there are other children and stuff in this neighborhood and things like that. Usually when someone goes into a daycare their kid is there for some time and they get used to the neighborhood and actually you get used to the other kids playing in that neighborhood. The parents would drive with caution as the signs say as if they were living down in the neighborhood.

Ms. Kimberly Rogers stated, I would like to also say we are allowed to have up to eight children but that does not mean we will have eight. We can have up to eight children if three are school aged, so the three kids would be going to school, but with school aged kids we can only keep 5.

Acting Chairman Mr. Mike Gee stated, right and that is dictated by the State. Ms. Kimberly Rogers stated, correct.

Mr. Damion Simmons stated, the other thing that I wanted to speak on is the property size not being the biggest thing, like you said the traffic will be the biggest thing because the State will take care of the other. The gate where they are talking about by the creek, I can speak on that first because I'm doing the construction and there will be a gate that goes along that bed where children can't get to the back side of that. I actually already have the gate and stuff I just haven't put it up obviously until we had this meeting with you gentlemen here today. There is a gate that is going to go up across the inside of the shed that blocks the children from getting back to that dangerous creek. Some of the fencing, the wood fence that goes around has been repaired on the inside and of course, like I said again, the rest hasn't because of this meeting today. It will also be painted and everything as well but we held off until this meeting today. The biggest thing I would say with the traffic is like the residents say, they have signs up in the neighborhood already and I will be willing actually, which I'm already going to put signs up myself telling the other neighbors to slow down. As far as our other parents that bring their children to our daycare, I can speak to them personally and we can have it written up in one of the contracts to make sure they go slow in this neighborhood. I think they would because like I said, it's not a new person every day, it's pretty much they stay there for sometimes year after year and they would know the neighborhood and understand the people that are there.

Ms. Kimberly Rogers stated, you never know, we may have one parent that has four kids and that will take up space for the eight kids.

Mr. Damion Simmons stated, there's a difference. I know that one person could bring their two kids, in my family we have three and we take them all to the same daycare and that's one car. I would say even if it is eight individual people, we would have them recognize the signs to slow down in the neighborhood and we will put one up as well. I would tell them daily as they are coming in but I really don't think it will be eight separate cars, it's just usually not the case. The last thing with the residents, like I said we have something signed by the landlord that we can also sign and say we will move there and live there. We can have that done. Acting Chairman Mr. Mike Gee asked, how would you propose you do that, like providing the City proof that you are a permanent resident in that facility? Mr. Damion Simmons stated, we can do whatever the City needs. We will have mail coming there and we can have them do an inspection and show them, but I don't think it will be one room that our bed, clothing something is there or something of that nature. Actually, I wanted to move there and she didn't but I said I think we should because this would be easier for my job because my job is closer to this area and I want to be in this area. It's actually better you guys said that for me. We are paying for two places so that's why I said this would be much easier and we can just pay for one and I would be closer to work and things like that. It would be much easier actually.

Ms. Kimberly Rogers stated, we are not from Burlington and we don't really know about the schools and such like that. I have a 15 year old son and I was comfortable in the area with the school that he goes to. He has already been going to that school.

Mr. Damion Simmons stated, we have a child and he will be two on the 10<sup>th</sup> and I said I think we should move out to this area and that's why I said when we first came up into the neighborhood I said look at the sign we should move here.

Ms. Kimberly Rogers stated, the State also comes and inspects. If you don't have any space when you are living there they will say you can't have eight kids you can only have five for this space. They will come and inspect everything.

Acting Chairman Mr. Mike Gee asked, I guess, not trying to make this more difficult, so you guys are willing to move your 15 year old from where you live now to Burlington and relocate schools and that type of thing? Ms. Kimberly Rogers stated, yes. I've already started researching schools. At the time when he asked we couldn't move, but now we can. Actually the school that he will be going to in Burlington at a high school is way better than the one he is at now which is Northeast Guilford. Acting Chairman Mr. Mike Gee asked, I guess with that we could get documentation or you could provide documentation from ABSS that your child has been enrolled in the Burlington School System. Ms. Kimberly Rogers stated, yes. Acting Chairman Mr. Mike Gee stated, based on living at a specific address and given that school is about to start I would think that a 30 day window to provide that would be adequate. Ms. Kimberly Rogers stated, yes. Acting Chairman Mr. Mike Gee stated, so what you are saying is you are willing to complete that within a 30 day window if we postpone this for 30 days? Ms. Kimberly Rogers stated, yes. Acting Chairman Mr. Mike Gee asked, any further questions from the Board? Thank you.

Zoning Administrator Mr. Joey Lea stated, Mr. Chairman I just want to bring up a point that they both actually brought up and also for the benefit of the residents here the requirements for the Special Use Permit the definition of a child daycare is six or more children within a 24 hour period. They both stated that there are instances where they couldn't keep any more than just five children. If they kept only five children then they would not need a Special Use Permit. They would however still be required to obtain a license by the State and that would restrict them to one shift. They can do five children without the Special Use Permit. I wanted to bring that up for the Board and the neighbors. Acting Chairman Mr. Mike Gee asked, ok any further questions? Seeing no further questions, we will close for discussion again.

**DISCUSSION & FINDING OF FACTS:** Acting Chairman Mr. Mike Gee asked, anything else that you guys are thinking? At this point I would look for someone to make a motion to either continue this for 30 days or to make a motion to rule on a decision as we sat today. Board Member Mr. David McDevitt stated, I have a hard time asking them to make all these arrangements and answering the safety concerns. Condition number one where do we feel on it? Board Member Mr. Todd Smith stated, we could make the Special Use Permit conditioned on living there and showing proof to the City they transferred their children. Acting Chairman Mr. Mike Gee stated, right. Zoning Administrator Mr. Joey Lea stated, Mr. Chairman I think that is an excellent point, if you go through the exercise then having do that this month and still turn it down because you decided you have a traffic issue is probably something you can address now. Acting Chairman Mr. Mike Gee stated, I agree and to add to your point if we walk through the conditions here, first thing is, it's not going to materially endanger the public health or safety. We have heard multiple in-home daycare cases, and as Mr. Lea pointed out, they would be allowed to have five children on one shift without coming before us. They could move there and have children in the house whether we approve the Special Use Permit or not. What we would be contemplating giving them the ability to do is, that on basically more than one shift, over the course of the day with a few more kids involved. The stated hours are between 6am-6pm and we don't have a traffic study we've got testimony from residents about some of the traffic issues with the neighborhood. I don't envision that you will have eight cars showing up at one time clogging up the driveway then eight cars trying to get in and out of there, but I guess that could happen, but again that is a residential area and that could happen whether there was a childcare facility there or not.

Whether that would or would not supply a significantly materially different risk to the public is the question, but I'm not sure that it does personally. The second condition would be that it meets the required conditions and specifications and obviously one of the conditions is that the applicant live in the home. The bulk of the main conditions are somewhat dictated by the State of North Carolina, you know they will have to certify a safe place for children. The third requirement is that it will not substantially injure the value of adjoining property or that the use is a public necessity. There are other childcare facilities somewhat nearby but it does seem to be a need for childcare. I think you could say that is a public necessity whether it is five kids per day or eight kids per shift. The fourth requirement is that it will be in harmony with the area and it is a single family residents that they would be occupying the facility and that would be in harmony in my opinion. That is just me kind of walking through it based on the way we handle the majority of these in the past. Board Member Mr. Todd Smith stated, I agree with you I hate that there is so much contention. It seems like there is traffic issues and maybe parking issues for these streets. My experience with this is the ones we approved all were having the same problems and being similar with the area. Like you say eight people don't show up at the same time. This is a little different with the curve right there at the corner, but like you say, the State will make them fix the fence, inspect them, make them live there. Although, if we pass this, we should make the requirement that they show the City they have moved and have transferred their kids, but I wish we could do a little more about the parking it seems a little bit inadequate, but that sounds like a State regulated issue, so there is not much we can do about that. As far as driving up and down the streets, honestly, it sounds like a good use for the place. There is a lot of kids in the neighborhood and adding some more kids how can that be a bad thing, that seems to be a good thing. One concern was people breaking into houses and stuff, well another person living in the neighborhood is another eye to make sure that is not happening, that is actually a benefit so I agree with you. Acting Chairman Mr. Mike Gee asked, if we continue this would we look to make a motion to approve it contingent upon getting that or do we continue this to have that evidence presented to us to make a further decision? Zoning Administrator Mr. Joey Lea stated, you can do it either way, you could take a vote now and approve it contingent upon providing that information within 30 days and if they don't, then the Special Use Permit will be void and of no effect. Or, you could continue it until the next Board meeting to have them come before you to provide that information, so you could do it either way. Board Member Mr. Todd Smith stated, if we do it the second way that would put them in the position of moving and not knowing if they are going to get the Special Use Permit. Acting Chairman Mr. Mike Gee asked, in this case, what conditions would you say, the signed lease agreement? Board Member Todd Smith stated, they would have to show proof to the City and a signed lease agreement and the registration at ABSS. Zoning Administrator Mr. Joey Lea stated, I'm not going to discount anything they say, but the school will be more impactful and the lease agreement does not prove they are living there, but that would certainly be part of it I think. Acting Chairman Mr. Mike Gee asked, anyone have anything further to say, anyone want to make a motion? Zoning Administrator Mr. Joey Lea stated, let me clarify something, are we saying they have to move within 30 days or are we giving them a time limit when they are supposed to be in the house? I ask this because I really don't think that is relative. Board Member Mr. Todd Smith stated, I would say the Special Use Permit isn't valid until it is proven that they are residents of the house. Zoning Administrator Mr. Joey Lea stated, ok, I just don't want there to be any gray area there. Board Member Mr. Todd Smith stated, in other words they can't have any kids over there until they live there because that is what the Special Use Permit is for, to have kids over there.

Board Member Mr. David McDevitt stated, they can't have other people's kids there. Acting Chairman Mr. Mike Gee asked, is it necessary to even put that a 30 day limit on it? Zoning Administrator Mr. Joey Lea stated, that's what I was saying. This needs to be worded in a sense that if it goes to appeal in front of a judge for some reason, it makes sense.

**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, in all ways other than traffic, there doesn't seem to be any content in that this is a safe environment for a home daycare. It's very similar to most of the daycares that have been approved in the last 15 years or so. There are some questions about traffic however, there is a State mandated system for the amount of parking and these of course are public roads open to anyone that wants to use them. There does seem to be adequate parking even if all people show up it would be cramped, but still adequate parking. I don't think there are any conditions that would materially endanger the public health or safety where the home daycare is going to be proposed and developed.
2. ***the use meets all required conditions and specifications:***  
the findings of fact are, they have already gone through the City and this has been approved by the City's requirements and they are going through the State's conditions and will have to comply with those conditions. The issues of space, fencing and things like that have been met, or will be met in order to continue a home daycare. Other finding of facts are, that most of the required conditions and specifications have been met however there are two requirements that we are going to make part of this Special Use Permit, one is that they have to have proof of residency, that proof of residency will be information, sufficient to the City to show that they live there, at least one of the owner operators lives there, and also it will include but not limited to proof of a lease from a landlord or ownership and proof that they transferred their children from whatever school system they are in now to ABSS at that location. Also the second requirement for the Special Use Permit is they have proof of State certification so the State can show that all the requirements are met for the State daycares.
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, there was no evidence that anybody said the value of the house adjoining or abutting would be devalued. I think Mr. Simmons said it might actually increase the value considering doing repairs and making the property a little nicer. Also home daycares are a necessity because people have to work and have to leave their kids with somebody to take care of.

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, home daycares are usually in single-family residential areas. It is very common here and this Board has passed several of them and it is clearly something that is in harmony with what's going on in Burlington, with this plan, and its general environs.

Board Member Mr. David McDevitt seconded the motion.

**AYES: Gee, Smith, McDevitt**

**NOES: Giles**

Board Member Mr. Todd Smith stated, I would like to make a motion to approve the Special Use Permit for Divine Miracles Home Daycare located at 709 Arden Street, Burlington, North Carolina due to the previously stated Findings of Fact and that the applicant must be required to prove to the city that the proof of residency will be whatever information that they can provide satisfies the City that they are residents of 709 Arden Street, including proof that they have transferred their children to the ABSS school system and have told ABSS that they live at this location and further that they either have proof of ownership or a lease from a landlord saying that they are going to live at that location and any other evidence that they can give to the City. 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.

Acting Chairman Mr. Mike Gee seconded the motion. The Board voted 2-2 on the motion to approve the Special Use Permit. Not a majority vote, the Special Use Permit was denied.

**AYES: Gee, Smith,**

**NOES: Giles, McDevitt**

Acting Chairman Mr. Mike Gee stated, based on the vote that was taken the Special Use Permit has been denied.

**NEW BUSINESS:** None

**MEETING ADJOURNED**

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H.E. Wilson III, Chairman

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Kelly Peele, Secretary