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**NEW BERN BOARD OF ADJUSTMENT
MINUTES**

August 25th, 2014

The New Bern Board of Adjustment held a work session on Monday, August 25th, 2014 at 5:30 pm in the City Hall Courtroom, 2nd floor, 300 Pollock Street.

Members Present: Ms. Sarah Afflerbach – Chair
Mr. Peter Adolph
Mr. Barry Evans
Mr. Benjamin Beasley
Mr. David Herndon
Ms. Renee Murphy
Mr. Willie Newkirk, Sr.
Ms. Beth Walker
Mr. PJ Walker

Members Excused: None

Members Absent: Mr. Kenneth Brown
Ms. Lois Jamison
Mr. Jeffrey Midgette
Mr. John Murrell

Staff Present: Mr. Greg McCoy, Land & Community Development Administrator

Chair Sarah Afflerbach called the meeting to order.

Roll call was taken and a quorum declared.

Minutes: Reading of the minutes from the previous meeting was waived by unanimous consent. Minutes from May 12th, 2014 were discussed and corrections were suggested. Minutes will be presented with corrections at the next meeting.

New Business:

- A. Rules and Procedures-Special Use Permits (SUP).
- B. Recognition of outgoing Board of Adjustment member Mr. Willie Newkirk

Mr. McCoy presented the Rules and Procedures for Special Use Permits outline to the Board (see attached). He explained the Departmental review and application process and how it is the prior step to the Special Use Permit process. The following are the main items discussed/reviewed

45 from the general Rules and Procedures:
46

47 **1) SPECIAL USE PERMITS, CONDITIONAL USE PERMITS AND**
48 **SPECIAL EXCEPTIONS**

49 **The Concept.**

50 The North Carolina General Statutes provide for three apparently different
51 special zoning permits—special use permits, conditional use permits, and special
52 exceptions. However, all three terms refer to the same zoning tool and are legally
53 indistinguishable. A special use permit allows a certain activity provided for in the
54 ordinance to be established at a particular location within a zoning district if the applicant
55 can demonstrate that certain ordinance requirements are met. The Board of Aldermen
56 allows a conditional use permit for the same purpose.
57

58 **Use-specific requirements.**

59 Most ordinances require that a special use meet certain fairly concrete requirements
60 that are specific to the particular use. These may include setback, buffer, off-street parking,
61 lot size, lot access, and similar requirements.
62

63 **General requirements.**

64 Special use permits are notable because ordinances also include requirements
65 that an application must meet that are more general and less concrete than use-specific
66 requirements. These requirements are general both in the sense that they typically must be met
67 by all special use permit applicants and because the language of the requirements includes a
68 certain amount of "play." These requirements give the board a certain amount of discretion in
69 evaluating evidence.

70 The following general findings are typical:

- 71 (1) The use will not materially endanger the public health or safety if located where
72 proposed and developed according to the plan as submitted and approved,
- 73 (2) The use meets all required conditions and specifications,
- 74 (3) The use will not substantially injure the value of adjoining or abutting
75 property, or that the use is a public necessity, and
- 76 (4) The location and character of the use, if developed according to the plan
77 submitted and approved, will be in harmony with the area in which it is to be
78 located and in general conformity with the plan of development of the city and
79 its environs.

80 **Burden of proof.**

81 The applicant generally has the burden of producing evidence sufficient to
82 establish a prima facie case with respect to use-specific findings as well as the burden of proof.
83 However, it could be very difficult for an applicant to anticipate and then negate every possible
84 objection to a development project. For this reason those who advocate the denial of the permit
85 bear the burden of producing evidence and the ultimate burden of proof with respect to
86 "general" findings.

87

88 **Site-specific development conditions.**

89 The board may add development conditions to the project that are specific to the
90 development proposal. The conditions must be reasonable and allow the board to make the
91 findings of fact and reach the conclusions of law that enable the board to grant the permit in the
92 first place. All conditions "run with the land" and apply with equal force to subsequent owners.
93

94
95 After reviewing the Rules and Procedures, and the Departmental Site Plan review application
96 (see attached) and process, Mr. McCoy explained the Special Use Permit Application and
97 process for approval.
98

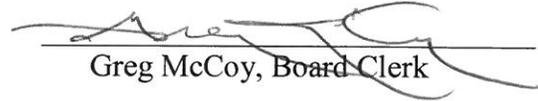
99 Outgoing Board of Adjustment member, Mr. Willie Newkirk was recognized for his valuable
100 service to the City of New Bern Board of Adjustment.
101

102 With no further discussion, meeting adjourned.
103
104
105

106 

107

Sarah Afflerbach, Chair
108



Greg McCoy, Board Clerk

