

STATE OF NORTH CAROLINA  
COUNTY OF PITT

FILED

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

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FILE NO. 24 CVS 2755

PITT CO. C.S.C.

BROOKHAVEN ESTATE ASSOCIATION,  
INC. d/b/a BROOKHAVEN COMMUNITY  
ASSOCIATION, GARRIE MOORE,  
VIVIAN KENNION, and WALTER  
FIELDS.

Petitioner,

v.

CITY OF GREENVILLE, and RACE  
TRAC, INC.,

Respondents.

**PETITION FOR WRIT OF  
CERTIORARI**

NOW COME Petitioners Brookhaven Estate Association (“Brookhaven Community Association” or “BCA”), Dr. Garrie Moore (“Dr. Moore”), in his personal capacity and as CEO of the Center for Science Technology and Leadership Development, Vivian Kennion (“Mrs. Kennion”), and Walter Fields (“Mr. Fields”) (together, “Petitioners”) by and through counsel, and respectfully petition this Court to issue a Writ of Certiorari<sup>1</sup> for judicial review of the September 26, 2024 decision and Accompanying Written Decision on October 25, 2024 of the City of Greenville Board of Adjustment (“Board of Adjustment” or “BOA”) to grant a Special Use Permit (the “Decision”) to RaceTrac, Inc. (the “Applicant” or “RaceTrac”) for operation of a Convenience Store with Gasoline Sales (“the RaceWay”). In support of their Petition, Petitioners respectfully show the Court the following:

<sup>1</sup> A copy of the proposed Writ of Certiorari that Petitioners have submitted to the Clerk of the Pitt County Superior Court is attached to this Petition as **Exhibit A**. An executed copy will be served on opposing parties upon receipt from the Clerk.

## PARTIES AND STANDING

1. As the Board of Adjustment correctly determined, unanimously and without opposition, Petitioners Dr. Garrie Moore, Walter Fields, and Vivian Kennion all have standing to challenge the Board of Adjustment's determination and decision, pursuant to N.C. Gen. Stat. § 160D-1402(c)(2), as Petitioners will all suffer special damages from the Decision.

2. As the Board of Adjustment correctly determined, unanimously and without opposition, Brookhaven Community Association has standing, pursuant to N.C. Gen. Stat. § 160D-1402(c)(3), as it is an association with at least one member who has standing individually, was formed decades ago to advocate for the Brookhaven community's interests, and is comprised of residents in the Brookhaven area who have standing in their individual capacities.

3. To establish standing for a quasi-judicial proceeding, individual Petitioners only need to allege "special damages" not common to the surrounding community at large. *Cherry v. Wiesner*, 245 N.C. App. 339, 351-52 (2016); *Fort v. County of Cumberland*, 218 N.C. App. 401, 405 (2012) (recognizing that allegations of injury are sufficient because "competent" evidence requirement doesn't apply to standing). Petitioners' allegations as to property value diminution or potential harms from a nearby proposed development, such as increased traffic, runoff, and safety concerns, are sufficient to establish these "special damages" for quasi-judicial standing. *Id.*; *Sanchez v. Town of Beaufort*, 211 N.C. App. 574, 578-79 (2011). Proximity to the proposed development also bears weight on the determination of special damages. *Mangum v. Raleigh Bd. of Adjustment*, 362 N.C. 640, 644 (2008); as displayed in **Exhibit B**, Dr. Moore and Mrs. Kennion live directly adjacent to the proposed development, and Mr. Fields lives within 250 feet of the proposed development. Petitioners will suffer special damages from the construction and operation of the RaceWay, as elaborated upon below, and so have standing to



bring this Petition.

4. Dr. Garrie Moore (“Dr. Moore”) is a longstanding resident of Greenville who owns and resides at property located at 1701 Brookhaven Avenue, Greenville, NC (PIN: 4780633268), immediately adjacent to the proposed development on one side of his property and adjacent to a highway, N. Memorial Drive, on another adjacent side. Dr. Moore is the current President of Brookhaven Community Association. Dr. Moore is also an expert in education, having earned his EdD in education from North Carolina State University in 1995 and subsequently working in the field for approximately thirty years; Dr. Moore currently works with troubled Wellcome Middle School students through the Center for Science Technology and Leadership Development, a non-profit he founded where he serves as CEO.

5. Dr. Moore will suffer special damages as a result of the Decision, and from the proposed RaceWay, due to the unique positioning of his property, as he is the only property owner immediately adjacent to both the RaceWay and to North Memorial Drive—a highway that is frequented by passenger car and heavy truck traffic but contains no highway noise barrier. As a property owner adjacent to a highway, he is already faced with the greatest degree of noise of any Brookhaven resident, which disrupts his sleep, and a greater degree of cumulative vehicle air pollution exposure than any other property owner adjacent to the RaceWay. He is certain the emissions and noise from the RaceWay’s construction and operation will uniquely harm his health as a property owner faced with the greatest degree of noise and vehicle emissions, due to his property’s unique positioning near the highway and the RaceWay site. The increased noise from individuals frequenting the RaceWay, along with the increased noise and air pollution from cars entering, idling at, and exiting the RaceWay, will certainly decrease the value of his property. Moreover, more vehicle traffic may be expected along N. Memorial Drive as drivers

may go somewhat out of their way to fill their gas tanks at the RaceWay. Finally, Dr. Moore's extensive background in education and community engagement with Wellcome Middle School makes him worried that the RaceWay will harm the health of many students he personally works with and whose well-being he is deeply invested in; Dr. Moore was not able to consult the City of Greenville *Board of Adjustment Rules of Procedure* via the City of Greenville website because they were not posted or accessible to the public except by special request, which harmed Dr. Moore's ability to present evidence. Dr. Moore nevertheless presented competent, substantial, and material expert testimony about his concerns to the BOA. Dr. Moore's personal and property impacts are examples of special damages he will suffer from the RaceWay.

6. Walter Fields ("Mr. Fields") is a member of the Brookhaven Community Association who has owned and resided at 1713 Brookhaven Drive, Greenville, NC (PIN: 4780620859), for over forty years. Mr. Fields moved to the Brookhaven community with his wife, now passed, because it is a safe neighborhood where residents take pride in their homes. Having retired from his industry job, Mr. Fields currently works as a substitute teacher at Wellcome Middle School multiple times per week. His property is uniquely positioned, as it is within 250 feet of the RaceWay site and sits on the corner of Briley Road and Brookhaven Drive. As such, Mr. Fields faces unique traffic effects in the area during school hours and Wellcome Middle School events, as well as effects from passerby traffic on Briley Road and Brookhaven Drive. The RaceWay would increase both the intensity and duration of these peak hours of traffic and decrease the value of his property. Despite not having access to the BOA's rules of procedure through the City of Greenville's website, Mr. Fields expressed his concerns at the BOA Hearing through sworn testimony. However, because the BOA's rules of procedure were not posted online as they are required to be, Mr. Fields did not know what to expect or

how to prepare for the BOA hearing and was disadvantaged in the proceeding.

7. Mr. Fields was unfortunately diagnosed with prostate cancer in 2019. Although his cancer is now in remission, he suffers from a persistent cough and breathing difficulties. Despite the obstacles he has faced, Mr. Fields maintains a zest for life. Mr. Fields keeps a well-manicured lawn and shrubbery surrounding his home, and he cherishes the days when his grandchildren, residents of Raleigh, come to Greenville to grill with him outdoors. Siting a gas station next to Mr. Fields' property will worsen nearby traffic during peak school hours, exacerbate Mr. Field's coughing and breathing issues through increased pollution, and increase his likelihood of prostate cancer recurrence. The close proximity of the gas station will also make it less enjoyable to sit outdoors or to grill, particularly when the fumes of car exhaust overpower the smell of food cooking on the grill. Mr. Fields believes the RaceWay will, for these reasons, ruin his grandchildren's visits and therefore decrease his and his grandchildren's use and enjoyment of his property. Finally, he is worried about the RaceWay bringing crime to his neighborhood; he has never had to worry about crime before and is now concerned about vandalism and safety as a senior Brookhaven resident living alone. These increases in traffic, air pollution, and worries about crime show Mr. Fields will suffer special damages from the Decision, and from the RaceWay's operation and construction, especially due to the unique positioning of his property, his health history, his family's visits, and his status as a single-occupant owner of property in Brookhaven.

8. Vivian Kennion ("Mrs. Kennion) is a Brookhaven community resident, and member of Brookhaven Community Association, who has owned and resided at 1711 Brookhaven Drive, Greenville, NC (PIN: 4780621988), with her husband for over forty-five years. A lover of nature, Mrs. Kennion spends the majority of her time on her back porch, where

she admires her view and enjoys the quietude and birdsong surrounding her. Mrs. Kennion takes great pride in her backyard, where she periodically and diligently cares for her flowers, entertains neighbors, and plays football with her grandchildren who visit weekly. Mrs. Kennion goes on walks weekly, where she walks past the proposed RaceWay site—a field of undisturbed trees and grass prior to RaceTrac’s involvement—before turning south towards Wellcome Middle School. She walks this route four times per outing, but fears the potential for crime at the RaceWay and proximity to heavy development and increased traffic will nullify the benefits of this routine. Mrs. Kennion is certain this development will ruin the appeal of her backyard, and therefore reduce her property value, because her view will be obstructed, quietude and birdsong will be drowned out, and air pollution will drastically affect her as an adjacent property owner. Despite not having access to the BOA’s rules of procedure through the City of Greenville’s website, Mrs. Kennion expressed her concerns at the BOA Hearing through sworn testimony. However, because the BOA’s rules of procedure were not posted online as they are required to be, Mr. Fields did not know what to expect or how to prepare for the BOA hearing and was disadvantaged in the proceeding.

9. Mrs. Kennion was diagnosed with two distinct types of breast cancer in 2014, which is in remission after a long fight. However, she must frequently return to the doctor for health assessments. Living immediately adjacent to a gas station, where cars and trucks will enter, idle, and exit, puts Mrs. Kennion’s life at risk, as frequent exposure to the air pollutants associated with gas stations increases her likelihood of breast cancer recurrence. With her bedroom window set to be in close proximity to the proposed RaceWay site, she is concerned that the lights from RaceWay will flood into her room, potentially worsening her existing sleep related issues. Mrs. Kennion may be forced to alter her entire lifestyle, end her frequent walks,

and forego football with her grandchildren to avoid the air pollutants associated with RaceWay for her personal safety. Mrs. Kennion will suffer special damages from the Decision, as she will uniquely suffer from RaceWay's construction and operation.

10. Petitioner Brookhaven Estate Association, Inc., d/b/a Brookhaven Community Association, is a North Carolina association formed in 1972. BCA is comprised of property owners who live and reside on Brookhaven Drive in Greenville, NC, which is adjacent to the proposed development and thrives as a historically Black community in Greenville. BCA was created to improve the quality of life of Brookhaven residents and represent the interests of Brookhaven residents to the outside community. Residents are eligible to join upon moving to Brookhaven Drive, and membership is terminated upon moving away from Brookhaven Drive.<sup>2</sup> Accordingly, BCA has standing as an association representing individuals with standing to challenge the Decision, pursuant to N.C. Gen. Stat. § 160D-1402(c)(3).

11. Respondent City of Greenville (the "City") is a city duly established and organized under the laws of the State of North Carolina. The City of Greenville Board of Adjustment (the "BOA"), pursuant to its authority under state laws N.C. Gen. Stat. §§ 160D-302, 160D-406, and 160D-705, and local ordinances Greenville Code §§ 9-4-186 and 9-4-320, amongst others, granted the Special Use Permit application of RaceTrac, Inc.

12. Respondent RaceTrac, Inc., is a private corporation that owns and operates gas stations across the southeastern United States. Justin Giambalvo submitted an application on behalf of RaceTrac, with the consent of property owner Julian Rawl, on August 26, 2024, for RaceTrac to obtain a Special Use Permit to operate a RaceWay gas station immediately adjacent

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<sup>2</sup> See **Exhibit C**, Brookhaven Community Association Bylaws, at 1.



to the Brookhaven community and Wellcome Middle School.

13. The City of Greenville and RaceTrac, Inc. (together, “Respondents”), are properly included as Respondents, pursuant to N.C. Gen. Stat. § 160D-1402(d).

### **JURISDICTION AND VENUE**

14. This is an appeal in the nature of certiorari, and this Court has jurisdiction, pursuant to N.C. Gen. Stat. §§ 160D-406, 160D-1402, 160D-1405, and Greenville Code 9-4-186(H).

15. Upon information and belief, the Board’s Decision was signed by the Secretary of the Board of Adjustment on October 25, 2024, and served on affected persons on that same day.<sup>3</sup> This Petition is timely filed within (30) days thereof. N.C. Gen. Stat. §§ 160D-406(j), 160D-1402, 160D-1405(d).

16. Pitt County is the proper venue for this proceeding. N.C. Gen. Stat. § 160D-1402(e).

### **FACTUAL BACKGROUND**

17. This case arises from an application submitted by Justin Giambalvo on behalf of Respondent RaceTrac, Inc., on August 26, 2024, for a Special Use Permit to operate a convenience store with gasoline sales (gas station) on property located at 3201 N. Memorial Drive, Greenville, NC (PIN: 4780624727).<sup>4</sup> This application was authorized by the owner of the subject property Julian Rawl.

18. The property at 3201 N. Memorial Drive, Greenville, NC, is zoned as General

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<sup>3</sup> See **Exhibit D**, BOA 24-17, Decision and Order Granting Special Use Permit (Quasi-Judicial Decision) (“Order”), at 31-33.

<sup>4</sup> See **Exhibit E**, September 26, 2024, City of Greenville Board of Adjustment Agenda Packet, at 60-64.

Commercial, which may accommodate a “Convenience Store with Gasoline Sales” only if a Special Use Permit is granted by the City of Greenville Board of Adjustment. Greenville Code § 9-4-68; Appendix A(10)(b).

19. An evidentiary hearing was scheduled for September 26, 2024 for the Board of Adjustment to consider RaceTrac’s Special Use Permit application (“BOA Hearing”).

20. The City notified property owners within 250 feet of the proposed development, informing them of the upcoming Special Use Permit hearing. This notice was sent to Dr. Moore, Mrs. Kennion, Mr. Fields, and other members of the Brookhaven community.

21. Upon information and belief, the City of Greenville *Board of Adjustment Rules of Procedure*,<sup>5</sup> which would have helped nearby property owners better understand how to properly provide competent evidence in the quasi-judicial evidentiary hearing, were not publicly available on the City’s website before and during the evidentiary hearing, in violation of N.C. Gen. Stat. § 160D-308. For instance, the *Board of Adjustment Rules of Procedure* state that the BOA will not rely on hearsay,<sup>6</sup> even though it is well-established in North Carolina law that Boards of Adjustment are free to rely on hearsay when making quasi-judicial decisions. N.C. Gen. Stat. § 160D-1402(j)(3); *Harding v. Bd. of Adjustment*, 170 N.C. App. 392, 397-98 (2005). The unavailability of procedural rules seriously injured the ability of Brookhaven residents’ ability to understand how to prepare for and properly present competent evidence to be considered at the BOA hearing.

22. On September 26, 2024, the BOA held an evidentiary hearing to review the Applicant’s Special Use Permit application, in order to determine whether to approve, approve

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<sup>5</sup> See **Exhibit F**, City of Greenville *Board of Adjustment Rules of Procedure*.

<sup>6</sup> See **Exhibit F**, City of Greenville *Board of Adjustment Rules of Procedure*, at 5.

with conditions, table, or deny the Special Use Permit application.

23. To be granted a Special Use Permit, an applicant must meet their burden of establishing that they meet local Special Use Permit requirements. *PHG Asheville, LLC v. City of Asheville*, 374 N.C. 133, 149 (N.C. 2020).

24. To be granted a Special Use Permit in the City of Greenville, an applicant must produce sufficient evidence to meet all requirements in Greenville Code § 9-4-81:

- a. The proposed use meets conditions, specifications, and policies of the City of Greenville for submission of a Special Use Permit;
  - b. The proposed use is in general conformity with the Comprehensive Land Use Plan;
  - c. The proposed use will not adversely affect the health and safety of the persons residing or working in the neighborhood of the site. This includes traffic considerations and pedestrian movements on-site and off-site;
  - d. The proposed use will not be detrimental to the public welfare or to the use of adjacent properties or other neighborhood uses;
  - e. The proposed use would not be adversely affected by existing uses in the surrounding area;
  - f. The proposed use will not injure adjoining or abutting property;
  - g. The proposed use will not constitute a nuisance or hazard. These considerations include intensity of uses in the surrounding area, visual impact, method of operation, and externalities including noise, odor, dust, and emissions.
25. Additionally, the Greenville Board of Adjustment “shall make appropriate

findings to insure that the [requirements in Greenville Code § 9-4-186(E)] are met.” The requirements in Greenville Code § 9-4-186(E) mirror those in Greenville Code § 9-4-81, except that Greenville Code § 9-4-186(E) also requires that the location and character of the use must be “in harmony with the area in which it is to be located.”

26. Anyone who has standing to appeal the decision may also participate as a party at an evidentiary hearing. N.C. Gen. Stat. § 160D-406(d). This right to participate as a party includes the due process right to offer evidence. *Young v. City of Durham*, 287 N.C. App. 521, 2023-NCCOA-19, ¶ 13.

27. Several witnesses for RaceTrac were admitted as experts and given the opportunity to provide their expert opinions at the hearing. Each proffered expert witness appearing on behalf of the Applicant was prompted by the BOA to state their qualifications to be certified as an expert in their field. Additionally, other parties at the hearing were given the opportunity to object to any witness’s certification as an expert. The BOA concluded these processes by moving to certify each witness as an official expert. Each vote passed unanimously. However, none of these experts mentioned or discussed whether the RaceWay would be in conformity with the City of Greenville Comprehensive Land Use Plan, or Horizons 2026.

28. After RaceTrac presented its evidence, Dr. Garrie Moore approached to provide testimony in his individual capacity and as an expert on behalf of the Brookhaven Community Association.

29. When asked a series of questions to determine whether he had standing, Dr. Moore unambiguously asserted that he is an expert in education and has a PhD in education. This expertise is invaluable when evaluating the impacts of the RaceWay development, as

Wellcome Middle School—a school of approximately 400 adolescent students who are overwhelmingly low-income students of color—is located within 1000ft of the proposed site. Dr. Moore personally works with troubled Wellcome Middle School students through the Center for Science Technology and Leadership Development, a non-profit he founded where he serves as CEO.

30. However, despite Dr. Moore’s attempt to be certified as an expert witness, his assertion that he was an expert was completely ignored by the Board of Adjustment.

31. The Board of Adjustment did not ask Dr. Moore to elaborate upon his qualifications as an expert, as they had with every other witness asserting expertise.

32. The Board of Adjustment did not provide other parties the opportunity to object to Dr. Moore’s certification as an expert, as they had with every other party asserting to be an expert witness.

33. The Board of Adjustment did not move to certify Dr. Moore as an expert, as they had with every other party asserting to be an expert witness.

34. The official Findings of Fact upon which the Board of Adjustment relies to ensure necessary standards are met under Greenville Code § 9-4-186(E), states that “[n]o expert testimony was provided by any opponent.”<sup>7</sup> Contrary to this statement, Dr. Moore attempted to provide expert testimony in his capacity as CEO of the Center for Science Technology and Leadership Development and was procedurally denied the ability to present that testimony for the Board of Adjustment’s consideration. Because Dr. Moore did not have access to an online version of the BOA’s policies and procedures, he was disadvantaged in his attempts to offer

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<sup>7</sup> **Exhibit D**, Order, at 13.



expert witness testimony when the BOA ignored his assertion that he was an expert and was unaware of rules necessary to prepare for the hearing as an expert.

35. During his testimony, Dr. Moore nevertheless spoke at length about the harms of putting a gas station in such close proximity to the approximately 400 adolescent students attending Wellcome Middle School, the most troubled of which he personally works with weekly as an education expert and nonprofit founder. His testimony included observations of health issues facing Wellcome Middle School students and the ways in which approving a gas station nearby would exacerbate these problems. He also noted that students at Wellcome Middle School will take every opportunity to go to the gas station, to their detriment (as the RaceWay plans to sell tobacco products).

36. Dr. Moore also submitted eleven pages of written testimony to the Board of Adjustment and other parties. This testimony included letters of opposition to the RaceWay, a map of the proposed RaceWay in relation to Wellcome Middle School, and Dr. Moore's expert research on the RaceWay's potential harms. This written expert testimony included research that gas stations within a 10-minute walk of a school increase student obesity.<sup>8</sup> Dr. Moore also cited EPA guidance, which he relied upon in his expert testimony and which is consistent with his informed opinion as an expert, which recommends that schools within 1000 feet of large gas stations should be initially screened for environmental hazards, including air pollution, soil contamination, ground water contamination, vapor intrusion into structures, and heavy vehicular traffic.<sup>9</sup>

37. At no point during this testimony did the Board of Adjustment ask any follow-

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<sup>8</sup> See **Exhibit G**, Dr. Moore Written Testimony, at 8.

<sup>9</sup> *Id.*

up questions about his expert observations and opinions concerning the impacts to Wellcome Middle School and its students; only one BOA member briefly asked for clarification about the EPA study.

38. Dr. Moore even asked for a continuance, based on the circumstances, which was opposed by RaceTrac and summarily denied by the Board of Adjustment.

39. The Board of Adjustment did not include any of Dr. Moore's verbal testimony about the RaceWay's harms to Wellcome Middle School students and the surrounding community in the record and, therefore, did not base their decision on his expertise. N.C. Gen. Stat. § 160D-406(j) ("Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record."). At the conclusion of Dr. Moore's testimony, the Chairman of the BOA, Daniel Worrall, even stated "they're giving us lay opinion which we shouldn't be considering." As previously stated, the Board of Adjustment also asserted in their Findings of Fact that no expert testimony was provided by any opponent.

40. All of Dr. Moore's testimony was relevant for the Board of Adjustment's determination of whether RaceTrac's application would adversely affect health and safety, be deleterious to public welfare, constitute a nuisance or hazard, be in harmony with the surrounding environment, and many other requirements set forth in Greenville Code § 9-4-81 and Greenville Code § 9-4-186(E).

41. However, the Board of Adjustment admits they did not consider any of Dr. Moore's written evidence in making their decision because they claim the evidence was not competent, substantial, and material.<sup>10</sup> The Board of Adjustment also found all of the submitted

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<sup>10</sup> **Exhibit D**, Order, at 23.

materials to be hearsay.<sup>11</sup> Assuming *arguendo* the materials submitted were hearsay, however, Boards of Adjustment may freely rely on hearsay if they so choose. N.C. Gen. Stat. § 160D-1402(j)(3); *Harding v. Bd. of Adjustment*, 170 N.C. App. 392, 397-98 (2005).

42. The Board of Adjustment stated in its conclusions of law that “there [was] a lack of competent, material, and substantial evidence that was introduced to support the denial of the Applicant’s Special Use Permit,” so the Applicant was *prima facie* entitled to the Special Use Permit.<sup>12</sup> In other words, the Board of Adjustment held that the Applicant was the only party who presented evidence worth considering, so the Applicant was entitled to the permit by law.

### **LEGAL BACKGROUND**

43. A reviewing court shall ensure Petitioner’s rights were not prejudiced because the Board of Adjustment’s findings, inferences, conclusions, or decisions were in violation of (a) due process rights, (b) in excess of their statutory authority, (c) inconsistent with applicable procedures, (d) affected by other error of law, (e) unsupported by competent, material, and substantial evidence in view of the entire record, or (f) arbitrary and capricious. N.C. Gen. Stat. § 160D-1402(j)(1).

#### **(1) The City of Greenville, Through the BOA, Violated Petitioners’ Due Process When It Denied Dr. Moore the Opportunity to Present Expert Testimony.**

44. The standard of review for an appellate court evaluating a due process violation in a quasi-judicial proceeding is *de novo*. N.C. Gen. Stat. § 160D-1402(j)(2).

45. The due process rights of a Petitioner that a trial court is responsible for ensuring were not violated include “the right to offer evidence.” *Young v. City of Durham*, 287 N.C.

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<sup>11</sup> *Id.*

<sup>12</sup> See **Exhibit D**, Order, at 25-27.

App. 521, 2023-NCCOA-19, ¶ 13.

46. Every quasi-judicial decision must be based on evidence *in the record* that is *competent, material, and substantial*. N.C. Gen. Stat. § 160D-406(j); N.C. Gen. Stat. § 160D-1402.

47. The “material” and “substantial” requirements essentially seek to ensure the proffered testimony is relevant. “Substantial evidence is defined as that which a reasonable mind would regard as sufficiently supporting a specific result. Material evidence is evidence having some logical connection with the consequential facts.” *Young v. City of Durham*, 287 N.C. App. 521, 2023-NCCOA-19, ¶ 19 (quotations omitted). Dr. Moore’s verbal testimony and the handouts he submitted to the Board of Adjustment are undoubtedly substantial and material.

48. Whether testimony offered by a party is “competent,” hinges on a witness’s status as a lay witness or an expert witness. “Competent” evidence cannot include matters for which only expert testimony would be acceptable. N.C. Gen. Stat. § 160D-1402(j)(3). Therefore, lay witness testimony is disregarded in quasi-judicial proceedings whenever lay witnesses testify to matters only appropriate for experts to opine on. *See, e.g., Innovative 55, LLC v. Robeson Cty.*, 253 N.C. App. 714, 724, 801 S.E.2d 671, 678 (2017). This is precisely what happened to Dr. Moore—but Dr. Moore was denied his opportunity to be tendered as an expert witness.

49. Although Dr. Moore unequivocally stated he was an expert in education, the Board of Adjustment treated him differently than every other expert witness and disregarded his expert opinions as incompetent. Dr. Moore’s due process right to offer evidence was therefore infringed, because there was no proper way for him to present his research and opinions. *See, e.g., Young v. City of Durham*, 287 N.C. App. 521, 2023-NCCOA-19, ¶¶ 34-35

(demonstrating the exclusion of expert testimony from a lay witness because it is “incompetent”); *see also* N.C. Gen. Stat. § 160D-1402(j)(3). This additionally harmed Dr. Moore’s nonprofit, as the students he serves will be unquestionably harmed by the RaceWay and their impacts, as testified to by Dr. Moore, were not considered.

**(2) The City of Greenville, Through the BOA, Committed Multiple Errors of Law by Failing to Make Appropriate Findings of Fact and Keeping BOA Procedures Hidden.**

50. The standard of review for an appellate court evaluating errors of law in a quasi-judicial proceeding is *de novo*. N.C. Gen. Stat. § 160D-1402(j)(2).

51. Greenville Code § 9-4-186(E) requires the Board of Adjustment to “make *appropriate findings to insure* that the [local Special Use Permit requirements] are met.” Greenville Code § 9-4-186(E) (emphasis added).

52. The City of Greenville stated in their findings of fact that “[n]o expert testimony was submitted by any opponent,” which is plainly incorrect—Dr. Moore submitted expert testimony and was fundamentally denied his “right to offer evidence” as an expert. *Young v. City of Durham*, 287 N.C. App. 521, 2023-NCCOA-19, ¶ 13.

53. As a result of this finding, the BOA concluded the Applicant was *prima facie* entitled to the Special Use Permit because there was “a lack of competent, substantial, and material evidence that was introduced to support the denial of the Applicant’s Special Use Permit.”<sup>13</sup>

54. Dr. Moore’s expert opinions concerning impacts to Wellcome Middle School students were indeed substantial, competent, and material.

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<sup>13</sup> **Exhibit D**, Order, at 27.



55. Therefore, the City of Greenville’s *inappropriate* findings of fact *prevented* the BOA from ensuring necessary permit requirements were met. Greenville Code § 9-4-186(E) (emphasis added). This was a harmful error of law. N.C. Gen. Stat. § 160D-1402(j)(1).

56. These injustices are further exacerbated by the fact that the City of Greenville, upon information and belief, failed to post their *Board of Adjustment Rules of Procedure* on the City of Greenville website, in violation of N.C. Gen. Stat. § 160D-308.

57. This error of law concealed unknown procedures (or lack thereof) for Petitioners to consult, heightening the difficulty for Petitioners to oppose RaceTrac’s Special Use Permit application. N.C. Gen. Stat. § 160D-1402(j)(1). This was an additional harmful error of law. N.C. Gen. Stat. § 160D-1402(j)(1).

**(3) The City of Greenville, Through the BOA, Failed to Establish the RaceWay Would**

**Conform with Horizons 2026.**

58. “Whether the record contains competent, material, and substantial evidence is a conclusion of law, reviewable *de novo*.” N.C. Gen. Stat. § 160D-1402(j)(2); *see Schooldev E., LLC v. Town of Wake Forest*, 284 N.C. App. 434, 444 (2022).

59. In applying for a Special Use Permit the burden is on the applicant to “produce[] competent, material, and substantial evidence tending to establish the existence of the facts and conditions which the ordinance requires for the issuance of [the Special Use Permit].” *Schooldev E., LLC*, 284 N.C. App. at 442.

60. To be granted a Special Use Permit in the City of Greenville, the proposed use must be “in general conformity with the Comprehensive Land Use Plan of the city and its extraterritorial jurisdiction.” Greenville Code § 9-4-81(B). “Horizons 2026” is the City of Greenville Comprehensive Land Use Plan.

61. Upon information and belief, RaceTrac did not mention Horizons 2026 at all during the BOA Hearing or present any discussion indicating conformance therewith. Horizons 2026 has a “Vision Framework” that establishes eight guideposts for the City of Greenville’s future, including “Growing a Healthy City,” but RaceTrac failed to show how granting this permit aligned with these guideposts. Horizons 2026 also has “Sustainability Themes,” which are an “important theme of this plan” and “central to addressing the long term challenges and opportunities of the community,” as well as consistent messaging regarding the importance of community vision and involvement. Approving a gas station near a middle school in the face of strong community opposition undermines Horizons 2026’s central tenant of sustainability, yet RaceTrac failed to mention these themes—or how positioning a gas station next to a middle school builds a healthy city—at all.

62. The Board of Adjustment also did not mention or ask about Horizons 2026 during the BOA Hearing.

63. RaceTrac therefore failed to meet their burden of establishing that the Special Use Permit would be in conformity with Horizons 2026.

64. Accordingly, the City of Greenville, through the Board of Adjustment, violated Greenville Code § 9-4-81(B) when it nevertheless issued the Special Use Permit to RaceTrac.

**(4) The City of Greenville, Through the BOA, was Arbitrary and Capricious Because it Lacked Fair and Careful Consideration in Making its Decision.**

65. While denial of due process and errors of law are evaluated *de novo*, the reviewing court must undertake a “whole record” test to assess whether the Board of Adjustment’s actions were arbitrary and capricious. *Frazier v. Town of Blowing Rock*, 286 N.C. App. 570, 573 (2022).

66. A decision that lacks fair and careful consideration is arbitrary and capricious under the “whole record” test. *Mann Media, Inc. v. Randolph County Planning Bd.*, 356 N.C. 1, 16 (2002).

67. The Board of Adjustment failed to consider expert testimony presented by Dr. Moore and neglected to consider Horizons 2026 at all. This showed a lack of fair and careful consideration, and so was inherently arbitrary and capricious.

**PRAYER FOR RELIEF**

WHEREBY, Petitioners respectfully request the Court:

1. Issue the attached Writ of Certiorari, pursuant to N.C. Gen. Stat. 160D-1402(e), directed to Respondent City of Greenville, requiring that the City of Greenville prepare and certify to the Court a complete record of the proceedings in this case, including, but not limited to, video recordings of the BOA Hearing, on or before the date specified in the proposed Writ;
2. Conduct judicial review of the record and decision in this case;
3. Issue an order reversing the Decision of the Board of Adjustment and revoking the Special Use Permit, pursuant to N.C. Gen. Stat. § 160D-1402(k)(3)(b), and conclude that RaceTrac was not entitled to a Special Use Permit on October 25, 2024.
4. Remand this matter to the City of Greenville Board of Adjustment as necessary to take further action consistent with this Court’s decision;
5. Award reasonable attorney’s fees and costs incurred pursuant to N.C. Gen. Stat. § 6-21.7 and 42 U.S.C. § 1988 for violation of Petitioners’ constitutional due process rights.
6. Tax the costs of this action against Respondent City; and
7. Finally, Petitioners request such further relief as the Court deems just and proper.

Respectfully submitted this the \_\_\_ day of November, 2024

This is the 20<sup>th</sup> day of November, 2024.

SOUTHERN COALITION FOR SOCIAL JUSTICE

By:  \_\_\_\_\_

James Huey  
State Bar No.:60933  
Anne Harvey  
State Bar No.:56502  
PO Box 51280  
Durham, NC 27717  
Telephone: (919)-323-3380, Ext. 152  
Email: [james@scsj.org](mailto:james@scsj.org)  
Email: [anne@scsj.org](mailto:anne@scsj.org)  
Attorneys for the Petitioners

NORTH CAROLINA  
COUNTY OF PITT

VERIFICATION

I, Walter E. Fields, affirm under the penalty of perjury, that the foregoing representations in this Verified Petition are true to my own knowledge, except as to matters stated upon information and belief, and as to those matters, I believe them to be true.

By: Walter E. Fields

Walter E. Fields

Date: 11-20-24

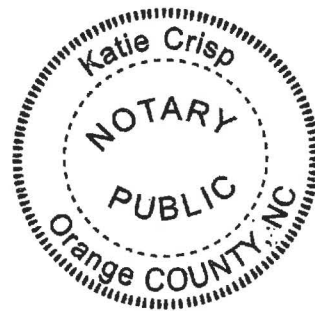
Sworn and subscribed before me this, the 20 day of November, 2025

Katie Crisp

Notary Public

October 3, 2028

My commission expires





NORTH CAROLINA  
COUNTY OF PITT

VERIFICATION

I, Vivian Kennion, affirm under the penalty of perjury, that the foregoing representations in this Verified Petition are true to my own knowledge, except as to matters stated upon information and belief, and as to those matters, I believe them to be true.

By: Vivian Kennion

Vivian Kennion

Date: Nov. 20, 2024

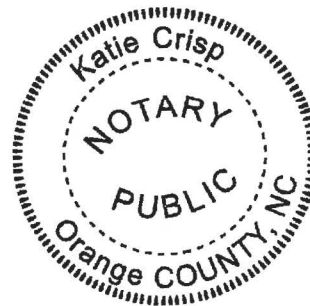
Sworn and subscribed before me this, the 20 day of November, 2025

Katie Crisp

Notary Public

October 3, 2024

My commission expires



NORTH CAROLINA  
COUNTY OF PITT

VERIFICATION

I, Garrick W. Moore, affirm under the penalty of perjury, that the foregoing representations in this Verified Petition are true to my own knowledge, except as to matters stated upon information and belief, and as to those matters, I believe them to be true.

By: Garrick W. Moore

Garrick W. Moore

Date: 11/20/24

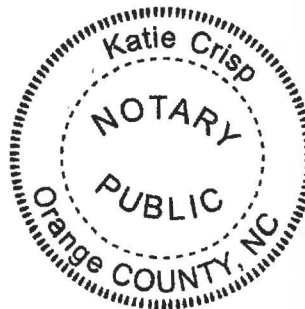
Sworn and subscribed before me this, the 20<sup>th</sup> day of November, 2025

Katie Crisp

Notary Public

October 3, 2028

My commission expires



# **EXHIBIT A**

STATE OF NORTH CAROLINA  
COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
FILE NO. \_\_\_\_\_

\_\_\_\_\_  
BROOKHAVEN ESTATE ASSOCIATION, )  
INC. d/b/a BROOKHAVEN COMMUNITY )  
ASSOCIATION, GARRIE MOORE, )  
VIVIAN KENNION, and WALTER )  
FIELDS. )

Petitioner, )

v. )

CITY OF GREENVILLE, and RACETRAC, )  
INC., )

Respondents. )

**WRIT OF CERTIORARI**

\_\_\_\_\_  
THIS MATTER came before the undersigned Clerk of Superior Court on Petitioners' Verified Petition for Writ of Certiorari in the above-captioned matter, pursuant to N.C.G.S. § 160D-406 and N.C.G.S. § 160D-1402 and other applicable law to review the decision of the Board of Adjustment of the City of Greenville, North Carolina (the "Respondent City"), dated September 26, 2024, and accompanied by written decision on October 25, 2024 granting the Application for a Special Use Permit from RaceTrac, Inc. ("Applicant Respondent") and having the Board of Adjustment file number 24-17.

AND IT APPEARING to the Court based on having reviewed the Petition, that good cause is shown, and that Petition should be GRANTED.

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. Petition for Writ of Certiorari is Granted;
2. Respondent City shall prepare and certify to this Court within forty-five (45) days after service of this Writ of Certiorari the complete record of the proceedings, relating to

Petitioners' appeal of the Special Use Permit determination and decision that was heard before the City of Greenville Board of Adjustment on September 26, 2024 and later Written Decision on October 25, 2024 granting the Special Use Permit to RaceTrac Inc., including but not limited to all exhibits admitted into evidence; the minutes from the September 26, 2024 Board of Adjustment meeting as may exist and any and all audiotapes and videotapes of the September 26, 2024 meeting as may exist; and any and all other documents the Respondent City may have in its records; and

3. Respondent City shall cause a true copy of said record to be filed with the Clerk of Superior Court within forty-five (45) days after the issuance of this Writ and shall serve a copy thereof on counsel for Petitioner and any other parties that may intervene in this matter within three (3) days after the record is filed with the Clerk pursuant to N.C.G.S. § 160D-1402(h);

4. Petitioner shall serve the Verified Petition for Writ of Certiorari and the Writ of Certiorari upon Respondents pursuant in the manner provided for service of a complaint under N.C.G.S. § 1A-1, Rule 4(j) of the North Carolina Rules of Civil Procedure, except that no summons shall be issued; and

5. A copy of this executed Writ of Certiorari shall be filed with the Pitt County Superior Court.

SO ORDERED this is the \_\_\_\_ of \_\_\_\_\_, 2024.

---

Clerk of Superior Court

# **EXHIBIT B**





Garrie Moore  
PIN: 4780633268  
1701 BROOK HAVEN DR

Vivian Kennion  
PIN: 4780621988  
1711 BROOK HAVEN DR

Walter Fields  
PIN: 4780620859  
1713 BROOK HAVEN DR

Julian Rawl (RaceTrac, Inc.)  
PIN: 4780624727  
3201 N MEMORIAL DR

20 m  
100 ft



# **EXHIBIT C**



**BROOKHAVEN ESTATES ASSOCIATION  
BY-LAWS**

**ARTICLE I - NAME**

This organization shall be called Brookhaven Estates Association.

**ARTICLE II - OBJECTIVES**

The objectives of the Brookhaven Association shall be:

1. To promote community awareness and activities.
2. To improve the quality of life in Brookhaven.
3. To represent Brookhaven Estates residents to the outside community when appropriate and so designated by the association.

**ARTICLE III - MEMBERSHIP**

**Section 1. Eligibility**

- a. Any household of Brookhaven may become a member of this association by residing in or owning property in Brookhaven and paying an entrance fee and monthly dues according to the needs of the association.
- b. Property owners not yet living in Brookhaven may delay paying monthly dues until actual residence is established.
- c. A maximum of two voting memberships are allowed per residence.

**Section 2. Termination**

- a. Membership shall be automatically terminated when a member moves from Brookhaven.
- b. Any member may request that his name be dropped from the rolls of the association.

**Section 3. Privileges**

All members shall be eligible to vote in elections and on matters of business brought before the association.

**ARTICLE IV - OFFICERS**

**Section 1. Officers**

The elected officers of the association shall be: the President, the Vice-President, the secretary, the Treasurer, and the Sargent-At-Arms.

**Section 2. Eligibility**

All officers shall be members of the Brookhaven Estates Association.

Section 2. Beautification

- a. The beautification committee shall consist of a chairman and three additional members.
- b. The beautification committee shall be responsible for those facilities and fixtures which promote the physical beauty and safety of the community.

Section 3. By-Laws Committee

- a. The by-laws committee shall consist of a chairman and two additional members.
- b. The by-laws committee shall be responsible for proposing by-laws for the Brookhaven Estates Association.

Section 4. Social-Recreational Committee

- a. The social-recreational committee shall consist of a chairman and three additional members.
- b. The social-recreational committee shall be responsible for planning social functions for the community and seeing that they are properly carried out.

Section 5. Legal-Redress Committee

- a. The legal-redress committee shall consist of a chairman and three additional members.
- b. The legal-redress committee shall be responsible for researching and coordinating all matters which have legal base ~~of~~ implications.

Section 6. Civic Affairs Committee

- a. The civic affairs committee shall consist of a chairman and two additional members.
- b. It shall be the responsibility of the civic affairs committee to represent the community club to the outside community and to inform Brookhaven residents of community issues.

Section 7. Nominations Committee

- a. The nominations committee shall consist of a chairman and two additional committee members.
- b. The nominations committee shall be responsible for a slate of officers to be voted on for the following year.

Section 8. Fund-Raising Committee

- a. The fund-raising committee shall consist of a chairman and two additional members.
- b. The fund-raising committee shall explore and coordinate ways and means to supplement the association's treasure and to finance certain special projects.

### Section 3. Duties

- a. It shall be the duty of the president to preside at all regular and call meetings of the association.
- b. The vice president shall serve as a voting member of all standing committees, perform the duties evolving from this office and such other duties as may be assigned to him/her from time to time.
- c. The secretary shall keep the minutes of regular and call meetings of the association.
- d. The treasurer shall handle all monies collected by the association relative to any association functions and shall pay bills for such functions with the approval of 3/4 of the membership.
- e. The parliamentarian shall see that order is kept at all meetings.

### Section 4. Uncompleted Terms of Office

- a. When the president is unable to complete his/her term of office, the vice-president shall complete that unexpired term. When the office of vice-president is thus vacated, the association shall appoint a vice-president to serve until the next election of officers.
- b. When any officer other than the president and vice-president is unable to complete his/her term of office, the community association shall be empowered to choose a member of the association to complete that term of office.

### Section 5. Removal from office

- a. Any officer may be removed from office by a 3/4 vote of the membership, providing the action was initiated by signed petition ~~of~~ at least 2/3 of the membership.
- b. Any committee chairman or committee member may be removed from office by the committee with the approval of the association.

## ARTICLE V - COMMITTEES

### Section 1. General Duties

The regular, continuing business of the association shall be carried on by the officers assisted by a group of standing committees which shall be designated as follows: Beautification, By-Laws, Social-Recreational, Legal-Redress, Civic Affairs and Nominations Committees. Special committees may be appointed as the need arises and for such terms of office and special duties as may be specified by the president or steering committee. The chairman of each committee shall prepare for the steering committee a written report of the year's activities and expenditures which shall be given to the president no later than August 31 of each year. These committee reports shall be completed by the secretary and shall be given to the official records of the association.

## ARTICLE VI - ELECTIONS

### Section 1. Terms of Office

- a. Officers elected in August, 1978 shall serve until August, 1980.
- b. All other terms of office, subsequently, shall be for one year. Officers shall not succeed themselves. *\* Fetenuating Circumstances can be evaluated by members from year to year.*

### Section 2. Procedures

- a. Elections shall be held following the August, 1980 business meeting; thereafter, elections shall be held yearly following the August meeting.
- b. The committee on nominations shall present a slate of officers to the membership at the August meeting. Opportunity for additional nominations from the floor shall be provided at the August meeting.
- c. Election shall be by written ballot of the membership following the August meeting.
- d. Elected officials shall take office in September following the election.

## ARTICLE VII - MEETINGS

Section 1. The meetings of the membership shall be held at each home in Brookhaven alphabetically.

Section 2. The membership meetings shall be held every second Sunday at 6 p.m. for one year; thereafter, meetings shall be held every three months unless a special meeting is called by the president.

Section 3. A quorum shall be 75% of the voting membership.

## ARTICLE VIII - RULES OF ORDER

On all matters of procedure not specifically indicated in this constitution, the official authority shall be Roberts' Rules of Order.

## ARTICLE IX - AMENDMENT OF THE CONSTITUTION

Amendment to this constitution may be initiated and signed by 3/4 of the voting members. Proposed amendments after review by the President shall be presented to the membership at least two weeks before the business meeting at which they will be discussed. Vote shall be by written ballot of the voting membership. Three-fourths vote of those members present will be necessary for adoption.

## ARTICLE X - RATIFICATION

This constitution shall be considered ratified when accepted by three-fourths of the residents eligible for voting.

\* Amended September 1, 1980

Mr. Don E. ...  
C. ...  
P. O. Box 1767  
N. C.

NORTH CAROLINA  
PITT COUNTY

PROTECTIVE AND RESTRICTIVE COVENANTS, BROOKHAVEN ESTATES KNOW ALL MEN BY THESE PRESENTS THAT BROOKHAVEN ESTATES, does covenant and agree to and with all other persons, firms or corporations now owning or hereafter acquiring as owner, any lot or parcel of land in the area designated as Brookhaven Estates, which is located in Pitt County, North Carolina, and specifically described as being all of Lots 1 through 19, inclusive. Brookhaven Estates, made by W. B. Duke, R.L.S., said real property is subject to the following covenants and restrictions as to the use thereof, running with the land by whosoever own to-wit:

1. LAND USE AND BUILDING TYPE.

No lot shall be used except for residential or commercial building of high caliber. No building shall be erected, altered, placed, or permitted to remain on any lot other than one detached, single-family dwelling, or building not over two stories. Commercial property designated as lots adjacent to public highways.

2. DWELLING COST, QUALITY AND SIZE.

No dwelling shall be permitted on any lot at a cost of less than SIXTEEN THOUSAND DOLLARS (\$16,000.00), based upon cost levels prevailing on the date of January 1, 1972, in the Greenville, North Carolina locality, it being the intention and purpose of this Covenant to assure that all dwelling shall be of a quality of workmanship and materials substantially the same, or better, than that which could be produced on Jan. 1, 1972, at minimum cost specified herein for the minimum permitted dwelling size.

3. BUILDING LOCATION.

No residential building shall be located on any lot nearer than forty (40) feet to the front lot line; or nearer than ten (10) feet to any interior line.

4. LOT AREA AND WIDTH.

No residential dwelling shall be erected or placed on any lot having less than twelve thousand (12,000) square feet. Nothing shall prevent the combination of portions c

herein stated.

5. EASEMENTS.

Easements for the installation and maintenance of utilities are reserved on the front and rear ten feet of all lots shown on said map, including their use for electricity, telephone, drainage, sewer and water lines; and drainage easements are hereby reserved as shown on the above referred to map.

6. NUISANCES.

No noxious or offensive activity shall be carried on upon any lot, nor shall anything be done thereon which may be, or may become, any annoyance or nuisance to the neighborhood.

\* 7. TEMPORARY STRUCTURES.

No structure of a temporary character, trailer or mobile home, basement, tent, shack, garage, barn, or other outbuilding shall be used on any lot at any time, as a residence or any other purpose, either temporarily or permanently.

8. UNSIGHTLINESS

No clothes lines will be permitted on any lot, except in the rear yard, and shall be supported by metal yardarms. No refuse containers shall be kept or constructed in any location except in the rear yard. No concrete blocks, either in building or walls shall be used above finished ground elevations unless said blocks are covered with brick veneer or stone. No asbestos siding or any type of asphaltic covering shall be used on exterior walls of any structure on the lots herein referred to.

9. The lay of the lots as shown on the maps shall be adhered to and no lot or group of lots may be subdivided so as to provide a greater number of smaller lots except with the approval of the owner, Ed. N. Warren, however, more than one lot may be used for the erection or placement of a residential structure provided the location of the structure and its external designs and external materials are approved by Ed. N. Warren. No additional streets, roadways or driveways, either public or private, shall be opened from or through any lot to serve adjoining property.

10. LIVESTOCK AND POULTRY, (INCLUDING DOG KENNELS).

No livestock or poultry (including kennels for more than three dogs) may be kept, quartered or housed on the lots shown on the above referred to map.

11. PRIOR APPROVAL OF PLANS, ETC.

No dwelling shall be erected on any lot shown on the aforesaid map until the plans, elevations, and specifications for same shall have been approved, in writing, by the owner, Ed. N. Warren. If no approval or rejection has been given for plans deposited or delivered to Ed. N. Warren within thirty days, the plans, specifications and elevations shall be deemed to have been approved.

12. TERM.

These covenants are to run with the land and shall be binding on all parties and all persons claiming under them for a period of fifteen (15) years from the date these covenants are recorded, after which time said Covenants shall be automatically extended for successive periods of ten years, unless an instrument signed by a majority of the then owners of the lots has been recorded, agreeing to change said Covenants in whole or in part.

13. ENFORCEMENT.

Enforcement shall be by proceeding at law or in equity against any person or persons violating or attempting to violate any Covenants either to restrain violation or to recover damages.

14. SEVERABILITY.

Invalidation of any one of these Covenants by Judgments or Court Order shall in no wise affect any of the other provisions which shall remain in full force and effect.

BROOKHAVEN ESTATES

BY Ed N. Warren  
ED. N. WARREN, OWNER

PITT COUNTY

I, Elizabeth M. Dudley, a Notary Public in and for the aforesaid County and State, do certify that Ed N. Warren personally appeared before me this the 29th day of March, 1972 and executed the foregoing instrument.

E. M. Dudley  
Notary Public

My comm. expires: 10-26-74

(SEAL)

NORTH CAROLINA: PITT COUNTY

The foregoing certificate of

Elizabeth M. Dudley N. P. of Pitt County

is certified to be correct.

Filed for registration at 10:35 o'clock A. M this 5<sup>th</sup> day of April, 1972

ELVIRA T. ALLRED, Register of Deeds

By Oralby J. Knowles, Asst



- ARTICLE I**     **Name of Organization.** The name of the organization shall be Brookhaven Estates Association
- ARTICLE II**     **Boundaries.** The boundaries of the Brookhaven Estates Association shall be defined as follows: Beginning at the intersection of HWY 11/13 and Briley Road and encompassing all residents located on both sides of Brookhaven Drive..
- ARTICLE III**    **Membership**
- Section 1**       **Membership qualification.** Membership in Brookhaven shall be open to all residents, business owners, business licensees, and nonprofit organizations located within the boundaries as defined in Article II.
- Section 2**       **Membership voting.** All residents, property owners, and business licensees (18 years of age or older) located within the boundaries as defined in Article II shall have one vote at any general or special meeting. One representative from each nonprofit shall have one vote at any general or special meeting.
- ARTICLE IV**    **Meetings**
- Section 1**       **General meetings.** There shall be at least 2 meetings per calendar year. The meetings shall be convened in May and November, 2nd Monday at 6 p.m. with decisions being made by a majority of members present. Notification of general meetings shall require at least 5 days advanced written or telephone notice to all members.
- Section 2**       **Special meetings.** Special meetings of the membership may be called by the President as deemed necessary. Notification and purpose(s) of the special meeting shall require 2 days advanced written or telephone notice to all members.
- Section 3**       **Executive meetings.** In cases where a decision must be made quickly, the President can call an executive meeting consisting of the President, Vice-President, Secretary, Treasurer, and one additional active member. In such cases, a summary of the action taken must be made at the next regularly scheduled general meeting. Action taken at an executive meeting that requires follow-up action must be voted on at the next regularly scheduled general meeting.
- Section 4**       **Quorum.** A quorum for any general or special meeting shall be the number of members in attendance. Unless otherwise specified in these bylaws, decisions at these meetings will be made by a majority vote of members present.
- ARTICLE V**     **Officers**
- Section 1**       **President.** The President shall prepare the agenda; shall preside at all board and membership meetings; and shall appoint members of committees not elected, with a majority approval of the other officers, except for members of any Grievance Committee. The President also shall act as the official spokesperson of the association unless the members choose to elect one.
- Section 2**       **Vice-President.** The Vice-President shall assist the President; and shall function as "Acting President" in the President's absence. The Vice-President also shall function as "Acting Chairperson" of any committee that lacks a chairperson.
- Section 3**       **Secretary.** The secretary shall keep minutes and written records of majority and minority opinions expressed at all meetings; shall be responsible for all correspondence; and shall make records available for inspection for any proper purpose at any reasonable time.

# **EXHIBIT D**

STATE OF NORTH CAROLINA  
COUNTY OF PITT

CITY OF GREENVILLE  
BEFORE THE BOARD OF ADJUSTMENT  
FILE NO.: BOA 24-17

In the Matter of: )  
 )  
RACETRAC, INC., )  
 )  
Applicant. )  
 )

DECISION AND ORDER  
GRANTING SPECIAL USE PERMIT  
(QUASI-JUDICIAL DECISION)

**THIS MATTER** came on to be heard as a quasi-judicial evidentiary hearing before the City of Greenville<sup>1</sup> Board of Adjustment (the “Board”) pursuant to N.C.G.S. § 160D-406; N.C.G.S. §§ 160D-705(a) and (c); N.C.G.S. § 160D-1402; Part II (Code of Ordinances), Title 9 (Building, Planning and Development Regulations), Chapter 4 (Zoning) of the Code of Ordinances of the City of Greenville (“City Code”), which chapter is also known as the Zoning Ordinance for Greenville, North Carolina or the Zoning Ordinance (“Zoning Ordinance”), particularly City Code § 9-4-22; City Code § 9-4-78 (Appendix A: Table of Uses, Use (10)b.); City Code § 9-4-81; City Code § 9-4-82; City Code § 9-4-252; and City Code § 9-4-316 to § 9-4-324); and the Board’s *Rules of Procedure* upon application for a special use permit by the Applicant, RaceTrac, Inc., concerning the property located at 3201 North Memorial Drive, Greenville, North Carolina 27834 and further identified as being Pitt County Tax Parcel No. 27195 (the “Hearing”).

The Hearing was convened and held on Thursday, September 26, 2024, at 6:00 p.m.<sup>2</sup> in City Council Chambers of City Hall located at 200 West Fifth Street, Greenville North Carolina 27835 (“City Council Chambers”). The voting members of the Board consisted of: Daniel Worrall (Chair), Carol Ann Bass, Clayton Self, Simon Swain, Nicholas White, and McKenzie Byrnes.

This *Decision and Order Granting Special Use Permit (Quasi-Judicial Decision)* was made by the Board at its regularly scheduled meeting held on Thursday, October 24, 2024 at 6:00 p.m. in City Council Chambers.<sup>3</sup>

<sup>1</sup> The City of Greenville will be referred to herein as the City.

<sup>2</sup> This matter appeared on the Board’s September 26, 2024 regular meeting Agenda as Item No. 5 of Section VI. New Business (available at: <https://www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings> and [https://granicus\\_production\\_attachments.s3.amazonaws.com/greenville/85650bb7005c8e8c9f851a75614562080.pdf](https://granicus_production_attachments.s3.amazonaws.com/greenville/85650bb7005c8e8c9f851a75614562080.pdf)). The Board’s Agenda packet for the September 26, 2024 meeting is available at: <https://d3n9y02raazwpg.cloudfront.net/greenville/de5cf628-9b58-11ee-a93d-0050569183fa-1fe87dce-7d69-4f1d-aa9a-99eb9dd53f981726670665.pdf> and the video of the hearing is available at: [https://greenville.granicus.com/MediaPlayer.php?view\\_id=16&clip\\_id=4182](https://greenville.granicus.com/MediaPlayer.php?view_id=16&clip_id=4182)) (see 00:31:57 to 03:15:13 of 03:16:08).

<sup>3</sup> As with the Board’s September 26, 2024 Agenda, Agenda Packet, and Video, the Agenda, Agenda Packet (including the proposed minutes of the September 26, 2024 meeting), and Video of the October 24, 2024 meeting are available at: <https://www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings>.

**APPEARANCES**

Owner: None

For Owner: None

Witnesses for Owner: None

Applicant/For Applicant: RaceTrac, Inc.  
*Applicant; Party with Standing*  
By: Cheri Beasley, Esq.  
Haynsworth Sinkler Boyd, P.A.  
*Counsel for Applicant*

Witnesses for Applicant: Tommy Pease  
Development Manager  
RaceTrac, Inc.  
*Expert Witness in Development*

Robert Wingate, P.E.  
Project Manager and Civil Engineer  
The John R. McAdams Company, Inc.  
*Expert Witness in Civil Engineering*

Travis Fluitt, P.E.  
Traffic Engineer  
Kimley-Horn and Associates, Inc.  
*Expert Witness in Traffic Engineering*

Jason T. Hrabusa  
Fuel Engineer  
Diamond Z Engineering, Inc.  
*Expert Witness in Fuel Engineering*

Sam Pate  
Appraiser  
Cape Fear Real Estate Group  
*Expert Witness in Appraisals*

Mary Ann Wervey  
Principal Senior Vice President of Retail Development  
Zaremba Group

Opponents: Garrie W. Moore  
*Party with Standing*

**Brookhaven Community Association, Inc.**  
by Garrie W. Moore, President  
*Party with Standing*

**Barbara Brown**  
*Party with Standing*

**Walter C. Fields**  
*Party with Standing*

**Vivian Kennion**  
*Party with Standing*

**Adrienne Reddrick**  
*Party with Standing*

**For Opponents:** None

**Witnesses for Opponent:** None

**The City of Greenville:** Bryan Jones  
Lead Planner  
City of Greenville  
Planning and Development Services Department

**For the City of Greenville:** None

**Witnesses for the City of Greenville:** None

**Others Attending:** Donald K. Phillips  
Assistant City Attorney  
City of Greenville  
City Attorney's Office  
*Counsel to the Board*

LaToya Yates  
Staff Support Specialist II  
City of Greenville  
Planning and Development Services Department

## EVIDENCE PRESENTED AND RECEIVED

### By the City of Greenville

Without objection, the following Administrative Materials<sup>4</sup> as defined by N.C.G.S. § 160D-406(c) were properly distributed and made a part of the Hearing record at the September 26, 2024 Board meeting:

1. The City's packet including: 1) Title of Item sheet (AM, p. 57); 2) City staff's report entitled Special Use Permit—Board of Adjustment, September 26, 2024, including a background of the Property at issue, relevant provisions of the Zoning Ordinance, City staff's comments, City staff's recommended conditions, and City staff's recommendation (AM, pp. 58-59); 3) the Applicants' August 27, 2024 Special Use Permit Application including an attached site plan and survey (AM, pp. 60-65); 4) September 11, 2024 public hearing notice letter from Bryan Jones, Lead Planner, to Applicant, RaceTrac, Inc., regarding the placement of the Application on the Board's September 26, 2024 Agenda (AM, p. 66); 5) September 11, 2024 public hearing notice letter from Bryan Jones, Lead Planner, to surrounding property owners of the subject properties including a list of surrounding property owners who were notified by mail of the September 26, 2024 meeting (AM, pp. 67-68); and 6) a cover sheet entitled RaceTrac showing an aerial photograph of the subject Property designated with red shading over the individual parcel and a yellow star on the parcel (AM, p. 69).
2. The City's Microsoft PowerPoint presentation including: 1) Title Page (slide); 2) General Location Map (slide); 3) Aerial Map (2020) (slide); 4) Zoning Map (slide); 5) Future Land Use & Character Map (slide); 6) View of the Property (three photograph views of the Property)(slide); and 7) Aerial Map (2020)(slide).

### By the Applicant

Pursuant to N.C.G.S. § 160D-406(d), the following materials<sup>5</sup> were presented without objection by the Applicant, RaceTrac, Inc., at the Hearing and were made a part of the Hearing record at the September 26, 2024 Board meeting:

1. The Applicant's Microsoft PowerPoint presentation including: 1) Title Page (slide); 2) Project Overview with RaceWay – Briley Road Concept Plan (slide); 3) Approval Criteria (slide); 4) Front and Rear Elevation renderings (slide); 5) Neighborhood Context Exhibit (slide); 6) SUP Plot Plan (slide); 7) SUP Plot Plan showing Adjoining Residential Uses and Buffer Yard (slide); 8) Greenville Community Plan (slide); 9) Zoning Map (slide); 10) Case

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<sup>4</sup> In accordance with N.C.G.S. § 160D-406(c), the Administrative Materials packet for the Hearing ("AM") containing "all applications, reports, and written materials relevant to the matter being considered" (paginated from pages 57 to 69) was "distributed to the members of the [B]oard prior to the [H]earing" and was made "a part of the [H]earing record." References to the AM packet for the Hearing will be as follows, e.g. (AM, pp. 61-62), etc. The Administrative Materials also included the City's Microsoft PowerPoint presentation.

<sup>5</sup> In accordance with N.C.G.S. § 160D-406(d), the Applicant, RaceTrac, Inc., presented two renderings of the proposal which were presented and distributed to the Board, to the City, and to all other Parties with Standing at the Hearing and were made "a part of the [H]earing record."

Study, 1530 East 14th Street, Greenville, NC (slide); 11) Title Page, RaceTrac Prototype Fuel System Overview and Features Presented by Jason T. Hrabusa of Diamond Z Engineering (slide); 12) Regulatory Agencies for Underground Storage Tanks (slide); 13) Historical Underground Storage Tank System Improvements, Single-walled vs. Double-walled Standards (slide); 14) Historical Underground Storage Tank System Improvements (continued), System Monitoring Requirements and Reporting (slide); 15) Double-wall Tank Isometric (slide); 16) How a Double-wall (Wet Interstitial) Tank Works (slide); 17) NOV Fiberglass Product Piping (slide); 18) Fuel Pipe Fittings (slide); 19) Tank Monitoring System (slide); 20) Overfill Alarm and Signage (slide); 21) (RaceTrac pledge) (slide); and 22) Approval Criteria (slide).

By Opponents

Garrie Moore and Brookhaven Community Association, Inc. by Garrie Moore, President

Pursuant to N.C.G.S. § 160D-406(d), the following documents<sup>6</sup> were presented without objection by the Opponents, Garrie Moore and Brookhaven Community Association, Inc. by Garrie Moore, President, at the Hearing and were made a part of the Hearing record at the September 26, 2024 Board meeting:

1. Handout 1—A two-page handout—Map entitled “RaceTrac has not performed due diligence to safeguard our community from material harm” (page 1 showing a map and page 2 entitled Poster References); Page 1 was also replicated on a posterboard with easel.
2. Handout 2—An nine-page handout—Memorandum entitled “Protest of Gas Station (RaceTrac) construction/location on vacant property South of The Brookhaven Community” (two pages) with the following attachments: 1) a letter dated June 30, 1999 from Carl Darden of Darden Commercial Realty to Garrie Moore (two pages); 2) a Plan of Land and Subdivision of Lots Surveyed for Brookhaven Acres from Map Book 21, Page 75 of the Pitt County Registry (one page); 3) Costs vs Benefits of a RaceTrac Gas station located near Brookhaven Community (two pages); and 4) sheet with maps entitled “Proposed RaceTrak site and its proximity to Wellcome Middle School and Brookhaven Neighborhood (two pages).

**BASED UPON** the careful consideration of the evidence produced after a study of the complete record, including the sworn testimony presented at the Hearing; the competent, material, and substantial evidence provided by the parties to the Board; oral arguments of the parties; and the entire record in this proceeding, the Board makes the following findings of fact.

In making the findings of fact, the undersigned has weighed all the competent, material, and substantial evidence in the record and has assessed the credibility of each person testifying by taking into account the appropriate factors for judging credibility, including but not limited to demeanor, any interests, bias, or prejudice the person may have, the opportunity of the person

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<sup>6</sup> In accordance with N.C.G.S. § 160D-406(d), the Opponents, Garrie W. Moore and the Brookhaven Community Association, Inc. by Garrie W. Moore, presented two handouts (11 pages total) which were presented and distributed to the Applicant, the Board, and to the City at the Hearing and were made “a part of the [H]earing record” (“Opponents’ handouts”).

testifying to see, hear, know, or remember the facts or occurrences about which the person testified, whether the testimony of the person is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

### FINDINGS OF FACT

#### **I. RELEVANT ORDINANCE PROVISIONS OF THE ZONING ORDINANCE.**

##### **A. City Code § 9-4-22 (Words and Terms Defined).<sup>7</sup>**

1. City Code § 9-4-22 states in relevant and pertinent part as follows (emphasis in original):

*Convenience store.* Any food-personal merchandise store which sells at retail only prepackaged food and beverage products, personal toiletries, sundries, over-the-counter medications, household supplies, magazines, and the like in combination from a limited inventory and does not stock poultry or meats.

##### **B. City Code § 9-4-78 and Appendix A (Table of Uses).<sup>8</sup>**

2. City Code § 9-4-78 states in pertinent part as follows:

The Table of Uses is set forth in Appendix A to this chapter.

(A) Permitted uses are indicated in the table by the letter P.

(B) Special uses are indicated in the table by the letter S.

Appendix A: Table of Uses of City Code (“Appendix A”) states in subsection (A) in pertinent part: “*Index to use table categories contained in this Appendix.* (10) Retail Trade.” (emphasis in original). Appendix A subsection (C) states in pertinent part: “*Tables.* The following uses shall be allowed only within the respective zoning districts as specified herein: (10) *Retail trade.*” One of the uses defined by Appendix A as allowed by way of a special use permit (“S”) in the CG (General Commercial) zoning district is: “(10) *Retail trade.* b. Gasoline or automotive fuel sales; accessory or principal use, retail” (“Appendix A, Use (10)b.”).

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<sup>7</sup> See Article B. (Definitions) of the Zoning Ordinance.

<sup>8</sup> See Article D. (Zoning Districts), Part 3. (Permitted and Special Uses); Section 9-4-78 (Table of Uses); Appendix A. (Table of Uses) of the Zoning Ordinance (hereinafter referred to as the “Table of Uses”).



**C. City Code § 9-4-252 (Schedule of Required Parking Spaces).<sup>9</sup>**

3. City Code § 9-4-252, states in pertinent part:

Off-street parking spaces shall be provided for all land uses in the following proportions:

<i>Use</i>	<i>Required spaces</i>
Gasoline or automotive fuel sales, convenience store; retail	1.5 spaces per individual pump (the service stall for each pump may count as 1 space), plus 1 space per 300 square feet of non-storage retail area

**II. NOTICE OF THE HEARING.**

4. In accordance with N.C.G.S. § 160D-406(b); N.C.G.S. §§ 160D-705(a) and (c); and Chapter 143, Article 33C of the North Carolina General Statutes, particularly N.C.G.S. § 143-318.12, and the Board’s *Rules of Procedure*, notice was mailed to the property owners located within a 250 foot radius of the subject Property on September 11, 2024 (“property owner notice letter”) and notice of the public hearing was published in *The Daily Reflector* on September 14, 2024 and September 21, 2024.

5. Notice was also provided on September 11, 2024 by prominently posting at least three signs; notices of the Hearing on the Property or on the adjacent street or highway right-of-way of the Property.

6. All individuals who testified before the Board at the Hearing were given notice of the quasi-judicial hearing pursuant to N.C.G.S. § 160D-406(b) and N.C.G.S. §§ 160D-705(a) and (c).

**III. THE PROPERTY.**

**A. The Location, Description, and Ownership.**

7. The property at issue is located in the northwestern quadrant of the City of Greenville at 3201 North Memorial Drive, Greenville, North Carolina 27834, near the intersection of North Memorial Drive (U.S. 13 and N.C. 11) and Briley Road (S.R. 1415), and is further identified as being Pitt County Tax Parcel No. 27195 (“the Property”).

8. The Property is a triangular shape vacant parcel, approximately 3.67 acres (approximately 159,834 square feet) in size, with the entire length of the eastern border of the Property, approximately 700 feet of frontage, being North Memorial Drive (U.S. 13 and N.C. 11); the entire length of the southern border of the Property, approximately 420 feet of frontage, being

<sup>9</sup> See Article O. (Parking) of the Zoning Ordinance.

Briley Road (S.R. 1415); and the entire length of the western/northwestern border of the Property being shared with six single-family residential parcels located in the Brookhaven Acres residential community or Brookhaven neighborhood ("Brookhaven Acres") (listed from south to north as Lots 12, 13, 14, 15, 16, and 17 of Brookhaven Acres)("the Brookhaven parcels").

9. Julian Rawl ("the Owner") is the Owner<sup>10</sup> of the Property.

**B. The Zoning of the Property and the Surrounding Zoning and Development.**

10. The Property is zoned CG (General Commercial).

11. The surrounding zoning and development is as follows:

(A) To the north of the Property: RA20/R9S – Single Family Residential (Pinewood Estates).

(B) To the south of the Property: RA20 – Welcome Middle School.

(C) To the east of the Property: RA20 – Greenville Grain, LLC.

(D) To the west of the Property: RA20/R9S – Single Family Residential (Brookhaven Acres).

**IV. THE PARTIES AT THE HEARING.<sup>11</sup>**

**A. The Applicant.**

12. The Applicant is RaceTrac, Inc. ("the Applicant" or "RaceTrac").

13. The Applicant was represented at the Hearing by Cheri Beasley, Esq. of Haynsworth Sinkler Boyd, P.A. ("Counsel for Applicant").<sup>12</sup>

14. As the "Applicant" in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c), RaceTrac, Inc. had standing to participate fully as a party at the Hearing.

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<sup>10</sup> N.C.G.S. § 160D-102(18) defines "landowner" or "owner" as: "The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals."

<sup>11</sup> N.C.G.S. § 160D-406(d) states in pertinent part: "Presentation of Evidence. *The applicant, the local government, and any person who would have standing to appeal the decision under [N.C.]G.S. [§] 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.*" (emphasis added)

<sup>12</sup> Section 6-2 of the Board's *Rules of Procedure* states in pertinent part: "Conduct of Hearing. (1) Any party may appear in person or by agent or *by attorney* at the hearing." (emphasis in original and added).

**B. The Local Government—The City of Greenville.**

15. The City of Greenville has standing as the “local government” in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c) to participate fully as a party at the Hearing.

16. Bryan Jones (“Mr. Jones”), Lead Planner for the City of Greenville, Planning and Development Services Department provided the City’s report at the Hearing; often referred to as the City Staff’s report, which consisted of Mr. Jones’s sworn testimony and the herein defined Administrative Materials.

**C. Other Parties with Standing—Opponents to the Application.**

1) **Garrie W. Moore.**

17. Garrie Moore (“Mr. Moore”) owns and resides at the property located at 1701 Brookhaven Drive, Greenville, North Carolina 27834 (“Mr. Moore’s property”).

18. Mr. Moore’s property, which is located within 100 feet of the subject Property, is within the 250 radius of the subject Property, abuts the property line of the Property at issue, and is the northernmost adjoining parcel, Lot No. 17, of the Brookhaven parcels.

19. The City sent and Mr. Moore received a property owner notice letter.

20. Without objection and by unanimous vote, Mr. Moore, was found by the Board to have standing in accordance with N.C.G.S. § 160D-406(d)<sup>13</sup> and N.C.G.S. § 160D-1402(c)(2)<sup>14</sup> to participate as a party at the evidentiary hearing.

21. Mr. Moore testified before the Board. Mr. Moore is opposed to the Applicant’s application and the herein defined proposed use.

2) **Brookhaven Community Association, Inc., by Garrie W. Moore, President.**

22. Mr. Moore is a member and is President of the Brookhaven Community Association, Inc., which is an incorporated association to which owners or lessees of property in a designated area, Brookhaven Acres, belong by virtue of their owning or leasing property in that area (Brookhaven Acres).

23. The Brookhaven Community Association, Inc. was created in the 1980s and was

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<sup>13</sup> See n. 11, *supra*.

<sup>14</sup> N.C.G.S. § 160D-1402(c)(2) states: “Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons have standing to file a petition under this section: [ ] Any other person who will suffer special damages as the result of the decision being appealed.”

not created in response to the Applicant's proposed application or development at issue.

24. Without objection and by unanimous vote, Brookhaven Community Association, Inc., by and through Mr. Moore, who is at least one of the members of the association that has standing as an individual to challenge the decision, was found by the Board to have standing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(3)<sup>15</sup> to participate as a party at the evidentiary hearing.

25. In addition to testifying for himself, Mr. Moore testified before the Board on behalf of the Brookhaven Community Association, Inc. The Brookhaven Community Association, Inc., by and through Mr. Moore is opposed to the Applicants' application and the herein defined proposed use.

**3) Barbara Brown.**

26. Barbara Brown ("Ms. Brown") owns and resides at the property located at 1709 Brookhaven Drive, Greenville, North Carolina 27834 ("Ms. Brown's property").

27. Ms. Brown's property is within the 250 radius of the subject Property, abuts the property line of the Property at issue, and is one of the center adjoining parcels, Lot No. 14, of the Brookhaven parcels.

28. The City sent and Ms. Brown received a property owner notice letter.

29. Without objection and by unanimous vote, Ms. Brown, was found by the Board to have standing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) to participate as a party at the evidentiary hearing.

30. Ms. Brown testified before the Board. Ms. Brown is opposed to the Applicant's application and the herein defined proposed use.

**4) Walter C. Fields.**

31. Walter C. Fields ("Mr. Fields") owns and resides at the property located at 1713 Brookhaven Drive, Greenville, North Carolina 27834 ("Mr. Fields's property").

32. Mr. Fields's property, which is located within 150 feet of the subject Property, is

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<sup>15</sup> N.C.G.S. § 160D-1402(c)(2) states:

Standing. – A petition may be filed under this section only by a petitioner who has standing to challenge the decision being appealed. The following persons have standing to file a petition under this section: [ ] An incorporated or unincorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, so long as at least one of the members of the association would have standing as an individual to challenge the decision being appealed, and the association was not created in response to the particular development or issue that is the subject of the appeal.

within the 250 radius of the subject Property but does not adjoin the subject Property.

33. The City sent and Mr. Fields received a property owner notice letter.

34. Without objection and by unanimous vote, Mr. Fields, was found by the Board to have standing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) to participate as a party at the evidentiary hearing.

35. Mr. Fields testified before the Board. Mr. Fields is opposed to the Applicant's application and the herein defined proposed use.

**5) Vivian Kennion.**

36. Vivian Kennion ("Ms. Kennion") owns and resides at the property located at 1711 Brookhaven Drive, Greenville, North Carolina 27834 ("Ms. Kennion's property").

37. Ms. Kennion's property, which is located approximately 100 feet from the subject Property, is within the 250 radius of the subject Property, abuts the property line of the Property at issue, and is one of the southernmost adjoining parcels, Lot No. 13, of the Brookhaven parcels.

38. The City sent and Ms. Kennion received a property owner notice letter.

39. Without objection and by unanimous vote, Ms. Kennion, was found by the Board to have standing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) to participate as a party at the evidentiary hearing.

40. Ms. Kennion testified before the Board. Ms. Kennion is opposed to the Applicant's application and the herein defined proposed use.

**6) Adrienne Reddrick.**

41. Adrienne Reddrick ("Ms. Reddrick") resides with her parents at the property located at 1706 Brookhaven Drive, Greenville, North Carolina 27834 ("Ms. Reddrick's residence").

42. Ms. Reddrick's residence is located across Brookhaven Drive from the Brookhaven parcels approximately 150 feet from the subject Property and does not adjoin the subject Property.

43. By a majority vote of 4 to 2 (four in favor and two in opposition), Ms. Reddrick, was found by the Board to have standing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) to participate as a party at the evidentiary hearing.

44. Ms. Reddrick testified before the Board. Ms. Reddrick is opposed to the Applicant's application and the herein defined proposed use.



## V. THE WITNESSES AT THE HEARING.<sup>16</sup>

### A. For the Applicant.

#### 1. Tommy Pease—Expert in Development.

45. Tommy Pease, Development Manager at RaceTrac (“Mr. Pease”), testified before the Board.

46. Mr. Pease has been employed with the Applicant for the last four years in the New Store Development Department. Prior to working for the Applicant, Mr. Pease was in the commercial construction industry. Mr. Pease studied building science graduating from the engineering program at Georgia Southern University.

47. Mr. Pease was received without objection by the Board and by unanimous vote as an expert witness in the field of development.

#### 2. Robert Wingate, P.E.—Expert in Civil Engineering.

48. Robert Wingate, P.E., Project Manager and Civil Engineer at The John R. McAdams Company, Inc. (“Mr. Wingate”), testified before the Board.

49. Mr. Wingate has been a civil engineer for over 20 years with an engineering degree from North Carolina State University. Mr. Wingate concentrates on national brand products such as gas stations and fast food restaurants and has provided expertise in this capacity nationwide.

50. Mr. Wingate was received without objection by the Board and by unanimous vote as an expert witness in the field of civil engineering.

#### 3. Travis Fluitt, P.E.—Expert in Transportation Engineering.

51. Travis Fluitt, P.E., Transportation Engineer at Kimley-Horn and Associates, Inc. (“Mr. Fluitt”), testified before the Board.

52. Mr. Fluitt has a master’s degree in transportation engineering from the University of Texas at Austin and is professional engineer in the State of North Carolina having over 20 years expertise performing traffic studies in and around the State of North Carolina, including many in the City.

53. Mr. Fluitt was received without objection by the Board and by unanimous vote as an expert witness in the field of transportation engineering.

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<sup>16</sup> N.C.G.S. § 160D-406(d) states in pertinent part: “*Presentation of Evidence*. The applicant, the local government, and any person who would have standing to appeal the decision under [N.C.]G.S. [§] 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. *Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.*” (emphasis added)

**4. Jason T. Hrabusa—Expert in Fuel Engineering.**

54. Jason T. Hrabusa, Fuel Engineer at Diamond Z Engineering (“Mr. Hrabusa”), testified before the Board.

55. Diamond Z Engineering is the fuel prototype managers and site adept developers for fuel systems for RaceTrac and are responsible for all RaceTrac fuel systems across RaceTrac’s entire nationwide footprint including new markets such as North Carolina, Indiana, and Ohio. Diamond Z also designs and installs fuel systems for other clients in both the United States and also Canada and Central America.

56. Mr. Hrabusa has been in the fuel systems engineering industry for 22 years and has been with Diamond Z Engineering since its creation in 2006. Mr. Hrabusa has handled several fuel system programs across the nation and has designed 96 underground fuel storage tank systems (“fuel systems”) for RaceTrac with three sites in North Carolina.

57. Mr. Hrabusa was received without objection by the Board and by unanimous vote as an expert witness in the field of fuel engineering.

**5. Sam Pate—Expert in Appraisals.**

58. Sam Pate, Appraiser with Cape Fear Real Estate Group (“Mr. Pate”), testified before the Board.

59. Mr. Pate has over 17 years of experience in the commercial appraisal industry and has been a licensed appraiser in North Carolina since 2007. Mr. Pate has performed over 1,000 commercial appraisals, hundreds of which have involved diminution appraisals involving a variety of uses and causes. Mr. Pate has provided appraisals for the City, North Carolina Department of Transportation, banking institutions, and private clients.

60. Mr. Pate was received without objection by the Board and by unanimous vote as an expert witness in the field of appraisals.

**A. For the Opponents.**

61. No witnesses were called by any of the opponents.

62. No expert testimony was submitted by any opponent.

**VI. THE REQUEST AND PROPOSED USE.**

**A. RaceTrac and Project Overview.**

63. The Applicant, by and through its Vice President, Justen Giambalvo, submitted a Special Use Permit Application to the City on August 27, 2024 (File No.: BOA 24-17) seeking a

special use permit to operate a convenience store with gasoline sales upon the Property pursuant to City Code § 9-4-22; City Code § 9-4-78 (Appendix A: Table of Uses, Use (10)b.); City Code § 9-4-81; and City Code § 9-4-252. This purpose is described by application and in accordance with the Zoning Ordinance as: Convenience Store with Gasoline Sales.

64. Under the City's Zoning Ordinance the Applicant may already operate a convenience store upon the Property without the need for special use permit. However, the issuance of a special use permit by the Board is required before the Applicant can operate gasoline sales upon the Property and proceed with the project at issue.

65. The Applicant is an Atlanta, Georgia-based fuel and convenience brand. The Applicant is family owned and operated, has been in business for over 90 years, and is recognized as a top operator in the industry.

66. The Applicant prides itself on valuing the communities where its stores are located and being a community partner.

67. The Applicant has identified Greenville as a growing community and the location selected for this project is along a major corridor and major truck route, North Memorial Drive (U.S. 13 and N.C. 11), where traffic travels north and south to and from Greenville and trucks travel from I-587 to U.S. 64.

68. As part of the project, the Applicant plans to operate a convenience store, RaceWay Project No. 1708, known as a RaceWay Market, with auto fueling stations with a canopy and truck fueling stations with a canopy on the Property ("the project"). RaceWay stores are under the corporate umbrella of RaceTrac, Inc.

69. The Applicant will partner with a local franchisee for the project thereby creating entrepreneurial opportunities, job growth, and increased tax base.

**B. The Building—RaceWay Market**

70. The RaceWay Market will be a 20 foot tall, one-story building of approximately 3,519 square feet.

71. The northwestern corner of the RaceWay Market building will be located approximately no closer than approximately 169.55 feet from the closest of the Brookhaven parcels.

72. The Applicant is committed to partnering with local law enforcement agencies and installing state-of-the-art surveillance systems at its locations, including the one at issue, to monitor only the project site location. There will be no surveillance of the Brookhaven parcels.

**C. Parking.**

73. Although 33 parking spaces are required by City Code, the Applicant will have



approximately 38 parking spaces on the Property; 17 at the proposed pump service stalls; 19 standard 10 foot wide by 18 feet long parking spaces (five along the northern portion of the building and 14 along and near the eastern side of the building); and two 12 foot ADA parking spaces along the eastern side of the building with required spacing between the ADA parking spaces.

74. There will be no long-term or overnight truck parking on the Property.

**D. The Underground Fuel Storage Tanks and Fuel System.**

75. There are four underground fuel storage tanks with venting and control systems planned for the Property; a 20,000 gallon fuel tank for regular gasoline; two 24,000 gallon fuel tank (compartmentalized for 12,000 gallons of fuel on each side); and a 24,000 gallon fuel tank for diesel fuel.

76. The auto fueling canopy, underground fuel storage tanks, and vents will be located along the primary frontage of the Property, the eastern side of the property closest to North Memorial Drive (U.S. 13 and N.C. 11) and farthest from the Brookhaven parcels.

77. The Applicant must design and install any proposed fuel system to meet or exceed the required standards of the following governing bodies: the U.S Environmental Protection Agency (U.S EPA); North Carolina Department of Environmental Quality, Division of Waste Management, UST Section (NCDEQ); National Electrical Code (N.E.C); National Fire Protection Association (NFPA); and all applicable local requirements as long as they are more strict than the federal and State requirements.

78. According to Mr. Hrabusa, North Carolina has very stringent permitting and design standards regarding fuel systems such as the one at issue and is second only to California in strict regulations and program requirements for underground storage tanks.

79. The fuel system to be installed at the Property will be a "state-of-the-art" system. Current standards and regulations for a fuel system that will be installed upon the Property mandate the following:

- (A) For the Underground Storage Tanks—RaceTrac uses Double-walled tanks (which can be FRP, steel, or steel clad) consisting of a tank rib; primary tank shell which holds the fuel; wet interstitial space (parabeam), which RaceTrac fills with brine to avoid freezing; and secondary tank shell which holds the groundwater out. The tanks and piping will carry a 25 year or greater warranty. RaceTrac uses fiberglass (non-metallic) tanks at its facilities. In addition to sensors and electronic monitoring, the tanks are designed to monitor themselves and shut off in case of intrusion or failure.
- (B) For the Product Piping and Fuel Pipe Fittings—Double-walled, non-metallic product piping with leak detection, such as NOV fiberglass product piping (Red Thread IIA, which is a dual pipe (primary and secondary)

product or Dualoy 3000/LCX, which is an integrated double-walled piping product) are used with primary fittings, which are pressurized and soap tested for leakage and secondary clamshell fittings overtop of the primary fittings, which are also pressurized and soap tested for any leaks prior to any backfilling around the piping and fittings.

- (C) For the Spill Buckets—Double-walled fill spill buckets to capture incidental spills during fuel deliveries and all spill buckets must be electronically monitored.
- (D) For System Monitoring of Tank Inventory Levels—Continuous (24 hours per day, seven days per week) inventory monitoring of the entire system (tank, pipes, dispensers) and via an automatic tank gauge system (including a striker plate, water warning limit, high water limit, water float, low level limit, delivery limit, fuel float, high level limit, overflow limit, maximum volume limit (S.W.C. or “Label” Volume), full volume (100% capacity) and magnetostrictive probe) and associated inventory probes with monthly reporting to the State.
- (E) For System Monitoring of Product Piping Leak Detection—Leak detection is required to be installed in-line so the product piping integrity is continuously monitored and tested (mechanical or electronic leak detectors are the standard).
- (F) For System Monitoring/Monthly Monitoring and Inspections—Monthly monitoring of the equipment to include visual inspections of all underground containment sumps, spill buckets, dispensers, dispenser hanging hardware, life safety equipment, and functionality of the automatic tank gauge system and Class A, B, and C Operator certifications are required for all underground storage tank systems. The sensors for the system are themselves tested for functionality and will immediately be replaced if failure occurs.

80. Additionally, regarding the tank monitoring system, the system is monitored at both the station and remotely at RaceTrac’s corporate office/headquarters 24 hours per day, seven days per week. Service technicians are on-call and ready to respond to any problems.

81. The site will also have an overflow alarm system and signage. There will be warning signage, overflow alarm and strobe, an emergency fuel stop button (emergency shut-off that shuts off fuel and fuel dispensing but not monitoring), and acknowledgement switch and reset (used after the alarm condition clears). For spills, particularly incidental spills, there will also be “spill kits” located on site as well as capture and treatment protocols for any dispenser spills.

82. Containment basins will also be located under the dispensers and if a dispenser is struck, a mechanical device automatically shuts off the fuel to avoid a gas “geyser” scenario and also shuts off the system.

**E. Setbacks and Buffers.**

83. The northern and westernmost portion of the project (the proposed truck fueling canopy) will be located no less than approximately 115.33 feet from the closest portion of the Brookhaven parcels. Accordingly, to ensure an adequate buffer exists between the length of the shared property line of the Property and the Brookhaven parcels, the Applicant will incorporate along the entirety of the shared westernmost boundary heading east from the Brookhaven parcels a 30 foot elevated landscape buffer, 50 foot building setback, 80 foot residential buffer setback, and a 20 foot building setback with stormwater control feature.

84. Along the shared border of the Property and the Brookhaven parcels the Applicant will install a six foot high opaque wooden fence and develop at least a 30 foot landscape buffer preserving existing trees and vegetation and adding supplemental trees and plantings. In addition to any buffer trees required by City Code § 9-4-263, the Applicant plans to install 19 large trees and a Type E buffer yard consisting of six large evergreen trees, eight small evergreen trees, and 26 evergreen shrubs per 100 linear feet along the shared property line.

85. Along the easternmost portion, along North Memorial Drive (U.S. 13 and N.C. 11) there will be a 10 foot street yard consisting of four small trees under power lines every 100 feet also counting towards the 37 small trees per City Code § 9-4-263 and parking area screening of evergreen shrubs when the parking area is within 50 feet of the property line also counting towards the 92 shrubs required by City Code § 9-4-263.

86. As required by City Code, the site will incorporate a comprehensive stormwater management plan to ensure that any additional runoff generated by the development will be both properly secured and treated. As planned, there will be a stormwater control measure in the southeastern corner of the property closest to the intersection of Briley Road (S.R. 1415) and North Memorial Drive (U.S. 13 and N.C. 11).

87. As with the Brookhaven parcels, the Property and project will be on City water service, not utilizing well water systems.

**F. Traffic.**

88. The intersection of North Memorial Drive (U.S. 13 and N.C. 11) and Briley Road (S.R. 1415) are currently controlled by stoplights.

89. To minimize any traffic conflicts regarding the project, there will be newly created right in/right out entrance/access point to the Property with a new turn lane from North Memorial Drive (U.S. 13 and N.C. 11). This design limiting the site driveway on North Memorial Drive (U.S. 13 and N.C. 11) to right in/right out access only with a new turn/deceleration lane will reduce the risk of traffic accidents and will ensure smoother traffic flow and ingress to and egress from the site, particularly given the existing median along North Memorial Drive (U.S. 13 and N.C. 11).

90. There will be two separate full movement access in/out driveways/access points to the Property from Briley Road (S.R. 1415); one west of the RaceWay Market building to be used

exclusively for truck traffic intentionally separated from passenger vehicles to reduce conflicts and enhance overall safety and one east of the RaceWay Market building aligned with the entrance/exit of the bus and faculty parking for Wellcome Middle School to better create a predictable and safe crossing for vehicles.

91. The location, driveways, and general location of the development provides visibility for both pedestrians and drivers both on and off site.

92. The existing vehicular traffic on the area streets will not be significantly impacted by the project and the majority of the traffic to and from the Property (approximately 75% of the traffic during the peak hours) will be what is referred to as "pass-by traffic." Pass-by traffic is the traffic that is already on the existing adjacent roadway rather than traffic generated by individuals leaving an area to travel to the Property and then returning to their point of origin.

93. Additionally, national studies show that the majority of traffic at gas stations is "pass by" traffic, or driven from existing traffic.

94. Mr. Fluitt opined that field observations confirmed that the volumes of traffic entering and exiting the bus and faculty driveway at the Wellcome Middle School located across the street are relatively low and limited to a short period of time in the a.m. and in the p.m. hours.

95. Mr. Fluitt further opined that school queue backup on North Memorial Drive (U.S. 13 and N.C. 11) during the afternoon pick-up time period does not extend through the intersection. The proposed project on the Property will not impact the school queuing operations and will have a minimal impact on school operations in general.

96. The project is expected to generate 60 new trips (30 entering and 30 exiting) in the a.m. peak hour and approximately 68 new trips (34 entering and 34 exiting) in the p.m. peak hour, thereby equating approximately only one vehicle per minute.

97. All of the adjacent roadways have sufficient capacity to accommodate the projected new site traffic from this new development.

98. Regarding the expected increase in vehicular traffic, a traffic impact analysis is currently being scheduled with the North Carolina Department of Transportation and the City and will be required to be approved before the issuance of a building permit. Additionally, any improvements identified as part of that traffic impact analysis study will be required to be performed prior to the site opening.

99. Even if all of the site traffic were to travel through the intersection of North Memorial Drive (U.S. 13 and N.C. 11) and Briley Road (S.R. 1415), it would only increase the traffic at that intersection by only 3% in the a.m. and p.m. peak hours.

100. Accordingly, impacts due to new site traffic are anticipated to be minimal.

101. Based upon his review of the site, the existing traffic conditions, and the projected

site traffic Mr. Fluitt opined that the proposed site will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use, the site driveways will safely and conveniently be located, impacts to existing traffic are not expected to be significant, area streets which will provide access to the development have sufficient capacity to accommodate such site traffic, and the anticipated increase in vehicular traffic generated by the proposed use is expected to be relatively low.

102. There will be a new public sidewalk along the eastern and southern portion of the Property, thereby providing better access for those individuals walking in the area and making the site location more pedestrian friendly.

103. The Applicant's goal is to serve the already existing travel traffic, not create additional traffic and the smaller RaceWay store will better achieve that goal.

**G. Injury to Properties; Injury to Other Property Values.**

104. In order to determine if there is any diminution to the surrounding or abutting property owners due to the development of the project at issue upon the Property, Mr. Pate surveyed the surrounding and abutting properties, which included Brookhaven Acres, and also conducted a case study review of a project similar to the one at issue.

105. Regarding Brookhaven Acres, Mr. Pate opined that Brookhaven Acres was originally developed in 1971 and is a mixture of single-family homes built in the 1970s and 1980s and are typically 1,500 to 2,500 square feet in size. Sale prizes in Brookhaven Acres and the general vicinity thereof have typically been from approximately \$150,000.00 to \$240,000.00.

106. Regarding a case study review of a project similar to the one at issue and for comparison to property values of an adjacent single-family residential subdivision, Mr. Pate examined the Family Fare Gas Station in comparison to the adjoining Osceola subdivision. Built in 2020, the Family Fare Gas Station is, like the project at issue, a modern designed, newly built gas station, and is located approximately six miles away from the subject Property at the northwest corner of Southeast Greenville Boulevard and East Fourteenth Street (1530 East Fourteenth Street, Greenville, North Carolina).

107. The Family Fare Gas Station abuts the Osceola subdivision, which, as similar to Brookhaven Acres, consists of single-family homes built in the 1970s and 1980s, with similar sizes, bedroom and bathroom counts, and price points.

108. As part of his assessment, Mr. Pate researched the homes in the Osceola subdivision directly adjacent to the Family Fare Gas Station property and for additional comparison purposes, also examined the single-family homes that were nonadjacent to the Family Fare Gas Station property but were located within the Osceola subdivision.

109. Between October 19, 2020 and December 6, 2023, there were 10 homes sold in the Osceola subdivision with two of them being directly adjacent to the Family Fare Gas Station property. Sale prices ranged from \$150,000.00 to \$275,000.00. The average price per square foot

for the adjacent properties was higher at \$131.00 per square foot than that of the non-adjacent properties, where the average price was \$127.00 per square foot.

110. One of the properties directly adjacent to the Family Fare Gas Station only had a buffer of approximately 57 feet, substantially less than that proposed by the Applicant in the case at issue.

111. Based on his assessment and analysis, Mr. Pate opined that there was no measurable damage or diminution of value to any of the surrounding property owners including Brookhaven Acres because of the subject development as proposed by RaceTrac on the Property.

112. Accordingly, there was essentially no difference between the pricing of the adjacent properties in the pricing of the nonadjacent properties.

113. There was no diminution found in the case study.

114. Mr. Pate has never seen a diminution due to proximity in a case such as the one at issue, particularly given that the use is aligned with the City's future land use plan and the current zoning.

#### **VII. CRITERIA COMPLIANCE—CITY CODE § 9-4-81 (GENERAL CRITERIA).**

115. The Board agrees with the City that the Applicant's request can meet all of the development standards required for the issuance of the special use permit.

116. Conditions and Specifications.—Regarding conditions and specifications pursuant to City Code § 9-4-81(A), based upon and in addition to the foregoing facts, the Board further finds that:

- (A) The proposed use satisfies all required conditions and specifications of the Zoning Ordinance and policies of the City of Greenville for submission of a special use permit, including all developmental regulations and standards.
- (B) The project plan is in compliance with the required lot area, dimensions, and setback standards and provides ample parking that meets or exceeds minimum requirements for the use and zoning district.
- (C) The Applicant has additional taken steps, including substantial revisions to the site plan, to create and maximize the buffer between the project and neighboring homes, particularly those in Brookhaven Acres.

117. Comprehensive Plan.—Regarding comprehensive plan pursuant to City Code § 9-4-81(B), based upon and in addition to the foregoing facts, the Board further finds that:



- (A) The Property is located within the Commercial character type as designated by the Horizon 2026 Greenville Community Plan.
- (B) The Future Land Use Plan recommends Commercial for this property. Commercial is described as primarily community-and regional-scale commercial development situated near and along major roadway corridors. Existing development is characterized by buildings set back from streets behind surface parking.
- (C) The proposed use is in compliance with the Future Land Use and Character Map.

118. **Health and Safety.**—Regarding health and safety pursuant to City Code § 9-4-81(C), based upon and in addition to the foregoing facts, the Board further finds that:

- (A) Racetrac is familiar with and has researched and prepared for the health and safety considerations and intends to construct and operate the project in compliance with the same.
- (B) Race Trac has taken steps to carefully design the site so as to promote a safe and convenient layout promoting healthy site circulation.
- (C) The proposed project will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use.
- (D) The project will be newly constructed and purpose built, complying with all dimensional and developmental standards.
- (E) Access to the site will utilize purpose designed, built, and conveniently located driveways/access points.
- (F) The site and the project will arrange for ample and safe parking and access to gasoline pumps.
- (G) Impacts to existing traffic are not expected to be significant and the anticipated increase in vehicular traffic generated by the proposed use is expected to be relatively low.
- (H) Area streets, which will provide access to the development have sufficient capacity to accommodate the site traffic.

119. **Detriment to Public Welfare.**—Regarding detriment to public welfare pursuant to City Code § 9-4-81(D), based upon and in addition to the foregoing facts, the Board further finds that:

- (A) The proposed operations will not be detrimental to the public welfare or

hinder the use and development of nearby properties or neighborhood activities. The business is located within a designated commercial zone in the City of Greenville.

- (B) The proposed use of the property will provide a compatible service to the area. Furthermore, the business will adhere to all applicable laws and regulations established by federal regulation, the State of North Carolina, and the City of Greenville, and ensuring compliance with safety standards.
- (C) RaceTrac is committed to collaborating with the City of Greenville to ensure that the proposed use adheres to regulations.
- (D) This proposed use is well situated at the corner of main drives and in an area the Horizons 2026 plan marks for commercial use.
- (E) There is appropriate distance from other lots and is abutted by other lots only on one side; the Brookhaven parcels.
- (F) The risk posed to the public welfare is low and RaceTrac intends to comply with applicable laws and regulations associated with the proposed use and to be a meaningful and engaged community partner.

120. **Existing Uses Detrimental.**—Regarding existing uses detrimental pursuant to City Code § 9-4-81(E), based upon and in addition to the foregoing facts, the Board further finds that: the Property lot is presently vacant and is marked for commercial use. The proposed use would be consistent with such commercial use and will not be adversely affected by the existing uses in the area.

121. **Injury to Properties or Improvements.**—Regarding injury to property or improvements pursuant to City Code § 9-4-81(F), based upon and in addition to the foregoing facts, the Board further finds that:

- (A) The proposed project will not injure, by value or otherwise, adjoining or abutting property or harm neighboring properties or public amenities.
- (B) The proposed use will aid the Horizons 2026 plan in that it would add a helpful retail and economic service to the area as opposed to the presently vacant land.
- (C) The improvements will provide access to residents and travelers alike to necessary services.
- (D) RaceTrac's improvements to rights of way, development of currently vacant land, and landscape improvements add beauty and value to the neighboring area.



(E) The site plan offers a buffer in addition to what is required by the City.

122. **Nuisance or Hazard.**—Regarding nuisance or hazard pursuant to City Code § 9-4-81(G), based upon and in addition to the foregoing facts, the Board further finds that:

- (A) The proposed use would not be adversely affected by the existing uses in the area. It will not create a nuisance or hazard.
- (B) The proposed use will be consistent with other gasoline stations and convenience store locations in Greenville and do not pose any greater threat than those already existing.
- (C) RaceTrac will actively monitor the site and will operate the site in a manner so as to ensure the safety and wellbeing of all individuals on the site.
- (D) RaceTrac takes customary and market steps to ensure the minimization of fires and other safety hazards.
- (E) RaceTrac constructs industry leading fuel tank systems, made from high-quality, non-corrodible materials and state of the art technology.
- (F) All aspects of the site including, but not limited to layout, underground tanks, site lighting, and landscaping are all designed to ensure safety and customer convenience.

123. As previously noted on page 5, footnote 6, *supra*, the Opponents' handouts were received by the Board but, the Board determined that the materials were not competent, material, and substantial evidence and were inadmissible hearsay. Consequently, the materials were not considered by the Board.

124. The Board agrees with the City that the Applicant's proposed request meets all criteria with the inclusion of all of the recommended special conditions.

Based upon the foregoing findings of fact, the undersigned makes the following:

#### **CONCLUSIONS OF LAW**

1. The Board is a "decision-making board" as defined by N.C.G.S. § 160D-102(9); has jurisdiction over this proceeding and "evidentiary hearing" as defined by N.C.G.S. § 160D-102(16), and possesses the authority to issue this "quasi-judicial decision" as defined by N.C.G.S. § 160D-102(28), N.C.G.S. § 160D-302, N.C.G.S. § 160D-406, N.C.G.S. §§ 160D-705(a) and (c); N.C.G.S. City Code Title 9, Chapter 4, Article E (City Code § 9-4-81 to § 9-4-86); City Code § 9-4-252; City Code Title 9, Chapter 4, Article S (City Code § 9-4-316 to § 9-4-324), and the Board's *Rules of Procedure*.

2. The Hearing was an "evidentiary hearing" as that term is defined by N.C.G.S. § 160D-102(16) and City Code § 9-4-22; was timely and properly scheduled and held; and the Notices of Hearing were timely and properly made, given, and/or served as required with no prejudice to the parties or others required to be notified of the hearing pursuant to N.C.G.S. § 160D-406(b) and N.C.G.S. §§ 160D-705(a) and (c).

3. The City had and has standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(4) because it is the local government and the Board is the City's decision making body at issue.

4. The Applicant had and has standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d), and N.C.G.S. § 160D-1402(c)(1)c. because the Applicant is an applicant before the Board, whose decision is at issue.

5. Garrie W. Moore had and has standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) because Mr. Moore is a person who will suffer special damages as the result of the Board's decision.

6. Brookhaven Community Association, Inc., by and through Garrie W. Moore, had and has standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(3) because Brookhaven Community Association, Inc. is an incorporated association to which owners or lessees of property in a designated area belong by virtue of their owning or leasing property in that area, or an association otherwise organized to protect and foster the interest of the particular neighborhood or local area, at least one of the members of the association, Mr. Moore, has standing as an individual to challenge the decision of the Board, and the Brookhaven Community Association, Inc. was not created in response to the particular development or issue that is the subject of the Board's decision.

7. Barbara Brown had and has standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) because Ms. Brown is a person who will suffer special damages as the result of the Board's decision.

8. Walter C. Fields had and has standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) because Mr. Fields is a person who will suffer special damages as the result of the Board's decision.

9. Vivian Kennion had and has standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) because Ms. Kennion is a person who will suffer special damages as the result of the Board's decision.

10. Adrienne Reddrick had and has standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) because Ms. Reddrick is a person who will suffer special damages as the result of the Board's decision.

11. All documents to be considered during the meeting were provided to each member of the Board in accordance with N.C.G.S. § 160D-406(c) and N.C.G.S. §§ 160D-705(a) and (c).

12. “A special use permit is one issued for a use which the ordinance expressly permits in a designated zone upon proof that certain facts and conditions detailed in the ordinance exist.” Pope v. Davidson Cnty., 288 N.C. App. 35, 42, 885 S.E.2d 119, 123 (2023) (internal citations omitted) The North Carolina Court of Appeals in Pope v. Davidson Cnty. added:

According to well-established North Carolina law, the local governing board must follow a two-step decision-making process in granting or denying an application for a special use permit. Preliminarily, the local board must determine whether an applicant has produced competent, material, and substantial evidence tending to establish the existence of the facts and conditions which the ordinance requires for the issuance of a special use permit. Where an applicant has satisfied this initial burden, then prima facie he is entitled to the issuance of the requested permit. Accordingly, an applicant for a special use permit who has met its burden of production automatically wins if no contrary evidence is offered.

Id. (internal citations omitted; emphasis in original). See also MCC Outdoor, LLC v. Town of Franklinton Bd. of Comm’rs, 169 N.C. App. 809, 811, 610 S.E.2d 794, 796 (citation omitted) (“[W]hen an applicant produces evidence which demonstrates it has complied with the ordinance, the petitioner is entitled to have the permit issued unless substantial competent evidence is introduced to support its denial.”), disc. rev. denied and appeal dismissed, 359 N.C. 634, 616 S.E.2d 540 (2005).

13. The Board has made such inquiry and received such evidence as it deems necessary to determine the nature and extent of the Applicant’s application for special use permit in comparison to the intent of City Code Part II, Title 9, Chapter 4; and the needs of the City.

14. Pursuant to City Code Part II, Title 9, Chapter 4, Article E (Standards and Criteria for Special Uses) (City Code § 9-4-81 to § 9-4-86), particularly City Code § 9-4-81 (General Criteria) based upon the foregoing Findings of Fact, the Board unanimously concludes as follows:

- (A) Conditions and Specifications. The proposed use meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a special use permit. Such conditions and specifications include but are not limited to the following:
- (1) Compliance with lot area and dimensional standards.
  - (2) Compliance with setback and other locational standards.
  - (3) Compliance with off-street parking requirements.
  - (4) Compliance with all additional specific criteria set forth for the particular use, Section 9-4-84, of this Article.
  - (5) Compliance with all application submission requirements.



- (B) Comprehensive Plan. The proposed use is in general conformity with the Comprehensive Land Use Plan of the City and its extraterritorial jurisdiction.
- (C) Health and Safety. The proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use. Such health and safety considerations include but are not limited to the following:
  - (1) The safe and convenient location of all on-site parking and drives.
  - (2) The existing vehicular traffic on area streets.
  - (3) The condition and capacity of area street(s) which will provide access to the proposed development.
  - (4) The visibility afforded to both pedestrians and operators of motor vehicles both on-site and off-site.
  - (5) The reasonably anticipated increase in vehicular traffic generated by the proposed use.
  - (6) The anticipated, existing and designed vehicular and pedestrian movements both on-site and off-site.
- (D) Detriment to Public Welfare. The proposed use will not be detrimental to the public welfare or to the use or development of adjacent properties or other neighborhood uses.
- (E) Existing Uses Detrimental. The proposed use would not be adversely affected by the existing uses in the area in which it is proposed.
- (F) Injury to Properties or Improvements. The proposed use will not injure, by value or otherwise, adjoining or abutting property or public improvements in the neighborhood.
- (G) Nuisance or Hazard. The proposed use will not constitute a nuisance or hazard. Such nuisance or hazard considerations include but are not limited to the following:
  - (1) The number of persons who can reasonably be expected to frequent or attend the establishment at any one time.
  - (2) The intensity of the proposed use in relation to the intensity of adjoining and area uses.

- (3) The visual impact of the proposed use.
- (4) The method of operation or other physical activities of the proposed use.
- (5) The noise; odor; smoke; dust; emissions of gas, particles, solids or other objectionable or toxic characteristics which are proposed or that can reasonably be expected to be a result of the operation of the proposed use.
- (6) The danger of fire or explosion.

15. The Applicant has produced competent, material, and substantial evidence tending to establish the existence of the facts and conditions which the Zoning Ordinance requires for the issuance of a special use permit.

16. Accordingly, given that the Applicant has satisfied this initial burden, then the Applicants are prima facie entitled to the issuance of the requested special use permit.

17. There is a lack of competent, material, and substantial evidence that was introduced to support the denial of the Applicant's special use permit.

18. The Applicant is therefore entitled to have the requested special permit issued.

19. Based upon the totality of the evidence before the Board, and in accordance with City Code Part II, Title 9, Chapter 4, Article E (City Code § 9-4-81 to § 9-4-86), particularly City Code § 9-4-81 (General Criteria), the Board, by unanimous vote (six in favor and none in opposition), determines and concludes that granting permission for the establishment of the following listed special use upon the Property is warranted in this matter: Convenience Store with Gasoline Sales in accordance with City Code § 9-4-22; City Code § 9-4-78 (Appendix A: Table of Uses, Use (10)b.); City Code § 9-4-81; and City Code § 9-4-252.

20. The Board is authorized to "hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in the [local] regulations." N.C.G.S. § 160D-705(c) (also stating that "[r]easonable and appropriate conditions and safeguards may be imposed upon" special use permits). Moreover, a condition imposed must reasonably related to the proposed use, not conflict with the Zoning Ordinance, and further a legitimate objective of the Zoning Ordinance. Overton v. Camden Cnty., 155 N.C. App. 391, 398-99, 574 S.E.2d 157, 162-63 (2002).

21. Based upon the totality of the evidence before the Board and in accordance with N.C.G.S. §§ 160D-705(a) and (c) and City Code Part II, Title 9, Chapter 4, Article E (City Code § 9-4-81 to § 9-4-86), particularly and City Code § 9-4-82 (Additional Restrictions), the Board, by unanimous vote (six in favor and none in opposition), determines and concludes that the following conditions, restrictions, and standards should be imposed and required upon the Property as recommended by the City and as herein stated in its Decision and Order, infra, as may be

necessary to protect the health and safety of workers and residents of the community, and to protect the value and use of property in the general neighborhood:

- (A) Final platting, stormwater management, erosion control, an approved traffic impact analysis, and site plan approval is required prior to issuance of a building permit.
- (B) Parking shall satisfy both gasoline fuel sales and convenience store requirements.
- (C) Outdoor amplified paging of patrons, guests, and/or employees shall be prohibited.
- (D) Outdoor amplified sound, including music, shall be allowed, provided
  - (1) Any sound transmission device, system, and/or speaker shall be oriented in a manner that directs all mechanical and/or amplified sound toward the building and away from any abutting residential property line, and
  - (2) No amplified sound shall be audible from any point located on any property zoned for residential purposes. Outdoor amplified sound is defined as any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside through open door(s) or window(s) or other openings in the building. Measurement standards shall be human auditory senses.
- (E) No television transmission, movie projection, and/or computer displays shall be viewed from the gasoline activity area.
- (F) Exterior lighting associated with the gasoline activity area shall be directed away from all public streets. On-site and under canopy lighting shall be shielded and directed to prevent the light cone from crossing the right-of-way or perimeter property line. Exterior lighting shall comply with the City of Greenville Lighting Standards.
- (G) No exterior neon lighting, no neon light signs, and no flashing signs shall be allowed in conjunction with the principal use convenient store and/or gasoline activity area.
- (H) The convenience store shall not contain 20% or more of the establishment's floor area dedicated to the display or stocking of tobacco products or 40% or more of the establishment's on-site signage that is visible from public right-of-way advertising tobacco products.
- (I) No loitering or outdoor activities permitted.

- (J) The proposed project must meet all related State of North Carolina fire and building codes prior to occupancy.

22. At the conclusion of the Hearing, the Applicant was informed of the Board's Decision. This written decision is being made within a reasonable time and is otherwise in compliance with N.C.G.S. § 160D-406(j) and N.C.G.S. §§ 160D-705(a) and (c).

Based upon the foregoing findings of fact and conclusions of law, the Board makes the following:

### **DECISION AND ORDER**

1. Upon consideration of the competent, material, and substantial evidence in the record and the arguments by the parties, by unanimous vote (six in favor and none in opposition), the Board, in accordance with N.C.G.S. § 160D-406; N.C.G.S. §§ 160D-705(a) and (c); and City Code Part II, Title 9, Chapter 4, particularly City Code § 9-4-22; City Code § 9-4-78 (Appendix A: Table of Uses, Use (10)b.); City Code § 9-4-81; and City Code § 9-4-252, hereby **GRANTS** permission for the establishment of the following special use for the subject Property and hereby **ISSUES A SPECIAL USE PERMIT** as follows: **Convenience Store with Gasoline Sales** in accordance with City Code § 9-4-22; City Code § 9-4-78 (Appendix A: Table of Uses, Use (10)b.); City Code § 9-4-81; and City Code § 9-4-252.

2. Pursuant to N.C.G.S. § 160D-705(c) and City Code § 9-4-82, the Board, by unanimous vote (six in favor and none in opposition), further **ORDERS** that the herein described Special Use Permit is hereby **ISSUED SUBJECT TO AND WITH THE FOLLOWING CONDITIONS AND RESTRICTIONS**:

- (A) Final platting, stormwater management, erosion control, an approved traffic impact analysis, and site plan approval is required prior to issuance of a building permit.
- (B) Parking shall satisfy both gasoline fuel sales and convenience store requirements.
- (C) Outdoor amplified paging of patrons, guests, and/or employees shall be prohibited.
- (D) Outdoor amplified sound, including music, shall be allowed, provided
  - (1) Any sound transmission device, system, and/or speaker shall be oriented in a manner that directs all mechanical and/or amplified sound toward the building and away from any abutting residential property line, and
  - (2) No amplified sound shall be audible from any point located on any

property zoned for residential purposes. Outdoor amplified sound is defined as any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside through open door(s) or window(s) or other openings in the building. Measurement standards shall be human auditory senses.

- (E) No television transmission, movie projection, and/or computer displays shall be viewed from the gasoline activity area.
- (F) Exterior lighting associated with the gasoline activity area shall be directed away from all public streets. On-site and under canopy lighting shall be shielded and directed to prevent the light cone from crossing the right-of-way or perimeter property line. Exterior lighting shall comply with the City of Greenville Lighting Standards.
- (G) No exterior neon lighting, no neon light signs, and no flashing signs shall be allowed in conjunction with the principal use convenient store and/or gasoline activity area.
- (H) The convenience store shall not contain 20% or more of the establishment's floor area dedicated to the display or stocking of tobacco products or 40% or more of the establishment's on-site signage that is visible from public right-of-way advertising tobacco products.
- (I) No loitering or outdoor activities permitted.
- (J) The proposed project must meet all related State of North Carolina fire and building codes prior to occupancy.

3. This permit is issued to the Applicant, RaceTrac, Inc., and shall be binding upon the Applicant, its successors, and/or assigns.

4. Any use of the Property inconsistent with the approved application shall be prohibited under this permit and shall be subject to revocation accordance with City Code.

5. This permit is subject to full compliance with all specific requirements as set out in City Code Part II, Title 9, Chapter 4.

6. If any of the conditions stated above shall not be met, then this permit shall become void and of no effect.



**NOTICE OF RIGHT TO APPEAL**

Pursuant to N.C.G.S. § 160D-406(j), City Code § 9-4-319, and Section 3-3 of the *Rules of Procedure* of the City of Greenville Board of Adjustment, a quasi-judicial decision by the City of Greenville Board of Adjustment is effective upon filing the written decision with the Secretary of the Board of Adjustment. The decision of the City of Greenville Board of Adjustment shall be delivered within a reasonable time by personal delivery, electronic mail, or by first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The Secretary of the Board of Adjustment shall certify that proper notice has been made.

In accordance with N.C.G.S. § 160D-406(k), every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to N.C.G.S. § 160D-1402. See also City Code § 9-4-324. Appeals shall be filed within the times specified in N.C.G.S. § 160D-1405(d). A petition for review shall be filed with the Clerk of Superior Court of Pitt County by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with N.C.G.S. § 160D-406(j). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

**SO DECIDED and ORDERED**, this the 25th day of October, 2024.

Signed by:  
*Daniel Worrall*  
5203883C28F24D6

Daniel J. Worrall  
Chair, Board of Adjustment

Received and filed, this the 25th day of October, 2024.

Signed by:  
*Bryan Jones*  
A9582C93C166447

Bryan Jones  
Secretary to the Board of Adjustment

\*\*\*\*\*

### CERTIFICATE OF SERVICE

This is to certify that in accordance with N.C.G.S. § 160D-406(j), the foregoing **Decision and Order Granting Special Use Permit (Quasi-Judicial Decision)** was served upon the following parties (“the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective”), unless otherwise indicated, by 1) personal delivery, 2) electronic mail to the following email address(es), or by 3) first-class mail by depositing a copy of the same enclosed in a post-paid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service addressed as follows:

Julian Rawl  
105 Weston Estates Way  
Cary, NC 27513  
Email: [bubba@prestondev.com](mailto:bubba@prestondev.com)  
*Owner*  
*Via Electronic Mail and First-Class Mail Only*

RaceTrac, Inc.  
c/o Justen Giambalvo  
Vice President  
200 Galleria Parkway, Suite 900  
Atlanta, GA 30339  
Email: [tpease@racetrac.com](mailto:tpease@racetrac.com)  
*Applicant*  
*Via Electronic Mail and First-Class Mail Only*

Cheri Beasley, Esq.  
Haynsworth Sinkler Boyd, P.A.  
223 South West Street, Suite 925  
Raleigh, NC 27603  
Email: [cbeasley@hsblawfirm.com](mailto:cbeasley@hsblawfirm.com)  
*Counsel for Applicant*  
*Via Electronic Mail and First-Class Mail Only*

Garrie W. Moore  
1701 Brookhaven Drive  
Greenville, NC 27834  
*Party with Standing as Determined by Board*  
*Via First-Class Mail Only*

Brookhaven Community Association, Inc.  
by Garrie W. Moore, President  
1701 Brookhaven Drive  
Greenville, NC 27834  
*Party with Standing as Determined by Board*  
*Via First-Class Mail Only*

Barbara Brown  
1709 Brookhaven Drive  
Greenville, NC 27834  
*Party with Standing as Determined by Board  
Via First-Class Mail Only*

Walter C. Fields  
1713 Brookhaven Drive  
Greenville, NC 27834  
*Party with Standing as Determined by Board  
Via First-Class Mail Only*

Vivian Kennion  
1711 Brookhaven Drive  
Greenville, NC 27834  
*Party with Standing as Determined by Board  
Via First-Class Mail Only*

Adrienne Reddrick  
1706 Brookhaven Drive  
Greenville, NC 27834  
*Party with Standing as Determined by Board  
Via First-Class Mail Only*

This the 25<sup>th</sup> day of October, 2024.

Signed by:

*Bryan Jones*

A05B2C93C166447...

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Bryan Jones  
Secretary to the Board of Adjustment

# **EXHIBIT E**



## Agenda

### Greenville Board of Adjustment

September 26, 2024

6:00 PM

City Hall Council Chambers, 200 West 5th Street

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Assistive listening devices are available upon request for meetings held in the Council Chambers. If an interpreter is needed for deaf or hearing impaired citizens, please call 252-329-4422 (voice) or 252-329-4060 (TDD) no later than two business days prior to the meeting.

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**I. Call to Order**

**II. Roll Call**

**III. Approval of Agenda**

**IV. Approval of Minutes**

1. July 25, 2024

**V. Old Business**

**2. PROPOSED BOA DECISION AND ORDER GRANTING SPECIAL USE PERMIT - MOHAMED MOHAMED**

In the Matter of: Mohamed Mohamed and Ismail Mohamed

BOA File No: 24-14

**VI. New Business**

**3. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY ELITE GROUP SERVICES, INC.**

The applicant, Elite Group Services, Inc., desires a special use permit to operate a Mental

health, emotional or physical rehabilitation day program facility pursuant to Appendix A, Use 8 (ff)(1) of the Greenville City Code. The proposed use is located at 2409 Charles Blvd. The property is further identified as being tax parcel number 42533.

**4. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY  
RAISSHA ENTERPRISES, INC., DBA HIGH LIFE SMOKE SHOP**

The applicant, Raisha Enterprises, Inc. DBA High Life Smoke Shop, desires a special use permit to operate a Tobacco Shop Class 1 pursuant to Appendix A, Use 10(ff) of the Greenville City Code. The proposed use is located at 205 SW Greenville Blvd, Suite 200. The property is further identified as being tax parcel number 13094.

**5. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY  
RACETRAC, INC.**

The applicant, RaceTrac, Inc., desires a special use permit to operate a Convenience Store with Gasoline Sales pursuant to Appendix A, Use 10(b) of the Greenville City Code. The proposed use is located at 3201 N. Memorial Drive. The property is further identified as being tax parcel number 27195.

**VII. Announcements**

**VIII. Adjournment**



City of Greenville,  
North Carolina

Meeting Date: 09/26/2024

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**Title of Item:** 1. July 25, 2024

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ATTACHMENTS

[COG-#1197179-v1-BOA\\_Minutes\\_July\\_25\\_2024.pdf](#)

## DRAFT MINUTES OF THE GREENVILLE BOARD OF ADJUSTMENT

**July 25, 2024**

The Greenville Board of Adjustment met on the above date at 6:00 PM in the City Council Chambers of City Hall.

The members present are denoted by an "\*" and those absent are denoted by an "X".

Sharon Evans, Chair - *	Jermaine McNair- X
Christopher Lilley, Vice Chair - *	Carol Ann Bass- *
Nathan Cohen - X	Sterling Ruffin - *
Ryan Purtle - *	Nola Dixon - X
Daniel Worrall- *	Clayton Self - *

**OTHERS PRESENT:** Assistant City Attorney Donald Phillips; LaToya Yates, Staff Support Specialist II; Bryan Jones, Lead Planner; Les Everett, Director of Planning and Development Services

**VOTING MEMBERS:** Evans, Purtle, Worrall, Bass, McNair, Self, and Dixon

### **III. APPROVAL OF AGENDA:**

**Motion made by Mr. Purtle, seconded by Mr. McNair, to move new business to the beginning of the agenda. Motion passed unanimously.**

### **IV. APPROVAL OF MINUTES:**

**Motion made by Mr. Worrall, seconded by Mr. Purtle, to approve minutes for June 27, 2024, as written. Motion passed unanimously.**

*Assistant City Attorney Donald Phillips reviewed information as stated on pages 2 to 3 of the Meeting Handout available to the Public, the EVIDENCE BEFORE THE BOARD OF ADJUSTMENT IS AS FOLLOWS:*

- A. *The Board of Adjustment is a quasi-judicial body that makes a decision concerning an application, petition or appeal based on the evidence presented by those in favor as well as those in opposition.*
- B. *The members of the Board of Adjustment are lay persons and as such, the rules of evidence that are followed in a court are relaxed for cases heard before this body.*
- C. *Though the rules of evidence are relaxed, it does not mean they are ignored. Only evidence that is material, competent and substantial will be considered and may be used by the Board in its decision-making process.*

Doc# 1197179



- D. The Board may not consider, nor is it admissible to present or offer affidavits, letters or other writings in support of or in opposition to a matter before the Board unless the person who prepared the writing is testifying. These writings are considered hearsay.*
- 1. Statements by a person such as in my opinion, the application will create a traffic hazard," is not an admissible opinion and may not be considered by the Board.*
  - a. However, such an opinion may be admissible if it is made by an expert or a person who is qualified to give opinions concerning traffic hazards, is making a presentation to the Board concerning his or her investigation and the basis for his or her conclusion in the report.*
  - b. A lay person can give an opinion but he or she also must present facts to show how the proposal affects his or her piece of property specifically and not just in a general way.*
  - 2. A statement that another person who is not present and not testifying either supports or doesn't support the petitioner or application is hearsay and is not admissible.*
  - 3. The same rule applies to both the applicant and those in opposition.*

*Pursuant to North Carolina General Statute 160D-109, 160D-406 and Section 4 of the Board of Adjustment's Rules of Procedure:*

*4-3. No member of the Board of Adjustment shall participate in either the discussion or vote on any special use permit, variance, or appeal from an administrative officer's decision in any manner that would violate the affected persons' constitutional right to a fair and impartial decision maker.*

*Prohibited conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter and not willing to consider changing his or her mind; and undisclosed ex parte communications with the person before the Board, any witnesses, staff, or other Board members. Decisions on either a request for recusal by a member or objections by a person appearing before the Board shall be decided by a simple majority vote.*

*4-4. No Board Member shall take part in the hearing, consideration, or determination of any matter in which that Board Member is involved or has a financial or personal interest. Personal interest shall be defined as having a family member involved in the project under consideration, a neighborhood association involvement where a Board Member is on the governing body of such association, or where the Board Member is involved in a conflict or dispute with the applicant on a matter unrelated to the application. If a Board Member has such a conflict, he shall declare the conflict and request to be excused from voting on the issue. A majority vote of the remaining members present shall be required to excuse the member.*

*4-5. No Board member shall vote on any matter deciding an application or appeal, unless he shall have attended the public hearing on that application or appeal.*

*4-6. No Board member shall discuss any case with any parties in interest prior to the public hearing on that case, provided however, that members may receive and/or seek information pertaining to the case from any other members of the Board.*

*If a Board member has had an ex parte communication that also needs to be disclosed at this time.*

## VI. NEW BUSINESS

*Mr. Ruffin stated he had to possibly recuse from Items 2 and 3, due to the owner (Michael Overton) being familiar with the owner where he works.*

*Attorney Donald Phillips established no objections to Mr. Sterling voting in tonight's hearing, by the Board.*

### 2. PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT BY MOHAMED MOHAMED

*Voting Members: Evans, Purtle, Worrall, Bass, McNair, Self, and Dixon*

The applicant, Mohamed Mohamed, desires a special use permit to operate an automotive major repair facility pursuant to Appendix A, Use 9(a) of the Greenville City Code. The proposed use is located at 1721 W. 5th Street. The property is further identified as being tax parcel number 22810.

*The Notary swore in all those speaking for and against the request.*

Bryan Jones, Lead Planner, presented on behalf of City Staff. The proposed use is located at 1721 W. 5th Street. The property is further identified as being tax parcel number 22810. The property is zoned as CDF, Downtown Commercial Fringe. North of the property is Mario's Tacos and is currently zoned as CDF, Downtown Commercial Fringe. South of the property is Taylor Warehousing and is currently zoned as MCH, Medical – Heavy Commercial. East of the property is Citgo Gas Station/Convenience Store and is currently zoned as GC, General Commercial. West of the property is Taylor Warehousing/New Dimensions Church and is currently zoned as MCH, Downtown Commercial Fringe. The subject property is 0.6 acres in size and has approximately 145 feet of frontage along W. 5th Street. The applicant wishes to operate a "Tire Shop/Body Shop". The property is located within the Commercial character type as designated by the Horizon 2026 Greenville Community Plan. The proposed use is in compliance with the Future Land Use and Character Map which recommends commercial development for the subject property. Notice was mailed to the adjoining property owners on July 10, 2024. Notice of the public hearing was published in the Daily Reflector on July 13, 2024 and July 20, 2024.

Chair Evans opened public hearing.

Mohamad Mohamad, manager, spoke in favor of this request.

Haroon Mohamad, manager, spoke in favor of this request.

*Attorney Donald Phillips presents questions to establish standing for Mr. Donald Taylor.*

**Motion made by Ms. Bass, seconded by Ms. Dixon, that Mr. Donald Taylor has standing to participate in the quasi-judicial proceeding for Item Number 2. Vote: 6:1. Motion passed. Voting in favor: Evans, Purtle, Bass, McNair, Self, and Dixon. Voting in opposition: Worrall.**

Donald Taylor, owner of Taylor Warehousing, spoke in opposition of this request.

*Attorney Donald Phillips presents questions to establish standing for Mr. Arthur Ray Rodgers.*

Doc# 1197179

**Motion made by Mr. Worrall, seconded by Ms. Bass, to accept Mr. Arthur Ray Rodgers as an agent, Deacon of New Dimensions Church and the member of the board of New Dimensions in the quasi-judicial proceeding for Item Number 2. Vote: 6:1. Motion Passed.**

**Motion made by Mr. Worrall, seconded by Ms. Bass, to accept Mr. Arthur Ray Rodgers does not have standing to participate in the quasi-judicial proceeding for Item Number 2. Motion passed unanimously.**

*The Notary swore in Ms. Trudy Gulley.*

*Attorney Donald Phillips presents questions to establish standing for Ms. Trudy Gulley.*

**Motion made by Mr. McNair, seconded by Ms. Bass, that Ms. Trudy Gulley has standing to participate in the quasi-judicial proceeding for Item Number 2. Vote: 6:1. participate in the quasi-judicial proceeding for Item Number 2. Vote: 6:1. Motion passed. Voting in favor: Evans, Purtle, Bass, McNair, Self, and Dixon. Voting in opposition: Worrall.**

Trudy Gulley, realtor of New Dimensions Church, spoke in opposition of this request.

Chair Evans asked for Staff's recommendation.

Mr. Jones stated Planning Staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Chair Evans closed the public hearing and opened for Board discussion.

No further Board discussion.

**Motion made by Mr. Purtle, seconded by Ms. Dixon, for approval of the Finding of Facts as presented by City Staff. Motion passed unanimously.**

**Motion made by Mr. Worrall, seconded by Mr. Purtle, for approval of the Petition with the recommended conditions by City Staff. Motion passed unanimously.**

**Motion made by Mr. Worrall, seconded by Mr. McNair, for Attorney Donald Phillips to draft the proposed decision of Item 2. Motion passed unanimously.**

### **III. ELECTION OF OFFICERS** *(Motion passed to move to end of meeting)*

Motion made by Mr. McNair to nominate Mr. Ryan Purtle for Vice-Chair. Motion passed unanimously.

Motion made by Mr. Ryan Purtle to nominate Mr. Purtle for Chair. Motion passed unanimously.

**VII. ADJOURNMENT**

**Motion made by Ms. Bass, seconded by Mr. White, to adjourn. Motion passed unanimously.**

Chair Evans stated that the meeting was officially adjourned. Meeting adjourned at 7:45PM.

Respectfully submitted,

Chantae Gooby,

Chief Planner

STATE OF NORTH CAROLINA  
COUNTY OF PITT

CITY OF GREENVILLE  
BEFORE THE BOARD OF ADJUSTMENT  
FILE NO.: BOA 24-14

In the Matter of: )  
)  
MOHAMED MOHAMED and )  
ISMAIL MOHAMED, )  
)  
Applicant. )

DECISION AND ORDER  
GRANTING SPECIAL USE PERMIT  
(QUASI-JUDICIAL DECISION)

**THIS MATTER** came on to be heard as a quasi-judicial evidentiary hearing before the City of Greenville<sup>1</sup> Board of Adjustment (the “Board”) pursuant to N.C.G.S. § 160D-406; N.C.G.S. §§ 160D-705(a) and (c); N.C.G.S. § 160D-1402; Part II (Code of Ordinances), Title 9 (Building, Planning and Development Regulations), Chapter 4 (Zoning) of the Code of Ordinances of the City of Greenville (“City Code”), which chapter is also known as the Zoning Ordinance for Greenville, North Carolina or the Zoning Ordinance (“Zoning Ordinance”), particularly City Code § 9-4-22; City Code § 9-4-78 (Appendix A: Table of Uses, Use (9)a.); City Code § 9-4-81; City Code § 9-4-82; City Code § 9-4-84; City Code § 9-4-85(B); City Code § 9-4-86(B); City Code § 9-4-103(Z); and City Code § 9-4-316 to § 9-4-324); and the Board’s *Rules of Procedure* upon application for a special use permit by the Applicants, Mohamed Mohamed and Ismail Mohamed, concerning the property located at 1721 West Fifth Street, Greenville, North Carolina 27834 and further identified as being Pitt County Tax Parcel No. 22810 (the “Hearing”).

The Hearing was convened and held on Thursday, July 25, 2024, at 6:00 p.m.<sup>2</sup> in City Council Chambers of City Hall located at 200 West Fifth Street, Greenville North Carolina 27835 (“City Council Chambers”). The voting members of the Board consisted of: Sharon Evans (Chair), Ryan Purtle, Daniel Worrall, Carol Ann Bass, Jermaine McNair, Nola Dixon, and Clayton Self.

This *Decision and Order Granting Special Use Permit (Quasi-Judicial Decision)* was made by the Board at its regularly scheduled meeting held on Thursday, September 26, 2024 at 6:00 p.m. in City Council Chambers.<sup>3</sup>

<sup>1</sup> The City of Greenville will be referred to herein as the City.

<sup>2</sup> This matter appeared on the Board’s July 25, 2024 regular meeting Agenda as Item No. 2 of Section VI. New Business (available at: <https://www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings> and [https://granicus\\_production\\_attachments.s3.amazonaws.com/greenville/1bd27c301422b4c3563adb6bfaa47cde0.pdf](https://granicus_production_attachments.s3.amazonaws.com/greenville/1bd27c301422b4c3563adb6bfaa47cde0.pdf)). The Board’s Agenda packet for the July 25, 2024 meeting is available at: <https://d3n9y02raazwpg.cloudfront.net/greenville/57a1cbbb-9b58-11ee-a93d-0050569183fa-1fe87dce-7d69-4f1d-aa9a-99eb9dd53f98-1721220767.pdf> and the video of the hearing is available at: [https://greenville.granicus.com/MediaPlayer.php?view\\_id=16&clip\\_id=4169](https://greenville.granicus.com/MediaPlayer.php?view_id=16&clip_id=4169)) (see 00:17:47 to 01:38:42 of 01:45:23).

<sup>3</sup> The Board’s regularly scheduled meeting on August 22, 2024 was cancelled. As with the Board’s July 25, 2024 Agenda, Agenda Packet, and Video, the Agenda, Agenda Packet (including the proposed minutes of the July 25, 2024 meeting), and Video of the September 26, 2024 meeting are available at: <https://www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings>.

**APPEARANCES**

Owner:	None
For Owner:	None
Witnesses for Owner:	None
Applicants:	Mohamed Mohamed <i>Applicant</i>
For Applicants:	None
Witnesses for Applicants:	Haroom Mohamed <i>Assistant Manager for Applicants' Proposed Business</i>
Opponents:	Taylor Capital, LLC by Donald Taylor, Member Manager <i>Owner of Property within the 250 Foot Radius of and Abutting the Property at Issue/Party with Standing</i>  James Horace Tetterton by Trudy Gulley, individually and as a member of Lee and Harrell Real Estate Professionals, LLC, formerly RE/MAX Preferred Realty, LLC <i>Designated Agent for the Owner of Property Located within the 250 Foot Radius of the Property at Issue/Party with Standing</i>  Arthur Ray Rogers Deacon, New Dimensions Community Church <i>On behalf of Tenant of Property Located within the 250 Foot Radius of the Property at Issue</i>
For Opponents:	None
Witnesses for Opponent:	None
The City of Greenville:	Bryan Jones Lead Planner City of Greenville Planning and Development Services Department
For the City of Greenville:	None
Witnesses for the City of Greenville:	None

Others Attending:

Donald K. Phillips  
Assistant City Attorney  
City of Greenville  
City Attorney's Office  
*Counsel to the Board*

LaToya Yates  
Staff Support Specialist II  
City of Greenville  
Planning and Development Services Department

### **EVIDENCE PRESENTED AND RECEIVED**

By the City of Greenville

Without objection, the following Administrative Materials<sup>4</sup> as defined by N.C.G.S. § 160D-406(c) were properly distributed and made a part of the Hearing record at the July 25, 2024 Board meeting:

1. The City's packet including: 1) Title of Item sheet (AM, p. 13); 2) City staff's report entitled Special Use Permit—Board of Adjustment, July 25, 2024, including a background of the Property at issue, relevant provisions of the Zoning Ordinance, City staff's comments, City staff's recommended conditions, and City staff's recommendation (AM, pp. 14-17); 3) the Applicants' June 27, 2024 Special Use Permit Application (AM, pp. 18-23); 4) July 10, 2024 public hearing notice letter from Bryan Jones, Lead Planner, to Applicant, Mohamed Mohamed, regarding the placement of the Application on the Board's July 25, 2024 Agenda (AM, p. 24); 5) July 10, 2024 public hearing notice letter from Bryan Jones, Lead Planner, to surrounding property owners of the subject properties including a list of surrounding property owners who were notified by mail of the July 25, 2024 meeting (AM, pp. 25, 27); and 6) a cover sheet entitled Mohamed Mohamed showing an aerial photograph of the subject Property designated with red shading over the individual parcel and a yellow star on the parcel (AM, p. 26).
2. The City's Microsoft PowerPoint presentation including: 1) General Location Map (slide); 2) Aerial Map (2020) (slide); 3) Zoning Map (slide); 4) Future Land Use & Character Map (slide); 5) View of the Property (front view photograph of the Property)(slide); and 6) Aerial Map (2020)(slide).

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<sup>4</sup> In accordance with N.C.G.S. § 160D-406(c), the Administrative Materials packet for the Hearing ("AM") containing "all applications, reports, and written materials relevant to the matter being considered" (paginated from pages 13 to 27) was "distributed to the members of the [B]oard prior to the [H]earing" and was made "a part of the [H]earing record." References to the AM packet for the Hearing will be as follows, e.g. (AM, pp. 18-20), etc. The Administrative Materials also included the City's Microsoft PowerPoint presentation.



By the Applicants

Pursuant to N.C.G.S. § 160D-406(d), the following documents<sup>5</sup> were presented without objection by the Applicant, Mohamed Mohamed, at the Hearing and were made a part of the Hearing record at the July 25, 2024 Board meeting:

1. An overhead design drawing showing the location of the office area and restroom and the six bays, two of which with overhead doors.
2. An frontview design drawing showing the location of the office area and restroom; the six bays, two of which with overhead doors; parking area; and overhead rendering of the restroom.

By Opponent Taylor Capital, LLC by Donald Taylor:

Pursuant to N.C.G.S. § 160D-406(d), the following documents<sup>6</sup> were presented without objection by the Opponent, Taylor Capital, LLC by Donald Taylor, member manager, at the Hearing and were made a part of the Hearing record at the July 25, 2024 Board meeting:

1. Eight photographs (four per sheet of two sheets) of a property located beside of Taylor Capital, LLC's Warehouse 17 located on Dickinson Avenue.

By Opponent James Horace Tetterton by Trudy Gulley:

Pursuant to N.C.G.S. § 160D-406(d), the following document<sup>7</sup> was presented without objection by the Opponent, James Horace Tetterton by Trudy Gulley, at the Hearing and was made a part of the Hearing record at the July 25, 2024 Board meeting:

1. A letter dated July 25, 2024 and signed by James H. Tetterton.

**BASED UPON** the careful consideration of the evidence produced after a study of the complete record, including the sworn testimony presented at the Hearing; evidence provided by the parties to the Board; oral arguments of the parties; and the entire record in this proceeding, the Board makes the following findings of fact.

In making the findings of fact, the undersigned has weighed all the competent, material,

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<sup>5</sup> In accordance with N.C.G.S. § 160D-406(d), the Applicant, Mohamed Mohamed, presented two renderings of the proposal which were presented and distributed to the Board, to the City, and to all other Parties with Standing at the Hearing and were made "a part of the [H]earing record."

<sup>6</sup> In accordance with N.C.G.S. § 160D-406(d), the Opponent presented eight total photographs and a letter which were presented and distributed to the Board and to the City at the Hearing and were made "a part of the [H]earing record."

<sup>7</sup> In accordance with N.C.G.S. § 160D-406(d), the Opponent presented a letter purportedly from James Horace Tetterton which was presented and distributed to the Board and to the City at the Hearing and were made "a part of the [H]earing record."

and substantial evidence in the record and has assessed the credibility of each person testifying by taking into account the appropriate factors for judging credibility, including but not limited to demeanor, any interests, bias, or prejudice the person may have, the opportunity of the person testifying to see, hear, know, or remember the facts or occurrences about which the person testified, whether the testimony of the person is reasonable, and whether the testimony is consistent with all other believable evidence in the case.

## FINDINGS OF FACT

### I. RELEVANT ORDINANCE PROVISIONS OF THE ZONING ORDINANCE.

#### A. City Code § 9-4-22 (Words and Terms Defined).<sup>8</sup>

1. City Code § 9-4-22 states in relevant and pertinent part as follows (emphasis in original):

*Repair; major.* The following activities shall be considered “major repair:”

- (1) Engine overhaul or dismantling of subparts;
- (2) Body or frame repair;
- (3) Windshield or glass replacement;
- (4) Transmission, starter, alternator or other subpart rework service;
- (5) Welding or metal cutting; and
- (6) Any other repair other than minor repair.

*Repair; minor.* The following activities shall be considered “minor repair:”

- (1) Engine tune-up; changing of plugs, filters, oil, lubricants, belts, adjustments;
- (2) Change and rotate tires;
- (3) Brake services;
- (4) Electrical system services;
- (5) Radiator services;
- (6) Muffler services; and

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<sup>8</sup> See Article B. (Definitions) of the Zoning Ordinance.

(7) Battery service.

**B. City Code § 9-4-78 and Appendix A (Table of Uses).<sup>9</sup>**

2. City Code § 9-4-78 states in pertinent part as follows:

The Table of Uses is set forth in Appendix A to this chapter.

(A) Permitted uses are indicated in the table by the letter P.

(B) Special uses are indicated in the table by the letter S.

Appendix A: Table of Uses of City Code (“Appendix A”) states in subsection (A) in pertinent part: “*Index to use table categories contained in this Appendix. (9) Repair.*” (emphasis in original). Appendix A subsection (C) states in pertinent part: “*Tables. The following uses shall be allowed only within the respective zoning districts as specified herein: (9) Repair.*” One of the uses defined by Appendix A as allowed by way of a special use permit (“S”) in the CDF (Downtown Commercial Fringe) zoning district is: “(9) *Repair. a. Major repair; as an accessory or principal use*” (“Appendix A, Use (9)a.”).

**C. City Code § 9-4-84 (Specific Criteria).<sup>10</sup>**

3. City Code § 9-4-84 states: “The Board of Adjustment may grant permission for the establishment of the uses listed under section 9-4-85 subject to the specific criteria set forth under section 9-4-86, the general criteria of section 9-4-81, as well as any special conditions which the Board may deem necessary to satisfy the general criteria set forth in section 9-4-81.”

**D. City Code § 9-4-85 (Index to Listed Uses Requiring a Special Use Permit).<sup>11</sup>**

4. City Code § 9-4-85, Subsection (B) states: “Major or minor repair facilities.”

**E. City Code § 9-4-86 (Listed Uses; Specific Criteria).<sup>12</sup>**

5. City Code § 9-4-86, Subsection (B) states:

(B) *Major or minor repair facilities.*

(1) All wrecked or damaged motor vehicles and parts shall be screened so as not to be visible from adjoining property lines and street right-

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<sup>9</sup> See Article D. (Zoning Districts), Part 3. (Permitted and Special Uses); Section 9-4-78 (Table of Uses); Appendix A. (Table of Uses) of the Zoning Ordinance (hereinafter referred to as the “Table of Uses”).

<sup>10</sup> See Article E. (Standards and Criteria for Special Uses) of the Zoning Ordinance.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

of-way.

- (2) All vehicles on the premises for repair shall be stored at the rear of the principal structure.
- (3) No vehicle shall be stored on the premises for more than 15 days.
- (4) There shall be no exterior storage of items other than vehicles and tires. Tires stored outside shall be in accordance with subsection (9) below.
- (5) Sale of vehicles shall be in accordance with section 9-4-22, definition of automobile, truck, recreational vehicle, motorcycle and boat sales, contained therein.
- (6) Rental or utility trailers, cars and trucks shall be permitted as accessory uses, provided that all units in excess of four shall be screened from adjoining street right-of-way and property lines in accordance with Bufferyard C or with a bufferyard of greater intensity as required by the bufferyard regulations.
- (7) Outdoor displays of products such as oil, wiper blades or other similar products shall be permitted provided they are within ten feet of the principal structure and outside required bufferyards. Signage displayed in conjunction with such display shall be in accordance with the sign regulations. A maximum of 24 tires may be displayed outside. All tires displayed outside of buildings shall not be closer than ten feet from the principal structure and shall not be more than twenty feet from the principal structure and must be located outside of required bufferyards. All tires displayed outside of buildings shall comply with compliance requirements set forth in subsection (9)(h).
- (8) All services except fuel sales shall be performed within a completely enclosed building.
- (9) Tires stored outside must comply with the following standards to minimize their visual impact and reduce their potential as a public nuisance and fire hazard:
  - (a) The maximum area devoted to tire storage shall be limited to 10% of the property area or 25% of the building from which the business operates, whichever is less;
  - (b) The maximum number of tires stored outside shall not exceed 300;

- (c) Tires must be stored behind required bufferyards and located where they are not visible from a street right-of-way or adjacent property through the installation of opaque fencing and/or landscaping or placement of tires behind buildings;
- (d) All tires must be placed on racks in the upright position;
- (e) There shall be a minimum separation of 20 feet between tire racks and property lines, street right-of-way, and buildings;
- (f) Rows of tire racks shall be separated from one another by a minimum of five feet;
- (g) The placement of tires stored outside shall be placed and maintained in accordance with this subsection (9) and the North Carolina Fire Code, as amended. The more restrictive provisions shall prevail between the NC Fire Code and tire storage standards of this section; and
- (h) Notwithstanding the provisions related to nonconforming uses and situations contained in Article C of this chapter, the requirements contained in this subsection (9) shall be applicable to all existing and future major and minor repair facilities.

**F. City Code § 9-4-103 (Special Standards for Certain Specified Uses).<sup>13</sup>**

6. City Code § 9-4-103, Subsection (Z) states:

*(Z) Major or Minor repair facilities.*

- (1) All tires displayed outside shall comply with section 9-4-86(B)(7).  
All tires stored outside shall comply with section 9-4-86(B)(9).

**II. THE PROPERTY.**

**A. The Location, Description, and Ownership.**

7. The property at issue is located in the northwestern quadrant of the City of Greenville at 1721 West Fifth Street, Greenville, North Carolina 27834, which is further identified as being Pitt County Tax Parcel No. 22810 (“the Property”).

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<sup>13</sup> See Article F. (Dimensional Standards, Modifications and Special Standards) of the Zoning Ordinance.

8. The Property, which is located near the intersection of West Fifth Street and Memorial Drive, is 0.6 acres in size and has approximately 145 feet of frontage along West Fifth Street.

9. Lions House LLC (“the Owner”) is the Owner<sup>14</sup> of the Property.

10. Barrag Nasser is both the managing member and registered agent for the Owner.

**B. The Zoning of the Property and the Surrounding Zoning and Development.**

11. The Property is zoned CDF (Downtown Commercial Fringe).

12. The surrounding zoning and development is as follows:

a. To the north of the Property: CDF (Downtown Commercial Fringe) – Mario’s Tacos (Mexican Restaurant).

b. To the south of the Property: MCH (Medical – Heavy Commercial) – Taylor Warehousing.

c. To the east of the Property: CDF (Downtown Commercial Fringe) – Citgo Gas Station/Convenience Store.

d. To the west of the Property: MCH (Medical – Heavy Commercial) – Taylor Warehousing/New Dimensions Church

**III. THE PARTIES AT THE HEARING.<sup>15</sup>**

**A. The Applicants.**

13. The Applicants are Mohamed Mohamed and Ismail Mohamed (“the Applicants”). Only Mohamed Mohamed appeared and testified at the Hearing.

14. As the “Applicant” in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c), Mohamed Mohamed had standing to participate fully as a party at the Hearing.

15. Mohamed Mohamed leases the Property from the Owner.

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<sup>14</sup> N.C.G.S. § 160D-102(18) defines “landowner” or “owner” as: “The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.”

<sup>15</sup> N.C.G.S. § 160D-406(d) states in pertinent part: “Presentation of Evidence. *The applicant, the local government, and any person who would have standing to appeal the decision under [N.C.]G.S. [§] 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing.* Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.” (emphasis added)

**B. The Local Government—The City of Greenville.**

16. The City of Greenville has standing as the “local government” in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c) to participate fully as a party at the Hearing.

17. Bryan Jones (“Mr. Jones”), Lead Planner for the City of Greenville, Planning and Development Services Department provided the City’s report at the Hearing; often referred to as the City Staff’s report, which consisted of Mr. Jones’s sworn testimony and the herein defined Administrative Materials.

**C. Other Parties with Standing.**

**1) Taylor Capital, LLC, d/b/a Taylor Warehousing, by Donald Taylor.**

18. Donald Taylor (“Mr. Taylor”) is a member manager of Taylor Capital, LLC, d/b/a Taylor Warehousing (“Taylor Capital”), which operates several warehouses in Greenville.

19. Taylor Capital is the owner of real property having Pitt County Tax Parcel No. 28898, which Taylor Capital refers to as Warehouse 18 (“the Taylor Capital property”). The Taylor Capital property spans from West Fifth Street to West Sixth Street, is within the 250 radius of the subject Property, and adjoins the subject Property on its western and southern boundaries.

20. Taylor Capital, LLC by and through Mr. Taylor is opposed to the Applicants’ application and the herein defined proposed use. He is also concerned about the enforcement of any zoning violations that may occur regarding the subject property if a special use permit is issued.

21. By a vote of 6 to 1 (six in favor and one in opposition), Taylor Capital, by and through Mr. Taylor, was found by the Board to have standing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) to participate as a party at the evidentiary hearing.

**2) James Horace Tetterton by Trudy Gulley.**

22. James Horace Tetterton (“Mr. Tetterton”) of Littleton, North Carolina, is the owner of real property located at 1700 West Sixth Street, Greenville, North Carolina (“the Tetterton property”).

23. The Tetterton property is located southeast of the subject Property and, although not adjoining the subject Property, is located approximately 20 feet from the Property; within the 250 radius of the Property.

24. Trudy Gulley (“Ms. Gulley”), individually and as a member of Lee and Harrell Real Estate Professionals, LLC, formerly RE/MAX Preferred Realty, LLC, appeared and testified for the Mr. Tetterton before the Board.



25. Ms. Gulley has served as the property manager of the Tetterton property for over 15 years. In this capacity, Ms. Gulley serves as an agent for Mr. Tetterton, having the authority to sign documents on Mr. Tetterton's behalf and write and negotiate contracts on Mr. Tetterton's behalf. Ms. Gulley has been a Realtor for over 35 years.

26. Mr. Tetterton leases the Tetterton property, by and through Ms. Gulley, to New Dimensions Community Church.

27. In accordance with Section 6-2<sup>16</sup> of the Board's *Rules of Procedure*, Mr. Tetterton authorized Ms. Gulley to appear on his behalf and to "take all necessary actions and make all decisions regarding any actions or voting necessary to oppose" the Applicants' application at issue.

28. By a vote of 6 to 1 (six in favor and one in opposition), Mr. Tetterton, by and through Ms. Gulley individually and as a member of Lee and Harrell Real Estate Professionals, LLC, formerly RE/MAX Preferred Realty, LLC, was found by the Board to have standing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) to participate as a party at the evidentiary hearing.

29. Mr. Tetterton by and through Ms. Gulley is opposed to the Applicants' application and the herein defined proposed use.

#### IV. THE WITNESSES AT THE HEARING.<sup>17</sup>

30. Haroom Mohamed, who is the assistant manager of Mohamed Mohamed's proposed business, testified at the Hearing.

31. Arthur Ray Rogers ("Mr. Rogers"),<sup>18</sup> who is a Deacon and member of the Board of Directors at New Dimensions Community Church, testified at the Hearing.

32. Mr. Rogers's wife is the Pastor of the Church.

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<sup>16</sup> Section 6-2 of the Board's *Rules of Procedure* states in pertinent part: "Any party may appear in person or by agent or by attorney at the hearing."

<sup>17</sup> N.C.G.S. § 160D-406(d) states in pertinent part: "*Presentation of Evidence*. The applicant, the local government, and any person who would have standing to appeal the decision under [N.C.]G.S. [§] 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. *Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the board.*" (emphasis added)

<sup>18</sup> By a unanimous vote (seven in favor and none in opposition), Mr. Rogers was found by the Board to be an agent of New Dimensions Community Church. However, by a separate unanimous vote (seven in favor and none in opposition), Mr. Tetterton, by and through New Dimensions Community Church, by the Church's agent, Mr. Rogers, was found by the Board to not have standing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) to participate as a party at the evidentiary hearing.

## V. THE REQUEST AND PROPOSED USE.

33. The Applicants submitted a Special Use Permit Application to the City on June 27, 2024 (File No.: BOA 24-14) seeking a special use permit to operate a tire shop/body shop, classified as an automotive major repair facility upon the Property pursuant to City Code § 9-4-22; City Code § 9-4-78 (Appendix A: Table of Uses, Use (9)a.); City Code § 9-4-84; City Code § 9-4-85(B); City Code § 9-4-86(B); and City Code § 9-4-103(Z). This purpose is described by application and in accordance with the Zoning Ordinance as: **Automotive Major Repair Facility**.

34. The Applicants plan to convert and develop the existing vacant car wash on the Property into a tire shop and body shop (automotive major repair facility) by closing in two of the existing six car wash bays with overhead garage-style doors on the north side of the bays and building a rear brick wall on the south side/rear of the bays.

35. The Applicants also plan to develop a 11 foot by 20 foot office space and waiting area in the center of the facility, which will include the addition of a 5 foot by 7 foot handicap accessible restroom. The office will have 8 foot ceilings.

36. The office will be flanked to the east by an adjoining 14.8 foot by 20 foot by 12 foot bay that will be enclosed with the northern facing overhead door and rear brick wall. The Applicants plan to construct a door leading from the office to this bay. To the east of this bay will be a 15 foot by 20 foot by 12 foot bay.

37. To the west of the office will be four bays. The first bay which adjoins the office will be a 15.5 foot by 20 foot by 12 foot bay that will be enclosed with the northern facing overhead door and rear brick wall. The Applicants plan to construct a door leading from the office to this bay. To the west of that bay will be three more bays; 15.5 foot by 20 foot by 12 foot; 15.6 foot by 20 foot by 12 foot; and 15.7 foot by 20 foot by 12 foot respectively moving to the west.

38. The Applicants plan that the major repair work will be conducted in one of the two bays with the overhead doors. The other closed bay will house machinery and new tires. As the business grows, future overhead doors will be added to the additional "empty bays." Tires will not be stored outside of the bays.

39. The Applicants plan to have at least six parking spaces, two of which will be designated handicap spaces.

40. Prior to the issuance of a building permit, the Applicants will be required to submit a site plan to the City which shall detail at a minimum the requirements of City Code § 9-4-22; City Code § 9-4-84; City Code § 9-4-85(B); City Code § 9-4-86(B); and City Code § 9-4-103(Z) and may be required by the City to submit a stormwater management and erosion control plan.

**VI. CRITERIA COMPLIANCE.**

41. No expert testimony was submitted by any party.

42. The Board agrees with the City that the Applicant's request can meet all of the development standards required for the issuance of the special use permit.

**A. Regarding General Criteria—City Code § 9-4-81.**

**1. Conditions and Specifications.**

43. The proposed use satisfies all required conditions and specifications of the Zoning Ordinance and policies of the City of Greenville for submission of a special use permit, including all developmental regulations and standards.

44. As required, the plan incorporates necessary setbacks and provides ample parking that meets or exceeds minimum requirements for the use and zoning district.

45. The Applicants will also adhere to all signage requirements established by the City of Greenville.

**2. Comprehensive Plan.**

46. The property is surrounded by other commercial properties making it compatible to be used for the proposed business structure.

47. The property is located within the Commercial character type as designated by the Horizon 2026 Greenville Community Plan.

48. The proposed use is in compliance with the Future Land Use and Character Map which recommends commercial development for the subject property.

**3. Health and Safety.**

49. The proposed use will not adversely affect the health and safety of residents and workers in the neighborhood.

50. The business will operate from an existing building, complying with all dimensional and developmental standards.

51. Access to the site will utilize an existing driveway, and ample parking will be available on-site, including spaces along the front of the building.

**4. Detriment to Public Welfare.**

52. The proposed operations will not be detrimental to the public welfare or hinder the

use and development of nearby properties or neighborhood activities. The business is located within a designated commercial zone in the City of Greenville.

53. The proposed use of the property will provide a compatible service to the area. Furthermore, the business will adhere to all applicable laws and regulations established by the City of Greenville and the State of North Carolina, ensuring compliance with safety standards.

54. The business is committed to collaborating with the City of Greenville officials to ensure that the proposed use adheres to regulations.

**5. Existing Uses Detrimental.**

55. The property is situated within a commercial zoning district. Surrounding properties are predominantly commercial, hosting various businesses such as convenience stores, gas stations, and restaurants. This area is a commercial hub with multiple retail establishments, aligning seamlessly with the intended use.

**6. Injury to Properties or Improvements.**

56. The proposed operations will not injure, by value or otherwise, adjoining or abutting property or harming neighboring properties or public amenities.

57. Located in a designated commercial zone along a major thoroughfare, the property is surrounded by various commercial establishments, such as restaurants and convenience stores. These activities are compatible with the proposed operations.

58. Given the commercial nature and compliance with zoning regulations, the applicant has shown that the operations will not negatively impact nearby properties or public amenities.

**7. Nuisance or Hazard.**

59. The proposed use would not be adversely affected by the existing uses in the area. It will not create a nuisance or hazard.

60. Situated in a designated commercial area, the site is anticipated to attract regular vehicular and customer traffic essential for its operation and success, without detriment to adjacent uses. It will enhance the retail and commercial offerings in the area.

61. Furthermore, the operations will fully comply with local, state, and federal laws.

**B. Regarding Specific Criteria—City Code § 9-4-84, City Code § 9-4-85(B), City Code § 9-4-86(B), and City Code § 9-4-103(Z).**

62. The proposed use can meet all of the requirements of City Code § 9-4-84, City Code § 9-4-85(B); City Code § 9-4-86(B); and City Code § 9-4-103(Z).

63. The Board agrees with the City that the Applicant's proposed request meets all criteria with the inclusion of all of the recommended special conditions.

## VII. NOTICE OF THE HEARING.

64. In accordance with N.C.G.S. § 160D-406(b); N.C.G.S. §§ 160D-705(a) and (c); and Chapter 143, Article 33C of the North Carolina General Statutes, particularly N.C.G.S. § 143-318.12, and the Board's *Rules of Procedure*, notice was mailed to the property owners located within a 250 foot radius of the subject Property on July 10, 2024 and notice of the public hearing was published in *The Daily Reflector* on July 13, 2024 and July 20, 2024.

65. Notice was also provided on July 10, 2024 by prominently posting a notice of the Hearing on the Property or on the adjacent street or highway right-of-way of the Property.

66. All individuals who testified before the Board at the Hearing were given notice of the quasi-judicial hearing pursuant to N.C.G.S. § 160D-406(b) and N.C.G.S. §§ 160D-705(a) and (c).

Based upon the foregoing findings of fact, the undersigned makes the following:

### CONCLUSIONS OF LAW

1. The Board is a "decision-making board" as defined by N.C.G.S. § 160D-102(9); has jurisdiction over this proceeding and "evidentiary hearing" as defined by N.C.G.S. § 160D-102(16), and possesses the authority to issue this "quasi-judicial decision" as defined by N.C.G.S. § 160D-102(28), N.C.G.S. § 160D-302, N.C.G.S. § 160D-406, N.C.G.S. §§ 160D-705(a) and (c); N.C.G.S. City Code Title 9, Chapter 4, Article E (City Code § 9-4-81 to § 9-4-86); City Code § 9-4-252; City Code Title 9, Chapter 4, Article S (City Code § 9-4-316 to § 9-4-324), and the Board's *Rules of Procedure*.

2. The Hearing was an "evidentiary hearing" as that term is defined by N.C.G.S. § 160D-102(16) and City Code § 9-4-22; was timely and properly scheduled and held; and the Notices of Hearing were timely and properly made, given, and/or served as required with no prejudice to the parties or others required to be notified of the hearing pursuant to N.C.G.S. § 160D-406(b) and N.C.G.S. §§ 160D-705(a) and (c).

3. The City had and has standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(4) because it is the local government and the Board is the City's decision making body at issue.

4. The Applicants had and have standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d), and N.C.G.S. § 160D-1402(c)(1)c. because the Applicants are applicants before the Board, whose decision is at issue.

5. Taylor Capital, LLC, d/b/a Taylor Warehousing, by and through its member manager, Donald Taylor, had and has standing to participate as a party in the Hearing in accordance

with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) because Taylor Capital, LLC, by and through Mr. Taylor, is a person who will suffer special damages as the result of the Board's decision.

6. James Horace Tetterton, by and through Judy Gulley, individually and as a member of Lee and Harrell Real Estate Professionals, LLC, formerly RE/MAX Preferred Realty, LLC, had and has standing to participate as a party in the Hearing in accordance with N.C.G.S. § 160D-406(d) and N.C.G.S. § 160D-1402(c)(2) because James Horace Tetterton, by and through Ms. Gulley, is a person who will suffer special damages as the result of the Board's decision.

7. All documents to be considered during the meeting were provided to each member of the Board in accordance with N.C.G.S. § 160D-406(c) and N.C.G.S. §§ 160D-705(a) and (c).

8. "A special use permit is one issued for a use which the ordinance expressly permits in a designated zone upon proof that certain facts and conditions detailed in the ordinance exist." Pope v. Davidson Cnty., \_\_\_ N.C. App. \_\_\_, 885 S.E.2d 119, 123, No. COA22-466, 2023 WL 2375794 (2023) (internal citations omitted) The North Carolina Court of Appeals in Pope v. Davidson Cnty. added:

According to well-established North Carolina law, the local governing board must follow a two-step decision-making process in granting or denying an application for a special use permit. Preliminarily, the local board must determine whether an applicant has produced competent, material, and substantial evidence tending to establish the existence of the facts and conditions which the ordinance requires for the issuance of a special use permit. Where an applicant has satisfied this initial burden, then prima facie he is entitled to the issuance of the requested permit. Accordingly, an applicant for a special use permit who has met its burden of production automatically wins if no contrary evidence is offered.

Id. (internal citations omitted; emphasis in original). See also MCC Outdoor, LLC v. Town of Franklinton Bd. of Comm'rs, 169 N.C. App. 809, 811, 610 S.E.2d 794, 796 (citation omitted) ("[W]hen an applicant produces evidence which demonstrates it has complied with the ordinance, the petitioner is entitled to have the permit issued unless substantial competent evidence is introduced to support its denial."), disc. rev. denied and appeal dismissed, 359 N.C. 634, 616 S.E.2d 540 (2005).

9. The Board has made such inquiry and received such evidence as it deems necessary to determine the nature and extent of the Applicant's application for special use permit in comparison to the intent of City Code Part II, Title 9, Chapter 4; and the needs of the City.

10. Pursuant to City Code Part II, Title 9, Chapter 4, Article E (Standards and Criteria for Special Uses) (City Code § 9-4-81 to § 9-4-86), particularly City Code § 9-4-81 (General Criteria) based upon the foregoing Findings of Fact, the Board unanimously concludes as follows:

(A) Conditions and Specifications. The proposed use meets all required conditions and specifications of the Zoning Ordinance and policies of the

City for submission of a special use permit. Such conditions and specifications include but are not limited to the following:

- (1) Compliance with lot area and dimensional standards.
  - (2) Compliance with setback and other locational standards.
  - (3) Compliance with off-street parking requirements.
  - (4) Compliance with all additional specific criteria set forth for the particular use, Section 9-4-84, of this Article.
  - (5) Compliance with all application submission requirements.
- (B) Comprehensive Plan. The proposed use is in general conformity with the Comprehensive Land Use Plan of the City and its extraterritorial jurisdiction.
- (C) Health and Safety. The proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use. Such health and safety considerations include but are not limited to the following:
- (1) The safe and convenient location of all on-site parking and drives.
  - (2) The existing vehicular traffic on area streets.
  - (3) The condition and capacity of area street(s) which will provide access to the proposed development.
  - (4) The visibility afforded to both pedestrians and operators of motor vehicles both on-site and off-site.
  - (5) The reasonably anticipated increase in vehicular traffic generated by the proposed use.
  - (6) The anticipated, existing and designed vehicular and pedestrian movements both on-site and off-site.
- (D) Detriment to Public Welfare. The proposed use will not be detrimental to the public welfare or to the use or development of adjacent properties or other neighborhood uses.
- (E) Existing Uses Detrimental. The proposed use would not be adversely affected by the existing uses in the area in which it is proposed.



- (F) Injury to Properties or Improvements. The proposed use will not injure, by value or otherwise, adjoining or abutting property or public improvements in the neighborhood.
- (G) Nuisance or Hazard. The proposed use will not constitute a nuisance or hazard. Such nuisance or hazard considerations include but are not limited to the following:
  - (1) The number of persons who can reasonably be expected to frequent or attend the establishment at any one time.
  - (2) The intensity of the proposed use in relation to the intensity of adjoining and area uses.
  - (3) The visual impact of the proposed use.
  - (4) The method of operation or other physical activities of the proposed use.
  - (5) The noise; odor; smoke; dust; emissions of gas, particles, solids or other objectionable or toxic characteristics which are proposed or that can reasonably be expected to be a result of the operation of the proposed use.
  - (6) The danger of fire or explosion.

11. The Applicants have produced competent, material, and substantial evidence tending to establish the existence of the facts and conditions which the Zoning Ordinance requires for the issuance of a special use permit.

12. Accordingly, given that the Applicants have satisfied this initial burden, then the Applicants are prima facie entitled to the issuance of the requested special use permit.

13. There is a lack of competent, material, and substantial evidence that was introduced to support the denial of the Applicants' special use permit.

14. The Applicants are therefore entitled to have the requested special permit issued.

15. Based upon the totality of the evidence before the Board, and in accordance with City Code Part II, Title 9, Chapter 4, Article E (City Code § 9-4-81 to § 9-4-86), particularly City Code § 9-4-81 (General Criteria), the Board, by unanimous vote (seven in favor and none in opposition), determines and concludes that granting permission for the establishment of the following listed special use upon the Property is warranted in this matter: **Automotive Major Repair Facility** in accordance with City Code § 9-4-22; City Code § 9-4-78 (Appendix A: Table of Uses, Use (9)a.); City Code § 9-4-84; City Code § 9-4-85(B); City Code § 9-4-86(B); and City Code § 9-4-103(Z).

16. The Board is authorized to “hear and decide special use permits in accordance with principles, conditions, safeguards, and procedures specified in the [local] regulations.” N.C.G.S. § 160D-705(c) (also stating that “[r]easonable and appropriate conditions and safeguards may be imposed upon” special use permits). Moreover, a condition imposed must reasonably related to the proposed use, not conflict with the Zoning Ordinance, and further a legitimate objective of the Zoning Ordinance. Overton v. Camden Cnty., 155 N.C. App. 391, 398–99, 574 S.E.2d 157, 162-63 (2002).

17. Based upon the totality of the evidence before the Board and in accordance with N.C.G.S. §§ 160D-705(a) and (c) and City Code Part II, Title 9, Chapter 4, Article E (City Code § 9-4-81 to § 9-4-86), particularly and City Code § 9-4-82 (Additional Restrictions), the Board, by unanimous vote (seven in favor and none in opposition), determines and concludes that the following conditions, restrictions, and standards should be imposed and required upon the Property as recommended by the City and as herein stated in its Decision and Order, infra, as may be necessary to protect the health and safety of workers and residents of the community, and to protect the value and use of property in the general neighborhood:

- A. Per City Code § 9-4-302, the change of use from a car wash to a major repair facility will require a site plan submission and approval.
- B. If applicable, a stormwater management and erosion control plan approval will be required prior to issuance of a building permit.
- C. Vehicles on the premises for repair shall be screened so as not to be visible from adjoining property lines and street right-of-way.
- D. The Property shall not evolve into a junkyard, automobile graveyard, or materials reclamation facility.
- E. The proposed project must meet all related State of North Carolina fire and building codes prior to occupancy.

18. At the conclusion of the Hearing, the Applicant was informed of the Board’s Decision. This written decision is being made within a reasonable time and is otherwise in compliance with N.C.G.S. § 160D-406(j) and N.C.G.S. §§ 160D-705(a) and (c).

Based upon the foregoing findings of fact and conclusions of law, the Board makes the following:

## DECISION AND ORDER

1. Upon consideration of the competent, material, and substantial evidence in the record and the arguments by the parties, by unanimous vote (seven in favor and none in opposition), the Board, in accordance with N.C.G.S. § 160D-406; N.C.G.S. §§ 160D-705(a) and (c); and City Code Part II, Title 9, Chapter 4, particularly City Code § 9-4-22; City Code § 9-4-78 (Appendix A: Table of Uses, Use (9)a.); City Code § 9-4-84; City Code § 9-4-85(B); City Code § 9-4-86(B); and City Code § 9-4-103(Z), hereby **GRANTS** permission for the establishment of the following special use for the subject Property and hereby **ISSUES A SPECIAL USE PERMIT** as follows: **Automotive Major Repair Facility** in accordance with City Code § 9-4-22; City Code § 9-4-78 (Appendix A: Table of Uses, Use (9)a.); City Code § 9-4-84; City Code § 9-4-85(B); City Code § 9-4-86(B); and City Code § 9-4-103(Z).

2. Pursuant to N.C.G.S. § 160D-705(c) and City Code § 9-4-82, the Board, by unanimous vote (seven in favor and none in opposition), further **ORDERS** that the herein described Special Use Permit is hereby **ISSUED SUBJECT TO AND WITH THE FOLLOWING CONDITIONS AND RESTRICTIONS**:

- A. Per City Code § 9-4-302, the change of use from a car wash to a major repair facility will require a site plan submission and approval.
- B. If applicable, a stormwater management and erosion control plan approval will be required prior to issuance of a building permit.
- C. Vehicles on the premises for repair shall be screened so as not to be visible from adjoining property lines and street right-of-way.
- D. The Property shall not evolve into a junkyard, automobile graveyard, or materials reclamation facility.
- E. The proposed project must meet all related State of North Carolina fire and building codes prior to occupancy.

3. This permit is issued to the Applicants and shall be binding upon the Applicants, their successors, and/or assigns.

4. Any use of the Property inconsistent with the approved application shall be prohibited under this permit and shall be subject to revocation accordance with City Code.

5. This permit is subject to full compliance with all specific requirements as set out in City Code Part II, Title 9, Chapter 4.

6. If any of the conditions stated above shall not be met, then this permit shall become void and of no effect.

**NOTICE OF RIGHT TO APPEAL**

Pursuant to N.C.G.S. § 160D-406(j), City Code § 9-4-319, and Section 3-3 of the *Rules of Procedure* of the City of Greenville Board of Adjustment, a quasi-judicial decision by the City of Greenville Board of Adjustment is effective upon filing the written decision with the Secretary of the Board of Adjustment. The decision of the City of Greenville Board of Adjustment shall be delivered within a reasonable time by personal delivery, electronic mail, or by first-class mail to the applicant, landowner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The Secretary of the Board of Adjustment shall certify that proper notice has been made.

In accordance with N.C.G.S. § 160D-406(k), every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to N.C.G.S. § 160D-1402. See also City Code § 9-4-324. Appeals shall be filed within the times specified in N.C.G.S. § 160D-1405(d). A petition for review shall be filed with the Clerk of Superior Court of Pitt County by the later of **30 days** after the decision is effective or after a written copy thereof is given in accordance with N.C.G.S. § 160D-406(j). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

**SO DECIDED and ORDERED**, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Chair, Board of Adjustment

Received and filed, this the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

\_\_\_\_\_  
Bryan Jones  
Secretary to the Board of Adjustment

\* \* \* \* \*

**CERTIFICATE OF SERVICE**

This is to certify that in accordance with N.C.G.S. § 160D-406(j), the foregoing **Decision and Order Granting Special Use Permit (Quasi-Judicial Decision)** was served upon the following parties (“the applicant, landowner, and any person who has submitted a written request for a copy prior to the date the decision becomes effective”), unless otherwise indicated, by 1) personal delivery, 2) electronic mail to the following email address(es), or by 3) first-class mail by depositing a copy of the same enclosed in a post-paid wrapper in a post office or official depository under the exclusive care and custody of the United States Postal Service addressed as follows:

Mohamed Mohamed  
1201B Peyton Circle  
Greenville, NC 27834  
Email: [mohamedmohamed4418@yahoo.com](mailto:mohamedmohamed4418@yahoo.com)  
*Applicant*  
***Via Electronic Mail and  
First-Class Mail Only***

Ismail Mohamed  
1495 Wellington Drive  
Baton Rouge, LA 70815  
Email: [im4377770@gmail.com](mailto:im4377770@gmail.com)  
*Applicant*  
***Via Electronic Mail and  
First-Class Mail Only***

Lions House LLC  
c/o Barrag Nasser, Managing Member  
5014 Country Club Drive  
Wilson, NC 27896  
Email: [abuleaf1@icloud.com](mailto:abuleaf1@icloud.com)  
*Owner*  
***Via Electronic Mail and  
First-Class Mail Only***

Lions House LLC  
c/o Barrag Nasser, Registered Agent  
5014 Country Club Drive  
Wilson, NC 27896  
Email: [abuleaf1@icloud.com](mailto:abuleaf1@icloud.com)  
*Owner*  
***Via Electronic Mail and  
First-Class Mail Only***

James Horace Tetterton  
1100 Osprey Point Road  
Littleton, NC 27850  
*Party with Standing as Determined by Board*  
***Via First-Class Mail Only***

Taylor Capital, LLC  
by Donald Taylor, Member Manager  
Post Office Box 714  
Greenville, NC 27835  
*Party with Standing as Determined by Board*  
***Via First-Class Mail Only***

This the \_\_\_\_\_ day of \_\_\_\_\_, 2024.

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Bryan Jones  
Secretary to the Board of Adjustment



City of Greenville,  
North Carolina

Meeting Date: 09/26/2024

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**Title of Item: PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT  
BY ELITE GROUP SERVICES, INC.**

The applicant, Elite Group Services, Inc., desires a special use permit to operate a Mental health, emotional or physical rehabilitation day program facility pursuant to Appendix A, Use 8 (ff)(1) of the Greenville City Code. The proposed use is located at 2409 Charles Blvd. The property is further identified as being tax parcel number 42533.

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**ATTACHMENTS**

[BOA 24-15 Elite Group Services - Agenda Packet.pdf](#)

**Special Use Permit - Board of Adjustment**  
September 26, 2024 6:00 p.m.  
City Council Chambers  
Staff Contact: Bryan Jones, 252-329-4608

**Date:** August 22, 2024

**Applicant:** Elite Group Services, Inc.

**Request:** The applicant, Elite Group Services, Inc., desires a special use permit to operate a mental health, emotional or physical rehabilitation day program pursuant to Appendix A, Use 8 (ff)(1) of the Greenville City Code.

**Location:** The proposed use is located at 2409 Charles Blvd. The property is further identified as being tax parcel number 42533.

**Zoning of Property:** OR (Office-Residential)

**Surrounding Zoning:**

North: OR (Office-Residential) – Oakmont Baptist Church  
South: OR (Office-Residential) – Greenville Fire Station #3  
East: OR (Office-Residential) – Attorney Office (Hugh D. Cox)  
West: OR (Office-Residential) – Dentist (Dr. Paul Manning) / East Carolina Veterinary

**Description of Property:**

The subject parcel is 0.15 acre in size with approximately 25 feet of frontage along Charles Drive. The proposed use is for an existing 2160 square foot commercial building. The applicant proposes to operate a mental health, emotional and physical rehabilitation day treatment facility.

**Comprehensive Plan:**

The property is located within the Office/Institutional (OI) character types as designated by the Horizon 2026 Greenville Community Plan. The character type is described as a transition between more intense commercial areas and surrounding neighborhoods. The proposed use is in compliance with the Future Land Use Plan.

**Notice:**

Notice was mailed to the adjoining property owners on September 11, 2024. Notice of the public hearing was published in the Daily Reflector on September 14, 2024 and September 21, 2024.

**Related Zoning Ordinance Regulations:**

Definition: *Mental health, emotional or physical rehabilitation day program facility.*



(1) An establishment qualified for a license by the State of North Carolina which provides a day treatment, day activity or other extended counseling service to persons who do not reside at the establishment and who are physically disabled, mentally retarded, developmentally disabled, persons recuperating from alcohol or drug related problems, persons adjusting to society as an alternative to imprisonment, children or adolescents who are emotionally disturbed and need special educational services, and persons recuperating from mental or emotional illness, but not including mentally ill persons who are dangerous to others. Persons receiving service at the establishment may be at the facility for no longer than 18 hours within any 24-hour period.

(2) "Dangerous to others" means that within the recent past, the individual has inflicted or attempted to inflict or threatened to inflict serious bodily harm on another, or has acted in such a way as to create a substantial risk of serious bodily harm to another, or has engaged in extreme destruction of property; and that there is a reasonable probability that his conduct will be repeated. Previous episodes of dangerousness to others, when applicable, may be considered when determining reasonable probability of future dangerous conduct. Professionals or paraprofessionals providing assistance to the occupants shall be allowed in addition to the maximum occupancy.

**Staff Recommended Conditions:**

The facility must comply with all state and federal requirements, licensing, rules, health certifications, background checks and other requirements imposed or directed by the NC Division of Health, Human Services.

At no time will clients of the day program facility be permitted to wait or be outside without being accompanied by a staff member of the facility to supervise and ensure proper behavior of the clients including but not limited to aggressive actions, littering, fighting, yelling, loitering or other unacceptable behavior.

**Other Comments:**

The proposed project shall meet all related NC State building and fire codes regulations applicable to the occupancy use.

**Staff Recommendation:**

Planning staff is of the opinion that the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

Revised February, 2021

BOA 24 . 15

Date Received 8-14-2024

**CITY OF GREENVILLE  
SPECIAL USE PERMIT APPLICATION**

Applicant Name(s) Elite Group Services, Inc.

\_\_\_\_\_  
\_\_\_\_\_

Contact Name and Mailing Address Harry Southerland  
P.O. Box 417  
Raeford, NC 28376

Contact Phone Number (910) 366-3830

Contact Phone Number ( ) \_\_\_\_\_

Contact Fax Number (910) 248-6258

Contact Email Address hsoutherland@elitegrp services.com

Location /Street address of proposed use 2409 Charles Blvd.  
Greenville, NC 27858

Tax Parcel # 42533

Proposed use Outpatient Therapy Office

\_\_\_\_\_  
\_\_\_\_\_

Revised February, 2021

The Zoning Ordinance imposes the following General Restrictions on the use requested by the applicant. Under each requirement the applicant should explain, with reference to attached plans, where applicable, how the proposed use satisfies these requirements. Answers should be supported by facts when possible.

The Board of Adjustment may grant permission for the establishment of a listed special use if the Board finds from the evidence produced after a study of the complete record that:

(a) Conditions and Specifications. That the proposed use meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a special use permit. Such conditions and specifications include but are not limited to the following:

Compliance with lot area, dimensional standards, setback and other location standards, off-street parking requirements, all additional specific criteria set forth for the particular use, Section 9-4-86, of Article E, and all application submission requirements.

Adequate parking is provided for the business use and outpatient therapy office. Parking loading and unloading is also provided for the outpatient therapy office use. Parking areas designated for 2409 Charles will be marked. Existing setbacks, existing dimensional standards, and lot areas are adequate.

(b) Comprehensive Plan. That the proposed use is in general conformity with the Comprehensive Land Use Plan of the City and its extraterritorial jurisdiction.

90% of the floor area of 2409 Charles Blvd is permitted for Office Use for Commercial Zoning. 10% of this special use permit to include Outpatient Therapy Services. The Outpatient Therapy Services are designed to provide individuals with the tools and resources necessary to overcome mental and behavioral health challenges.

Revised February, 2021

(c) Health and Safety. That the proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use.

Such health and safety considerations include but are not limited to the following:

1. The safe and convenient location of all on-site parking and drives.
2. The existing vehicular traffic on area streets.
3. The condition and capacity of area streets which will provide access to the proposed development.
4. The visibility afforded to both pedestrians and operators of motor vehicles both on-site and off-site.
5. The reasonably anticipated increase in vehicular traffic generated by the proposed use.
6. The anticipated, existing and designed vehicular and pedestrian movements both on-site and off-site.

A small portion of 2409 Charles Blvd will be used for Outpatient Therapy Services. Adequate walkways from parking to the office is also existing. Since the portion of the floor area is accessory use to the Business function to 2409 Charles Blvd, then an increase in traffic is not expected.

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(d) Detriment to Public Welfare. That the proposed use will not be detrimental to the public welfare or to the use or development of adjacent properties or other neighborhood uses.

The proposed use will not be detrimental to the public welfare instead it will be an investment into the community. We will be adding education to those in need of outpatient services. Treated individuals contributes to the safety and overall welfare of themselves, their family and the community.

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(e) Existing Uses Detrimental. That the proposed use would not be adversely affected by the existing uses in the area in which it is proposed.

The exiting areas will not be a detriment to the use of 2409 Charles Blvd. 90% of the floor area is also business use that matches the existing suites.

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Revised February, 2021

(f) Injury to Properties or Improvements. That the proposed use will not injure, by value or otherwise, adjoining or abutting property or public improvements in the neighborhood.

*There will be no exterior improvements. Thus the facade of the building will remain as-is.*

(g) Nuisance or Hazard. That the proposed use will not constitute a nuisance or hazard. Such nuisance or hazard considerations include but are not limited to the following:

1. The number of persons who can reasonably be expected to frequent or attend the establishment at any one time.
2. The intensity of the proposed use in relation to the intensity of adjoining and area uses.
3. The visual impact of the proposed use.
4. The method of operation or other physical activities of the proposed use.
5. The noise; odor; smoke; dust; emissions of gas, particles, solids or other objectionable or toxic characteristics which are proposed or that can reasonably be expected to be a result of the operation of the proposed use.
6. The danger of fire or explosion.

*The main floor area will be 90% business use. The remaining 10% of the floor area will include Outpatient Therapy services. Due to the main floor area the proposed will not constitute a nuisance or hazard.*

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief. I authorize the City of Greenville to place a sign on the property in question, for the purpose of alerting the general public of my request.

*Harry Southerland*

Print Name

*Harry Southerland*

Signature of Applicant

*7/26/21*

Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Signature of Applicant

\_\_\_\_\_  
Date

**NOTE:** If the person who is requesting the Board of Adjustment to take action on a particular piece of property is not the owner of the property and does not have a binding option to purchase the property, then the actual owner(s) of the land must complete this form. If the person who is requesting the Board of Adjustment to take action on a particular piece of property is the owner of the property or has a binding option to purchase the property, please disregard this form. Attach a copy of the option to purchase if the applicant has a binding option to purchase the property.

I We Owner of Pro Worker Plus LLC, Daniel Moore Jr am /are the owner(s) of the property located at 2409 Charles Blvd, Greenville NC 27858

I We hereby authorize Harry Sutherland of Elite Group Services to appear by consent before the Greenville Board of Adjustment in order to ask for a special use permit to operate outpatient office

at this location. I We understand that the special use permit, if granted, is permanent and runs with the land unless otherwise conditioned. I We authorize the City of Greenville to advertise and present this matter in my /our name as the owner of the property.

If there are any questions, you may contact Daniel Moore Jr at my address, 306 Scottish Ct, Greenville NC 27858

or by telephone at ( 252 ) 695-8049 or ( 252 ) 217-7795

Property owner email dmoore1616@rocketmail.com

Respectfully yours,

D Moore Jr 7/26/24  
Owner Date

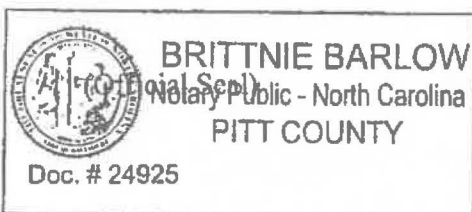
Owner Date

Pitt County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Daniel Moore Jr

Date: 7/26/2024

[Signature]  
Notary Public

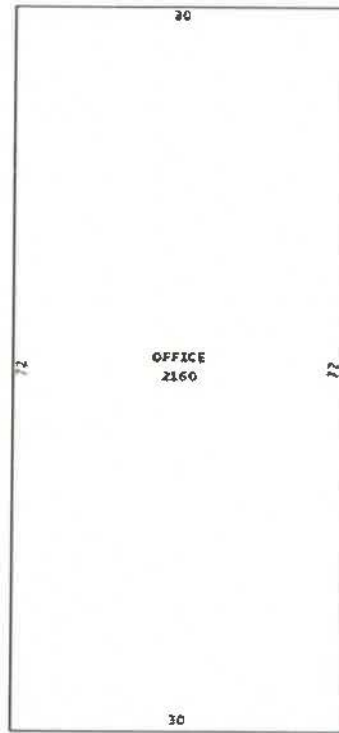


My commission expires: 11-19-2027

42533  
2409 CHARLES BV

PRO WORKER PLUS LLC  
2409 CHARLES BV GREENVILLE NC 27858

Total Market Value  
**\$185,898**







PLANNING AND DEVELOPMENT SERVICES  
PLANNING DIVISION

September 11, 2024

Elite Group Services, Inc.  
c/o Harry Southerland  
PO Box 417  
Raeford, NC 28376

Dear Petitioner:

The City of Greenville wishes to inform that your request for a special use permit has been placed on the Board of Adjustment agenda. The request is for a special use permit operate a Mental health, emotional or physical rehabilitation day program facility pursuant to Appendix A, Use 8 (ff)(1) of the Greenville City Code. The property is located at 2409 Charles Blvd and further identified as being tax parcel number 42533.

A public hearing will be held by the Board of Adjustment on Thursday, September 26, 2024 at 6:00 PM in the Council Chambers on the third floor of City Hall, 200 West Fifth Street.

Your presence (or that of your authorized representative) is required at this meeting to answer any questions which may arise concerning your request. If you plan to distribute any documents, exhibits and/or any other materials the night of the hearing, please make sure you provide 15 copies for the board and city staff. **Applicable presentations that you wish to show at this meeting must be electronically submitted to staff via our dropbox link at <https://www.dropbox.com/request/7pkUNJK3ctlmVWouiYmf> no later than 5:00 PM on Friday, September 20, 2024.**

To review the staff report, please visit the City of Greenville's website at [www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings](http://www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings). This information should be available for viewing by Friday, September 20, 2024. If you have any questions concerning this matter, please do not hesitate to call me at (252) 329-4608 or [cbjones@greenvillenc.gov](mailto:cbjones@greenvillenc.gov).

Sincerely,

*Bryan Jones*

Bryan Jones  
Lead Planner

Enclosure

Doc. #198035



PLANNING AND DEVELOPMENT SERVICES  
PLANNING DIVISION

September 11, 2024

Dear Greenville Area Property Owner:

The City of Greenville wishes to inform you that a formal request has been made to the Board of Adjustment by Elite Group Service, Inc. to apply for a special use permit to operate a Mental health, emotional or physical rehabilitation day program facility pursuant to Appendix A, Use 8 (ff)(1) of the Greenville City Code. The property is located at 2409 Charles Blvd and further identified as being tax parcel number 42533. You are receiving this notification because your property is within 250 feet of the proposed request.

A public hearing will be held by the Board of Adjustment on Thursday, September 26, 2024 at 6:00 PM in the Council Chambers on the third floor of City Hall, 200 West Fifth Street. You are welcome to attend.

Also, you may watch the meeting live on GTV9 at <https://www.greenvillenc.gov/government/city-manager-s-office/public-information-office/government-access-channel-gtv9> or by scanning the provided QR code below. Once you have accessed the website above, click the hyperlink located in the first sentence that says, "Click HERE to watch a live stream of GTV9."

**If you have competent and material evidence relevant to this case, you may participate in the evidentiary hearing. If you have questions about how to participate in the evidentiary hearing, please contact me as soon as possible.** If you plan to distribute any documents, exhibits and/or any other materials the night of the hearing, please make sure you provide 15 copies for the board and city staff. You will be sworn in on the night of the hearing.

For more information regarding the case, please visit the City of Greenville's website at [www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings](http://www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings). This information should be available for viewing by Friday, September 20, 2024. If you have any questions concerning this matter, please feel free to contact me at 252-329-4608 or [cbjones@greenvillenc.gov](mailto:cbjones@greenvillenc.gov).

Best Regards,

*Bryan Jones*

Bryan Jones  
Lead Planner

Enclosures

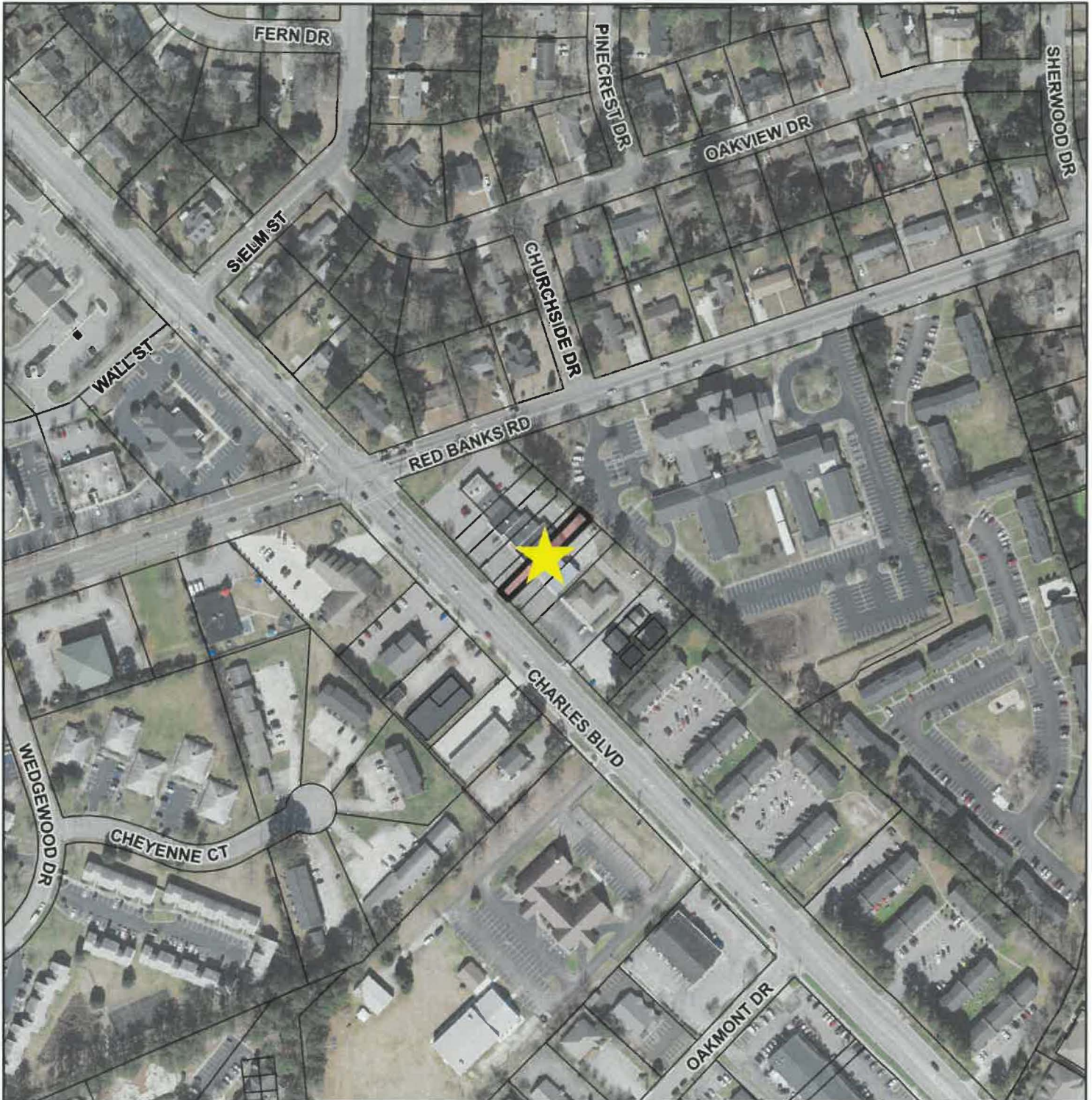
1198034



OwnerName	OwnerAddress1	OwnerAddress2	CityStateZip
BEARCAT PROPERTIES LLC	470 BASS RD		NASHVILLE NC 27856
FINN INVESTMENTS LLC	921 CARLTON PL		GREENVILLE NC 27858
PONDER PROPERTIES LLC	2403 S CHARLES BLVD		GREENVILLE NC 27835
2408 CHARLES BLVD LLC	430 BAYWOOD DR		WINTERVILLE NC 28590
THREE DOGS PROPERTIES LLC	1117 OXNER COVE RD		WAYNESVILLE NC 28786
BEN ALI HOLDINGS LLC	2401 S CHARLES BV		GREENVILLE NC 27858
OAKMONT BAPTIST CHURCH INC	1100 RED BANKS RD		GREENVILLE NC 27858
GREENVILLE RE HOLDINGS LLC	PO BOX 2571		GREENVILLE NC 27836
GREENVILLE CITY OF	PO BOX 7207		GREENVILLE NC 27835
WILLIAMSON FAMILY TRUST	STALLING JIMMY R JR TRUSTEE	112 OXFORD ROAD	GREENVILLE NC 27858
SUBASH DORATHY HEMALATHA	RAGHAVAN SUBASH	102 CHURCHSIDE DR.	GREENVILLE NC 27858
MCCORD VENTURE PROPERTIES LLC	1105 RED BANKS RD		GREENVILLE NC 27858
G & M HARVEY INVESTMENTS LLC	1125 TAZWELL PLACE		RALEIGH NC 27612
PRO WORKER PLUS LLC	2409 CHARLES BV		GREENVILLE NC 27858
HUMPHREY VIVIAN A	93 CLOYES ST		ASHEVILLE NC 28806
P & A HOLDINGS LLC	PO BOX 432		MEBANE NC 27302



*Find yourself in good company®*



 Location  Subject Property  Parcels

0 140 280 550 Feet





City of Greenville,  
North Carolina

Meeting Date: 09/26/2024

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**Title of Item:** PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT  
BY RAISSHA ENTERPRISES, INC., DBA HIGH LIFE SMOKE SHOP

The applicant, Raishsha Enterprises, Inc. DBA High Life Smoke Shop, desires a special use permit to operate a Tobacco Shop Class 1 pursuant to Appendix A, Use 10(ff) of the Greenville City Code. The proposed use is located at 205 SW Greenville Blvd, Suite 200. The property is further identified as being tax parcel number 13094.

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ATTACHMENTS

[BOA 24-16 High Life Smoke Shop - Agenda Packet.pdf](#)



**Special Use Permit – Board of Adjustment**  
June 27, 2024 6:00 p.m.  
City Council Chambers  
Staff Contact: Bryan Jones, 252-329-4608

**Date:** August 30, 2024

**Request:** The applicant, Raishsha Enterprises, Inc. DBA High Life Smoke Shop, desires a special use permit to operate a Tobacco Shop Class 1 pursuant to Appendix A, Use 10(ff). of the Greenville City Code.

**Location:** The proposed use is located at 205 SW Greenville Blvd. The property is further identified as being tax parcel number 27092.

**Zoning of Property:** CG (General Commercial)

**Surrounding Zoning and Development:**

North: CG (General Commercial) – Wal Mart  
South: CH (Heavy Commercial) – Hilton / Holiday Inn  
East: CH (Heavy Commercial) – Holiday Inn  
West: CH (Heavy Commercial) – Hilton Greenville

**Description of Property:**

The subject property is a 0.83-acre lot with approximately 220 feet of frontage along Greenville Blvd. The proposed use is in an existing 11,700 square foot multi-unit commercial building. The applicant wishes to operate a Tobacco Shop Class 1.

**Comprehensive Plan:**

The Future Land Use Plan recommends Commercial for this property. Commercial is described as Primarily community- and regional-scale commercial development situated near and along major roadway corridors. Existing development is characterized by buildings set back from streets behind surface parking. The proposed use is in compliance with the Future Land Use Plan.

**Notice:**

Notice was mailed to the adjoining property owners on September 11, 2024. Notice of the public hearing was published in the *Daily Reflector* on September 14, 2024 and September 21, 2024.

**Related Zoning Ordinance Regulations:**

**Definition:**

*Tobacco Shop (Class 1).* An establishment that, as a substantial portion of the use, entails the retail sales of tobacco product including, but not limited to, cigarettes, cigars, chewing tobacco, shisha, unformed or loose tobacco, and/or similar products. For the purpose of this definition, a substantial portion of the use is established if:

- (1) At least 20% of the establishments floor area open and accessible to customers is used for the display and/or stocking of tobacco products as provided herein; or
- (2) At least 40% of the sign area of the establishment's on-site signage that is visible from public rights-of-way advertises tobacco products as provided herein.

**Specific Criteria:**

Section 9-4-103(BB)

*(BB) Tobacco Shop (Class 1).*

- (1) No tobacco shop (class 1) shall be located within a 500-foot radius of an existing or approved school. This measurement shall be made from the exterior wall of the proposed tobacco shop (class 1) to the nearest exterior wall of any existing or approved school.
- (2) No tobacco shop (class 1) shall be located within any certified redevelopment area.

The major difference between a Class 1 and Class 2 Tobacco Shop is a Class 2 can sell water pipes, hookah pipes, bowls, water bongs or similar products and a Class 1 cannot.

**Staff Recommended Conditions**

Shall not operate as a Tobacco Shop Class 2 or evolve into a hookah café.

No retail sales of any smoking apparatus to include but not be limited to water pipes, hookah pipes, bowls, water bongs, vape devices or similar products.

No LED or flashing letters, light strips or signs shall be permitted on the glass, around signage, or the outside of the building.

Advertisement shall not cover more than 25% of the windows or doors.

All signage shall comply with City of Greenville Sign Ordinance and will not be permitted prior to operation as a tobacco shop.

No loitering permitted outside of the business.

Must comply will all federal, state and local laws.

**Staff Comments:**

The proposed project must meet all related State of North Carolina fire and building codes prior to occupancy.

**Staff Recommendation:**

In staff's opinion, the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.



BOA 24 - 16

Date Received 8-28-2024

### CITY OF GREENVILLE SPECIAL USE PERMIT APPLICATION

Applicant Name(s) Raishsa Enterprises, Inc. dba High Life Smoke Shop  
Lawrence J. Shaheen Jr., Attorney by and on behalf of JMP Global LLC

Applicant Mailing Address \_\_\_\_\_

Applicant Phone Number \_\_\_\_\_

Applicant Email Address \_\_\_\_\_

Contact Name and Mailing Address Lawrence J. Shaheen, Jr.  
PO Box 2270, Davidson, NC 28036

Contact Phone Number ( 704 ) 892-1699 ext 350

Contact Phone Number ( \_\_\_\_\_ ) \_\_\_\_\_

Contact Fax Number ( \_\_\_\_\_ ) \_\_\_\_\_

Contact Email Address Larry@mcintoshlawfirm.com

Location /Street address of proposed use 205 SW Greenville Blvd, Greenville, NC 27834

Tax Parcel # 27092

Proposed use Tobacco Shop 1 Special Use Permit for Retail Sale of Tobacco and Vape Products

The Zoning Ordinance imposes the following General Restrictions on the use requested by the applicant. Under each requirement the applicant should explain, with reference to attached plans, where applicable, how the proposed use satisfies these requirements. Answers should be supported by facts when possible.

The Board of Adjustment may grant permission for the establishment of a listed special use if the Board finds from the evidence produced after a study of the complete record that:

- (a) Conditions and Specifications. That the proposed use meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a special use permit. Such conditions and specifications include but are not limited to the following:

Compliance with lot area, dimensional standards, setback and other location standards, off-street parking requirements, all additional specific criteria set forth for the particular use, Section 9-4-86, of Article E, and all application submission requirements.

The property is zoned CG, which allows for a Tobacco Shop Class 1. There are no plans to make alterations to the exterior of the premises.

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- (b) Comprehensive Plan. That the proposed use is in general conformity with the Comprehensive Land Use Plan of the City and its extraterritorial jurisdiction.

As a Class 1 Tobacco Shop conforms with the zoning regulations of this property, our plan is to sell tobacco and vape products.

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(c) Health and Safety. That the proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use.

Such health and safety considerations include but are not limited to the following:

- 1. The safe and convenient location of all on-site parking and drives.
- 2. The existing vehicular traffic on area streets.
- 3. The condition and capacity of area streets which will provide access to the proposed development.
- 4. The visibility afforded to both pedestrians and operators of motor vehicles both on-site and off-site.
- 5. The reasonably anticipated increase in vehicular traffic generated by the proposed use.
- 6. The anticipated, existing and designed vehicular and pedestrian movements both on-site and off-site.

The shop will be part of the larger shopping center with shared parking designed to accommodate the shopping center as a whole. There should not be a strain on nearby streets as a result. There are approximately 35 parking spots available on the lot.

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(d) Detriment to Public Welfare. That the proposed use will not be detrimental to the public welfare or to the use or development of adjacent properties or other neighborhood uses.

The business will be creating several jobs in the area. The area is commercial in nature so there should be no detrimental effect to adjacent properties or the broader neighborhood.

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(e) Existing Uses Detrimental. That the proposed use would not be adversely affected by the existing uses in the area in which it is proposed.

The neighboring uses are all commercial operations that would not be detrimentally impacted by the approval of a Tobacco Shop Class 1 SUP.

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- (f) Injury to Properties or Improvements. That the proposed use will not injure, by value or otherwise, adjoining or abutting property or public improvements in the neighborhood.

Having an occupied, in-use, building rather than an empty or abandoned one raises the image of the area. In

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addition, the creation of jobs in the neighborhood is an asset.

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- (g) Nuisance or Hazard. That the proposed use will not constitute a nuisance or hazard. Such nuisance or hazard considerations include but are not limited to the following:

1. The number of persons who can reasonably be expected to frequent or attend the establishment at any one time.
2. The intensity of the proposed use in relation to the intensity of adjoining and area uses.
3. The visual impact of the proposed use.
4. The method of operation or other physical activities of the proposed use.
5. The noise; odor; smoke; dust; emissions of gas, particles, solids or other objectionable or toxic characteristics which are proposed or that can reasonably be expected to be a result of the operation of the proposed use.
6. The danger of fire or explosion.

The proposed use is expected to have two or less consumers visiting the building at any given time. This should not negatively impact traffic or other businesses in the area.

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I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief. I authorize the City of Greenville to place a sign on the property in question, for the purpose of alerting the general public of my request.

Lawrence J. Shaheen, Jr.		8/23/2024
Print Name	Signature of Applicant	Date

Print Name	Signature of Applicant	Date

**NOTE:** If the person who is requesting the Board of Adjustment to take action on a particular piece of property is not the owner of the property and does not have a binding option to purchase the property, then the actual owner(s) of the land must complete this form. If the person who is requesting the Board of Adjustment to take action on a particular piece of property is the owner of the property or has a binding option to purchase the property, please disregard this form. **Attach a copy of the option to purchase if the applicant has a binding option to purchase the property.**

I /We JMP Global LLC am /are the owner(s) of the property located at 205 SW Greenville Bv.

I /We hereby authorize Lawrence J. Shaheen, Jr. to appear by consent before the Greenville Board of Adjustment in order to ask for a special use permit to allow Raishsha Enterprises, Inc. dba High Life Smoke Shop to operate a Tobacco Shop Class 1.

at this location. I /We understand that the special use permit, if granted, is permanent and runs with the land unless otherwise conditioned. I /We authorize the City of Greenville to advertise and present this matter in my /our name as the owner of the property.

If there are any questions, you may contact Lawrence J. Shaheen, Jr. at my address, PO Box 2270, Davidson, NC 28036

or by telephone at ( 704 ) 892-1699 ext 350 or (            )

Property owner email hoke.jm@gmail.com

Respectfully yours,

[Signature]  
Owner

8/26/24  
Date

Owner

Date

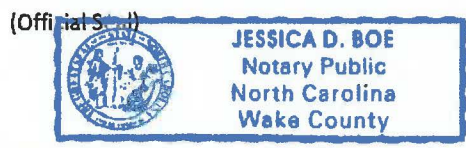
Wake County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: owner or applicant (circle one).

Date: 8-26-2024

Jessica D. Boe  
Notary Public

My commission expires: 1-28-2029



27092

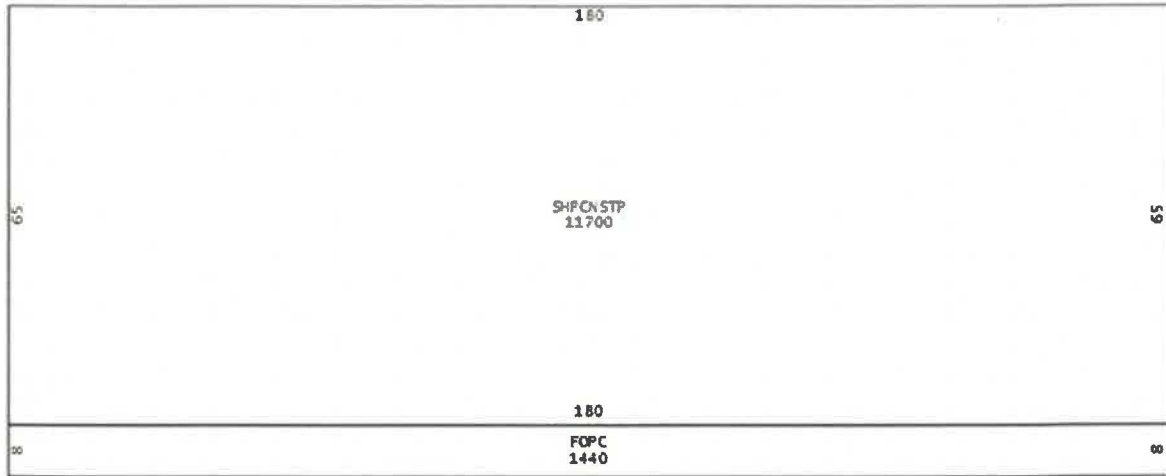
205 SW GREENVILLE BV

JMP GLOBAL LLC

6817 FALLS OF THE NEUSE RD STE 102 RALEIGH  
NC 27615

Total Market Value

\$2,162,566







PLANNING AND DEVELOPMENT SERVICES  
PLANNING DIVISION

September 11, 2024

Raishsha Enterprises, Inc. dba High Life Smoke Shop  
Lawrence Shaheen, Jr.  
PO Box 2270  
Davidson, NC 28036

Dear Petitioner:

The City of Greenville wishes to inform that your request for a special use permit has been placed on the Board of Adjustment agenda. The request is for a special use permit operate a Tobacco Shop Class 1 pursuant to Appendix A, Use 10(ff) of the Greenville City Code. The property is located at 205 SW Greenville Blvd and further identified as being tax parcel number 27092.

A public hearing will be held by the Board of Adjustment on Thursday, September 26, 2024 at 6:00 PM in the Council Chambers on the third floor of City Hall, 200 West Fifth Street.

Your presence (or that of your authorized representative) is required at this meeting to answer any questions which may arise concerning your request. If you plan to distribute any documents, exhibits and/or any other materials the night of the hearing, please make sure you provide 15 copies for the board and city staff. **Applicable presentations that you wish to show at this meeting must be electronically submitted to staff via our dropbox link at <https://www.dropbox.com/request/7pkUNJK3ctlmVWouiYmf> no later than 5:00 PM on Friday, September 20, 2024.**

To review the staff report, please visit the City of Greenville's website at [www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings](http://www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings). This information should be available for viewing by Friday, September 20, 2024. If you have any questions concerning this matter, please do not hesitate to call me at (252) 329-44608 or [cbjones@greenvillenc.gov](mailto:cbjones@greenvillenc.gov).

Sincerely,

*Bryan Jones*

Bryan Jones  
Lead Planner

Enclosure





PLANNING AND DEVELOPMENT SERVICES  
PLANNING DIVISION

September 11, 2024

Dear Greenville Area Property Owner:

The City of Greenville wishes to inform you that a formal request has been made to the Board of Adjustment by Raissaha Enterprises, Inc. dba High Life Smoke Shop to apply for a special use permit to operate a Tobacco Shop Class 1 pursuant to Appendix A, Use 10(ff) of the Greenville City Code. The property is located at 205 SW Greenville Blvd and further identified as being tax parcel number 27092. You are receiving this notification because your property is within 250 feet of the proposed request.

A public hearing will be held by the Board of Adjustment on Thursday, September 26, 2024 at 6:00 PM in the Council Chambers on the third floor of City Hall, 200 West Fifth Street. You are welcome to attend.

Also, you may watch the meeting live on GTV9 at <https://www.greenvillenc.gov/government/city-manager-s-office/public-information-office/government-access-channel-gtv9> or by scanning the provided QR code below. Once you have accessed the website above, click the hyperlink located in the first sentence that says, "Click [HERE](#) to watch a live stream of GTV9."

**If you have competent and material evidence relevant to this case, you may participate in the evidentiary hearing. If you have questions about how to participate in the evidentiary hearing, please contact me as soon as possible.** If you plan to distribute any documents, exhibits and/or any other materials the night of the hearing, please make sure you provide 15 copies for the board and city staff. You will be sworn in on the night of the hearing.

For more information regarding the case, please visit the City of Greenville's website at [www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings](http://www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings). This information should be available for viewing by Friday, September 20, 2024. If you have any questions concerning this matter, please feel free to contact me at 252-329-4608 or [cbjones@greenvillenc.gov](mailto:cbjones@greenvillenc.gov).

Best Regards,

*Bryan Jones*

Bryan Jones  
Lead Planner

Enclosures

1198037



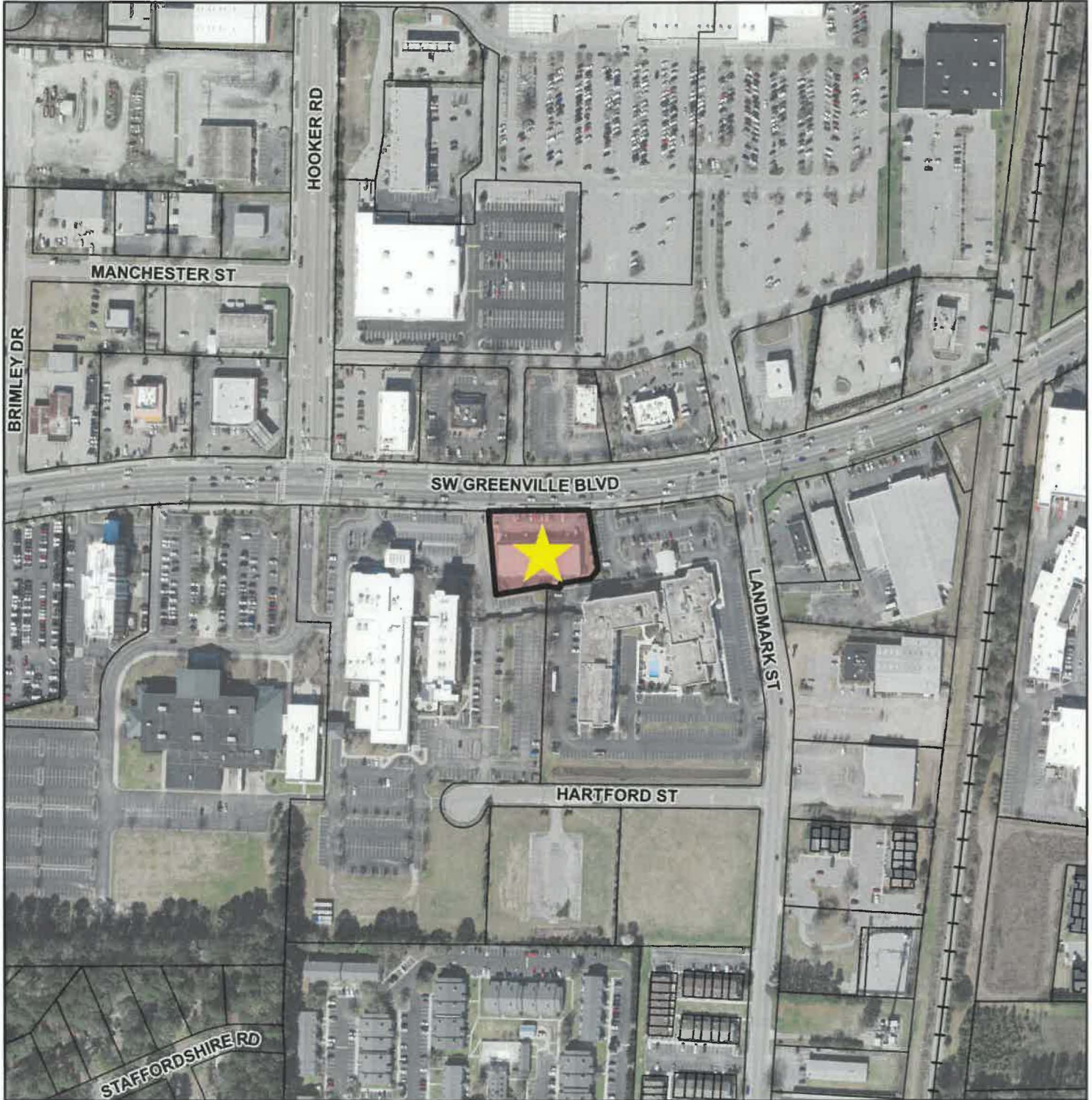
OwnerName	OwnerAddress1	CityStateZip
GREENVILLE PRIME INVESTORS LLC DBA GREENVILLE HILTON BV 216 LLC	207 SW GREENVILLE BV 1414 YANCEYVILLE STREET SUITE 300	GREENVILLE NC 27834 GREENSBORO NC 27405
HALLE PROPERTIES LLC	20225 NORTH SCOTTSDALE RD	SCOTTSDALE AZ 85255
WAL MART REAL ESTATE BUSINESS TRUST KY & P INC	PO BOX 8050 MS 0555 346 X3 HAVEN DR	BENTONVILLE AR 72716 GREENVILLE NC 27858
JMP GLOBAL LLC	6817 FALLS OF THE NEUSE RD STE 102	RALEIGH NC 27615
BOULEVARD HOSPITALITY ASSOCIATES LLC	PO BOX 30803	GREENVILLE NC 27833
MCDONALDS CORPORATION	5725 OLEANDER DR STE D4	WILMINGTON NC 28403





# High Life Smoke Shop

Find yourself in good company®



 Location

 Subject Property  Parcels

0 150 300 600 Feet





City of Greenville,  
North Carolina

Meeting Date: 09/26/2024

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**Title of Item:**

**PUBLIC HEARING ON A REQUEST FOR A SPECIAL USE PERMIT  
BY RACETRAC, INC.**

The applicant, RaceTrac, Inc., desires a special use permit to operate a Convenience Store with Gasoline Sales pursuant to Appendix A, Use 10(b) of the Greenville City Code. The proposed use is located at 3201 N. Memorial Drive. The property is further identified as being tax parcel number 27195.

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ATTACHMENTS

[BOA 24-17 RaceTrac - Agenda Packet.pdf](#)

**Special Use Permit – Board of Adjustment**  
September 26, 2024 6:00 p.m.  
City Council Chambers  
Staff Contact: Bryan Jones, 252-329-4608

**Date:** August 30, 2024

**Request:** The applicant, RaceTrac, Inc., desires a special use permit to operate a Convenience Store with Gasoline Sales pursuant to Appendix A, Use 10(b) of the Greenville City Code.

**Location:** The proposed use is located at 3201 N. Memorial Drive. The property is further identified as being tax parcel number 27195.

**Zoning of Property:** CG (General Commercial)

**Surrounding Zoning and Development:**

North: RA20/R9S – Single Family Residential (Pinewood Estates)  
South: RA20 – Welcome Middle School  
East: RA20 – Greenville Grain, LLC  
West: R9S/RA20 – Single Family Residential (Brookhaven Acres)

**Description of Property:**

The subject property is a vacant 3.09-acre lot with approximately 700 feet of frontage along N. Memorial Blvd and 420 feet along Briley Road. The applicant wishes to operate a Convenience Store with Gasoline Sales.

**Comprehensive Plan:**

The Future Land Use Plan recommends Commercial for this property. Commercial is described as primarily community- and regional-scale commercial development situated near and along major roadway corridors. Existing development is characterized by buildings set back from streets behind surface parking. The proposed use is in compliance with the Future Land Use Plan.

**Notice:**

Notice was mailed to the adjoining property owners on September 11, 2024. Notice of the public hearing was published in the *Daily Reflector* on September 14, 2024 and September 21, 2024.

**Staff Recommended Conditions**

- Final platting, stormwater management, erosion control, an approved traffic impact analysis and site plan approval is required prior to issuance of a building permit.
- Parking shall satisfy both gasoline fuel sales and convenience store requirements.



- Outdoor amplified paging of patrons, guests and/or employees shall be prohibited.
- Outdoor amplified sound, including music, shall be allowed, provided
  - (i) any sound transmission device, system, and/or speaker shall be oriented in a manner that directs all mechanical and/or amplified sound toward the building and away from any abutting residential property line, and
  - (ii) no amplified sound shall be audible from any point located on any property zoned for residential purposes. Outdoor amplified sound is defined as any sound using amplifying equipment, whose source is outside or whose source is inside and the sound propagates to the outside through open door(s) or window(s) or other openings in the building. Measurement standards shall be human auditory senses.
- No television transmission, movie projection and/or computer displays shall be viewed from the gasoline activity area.
- Exterior lighting associated with the gasoline activity area shall be directed away from all public streets. On-site and under canopy lighting shall be shielded and directed to prevent the light cone from crossing the right-of-way or perimeter property line. Exterior lighting shall comply with the City of Greenville Lighting Standards.
- No exterior neon lighting, no neon light signs, and no flashing signs shall be allowed in conjunction with the principal use convenient store and/or gasoline activity area.
- The convenience store shall not contain 20% or more of the establishment's floor area dedicated to the display or stocking of tobacco products or 40% or more of the establishment's on-site signage that is visible from public right-of-way advertising tobacco products.
- No loitering or outdoor activities permitted.

**Staff Comments:**

The proposed project must meet all related State of North Carolina building and fire codes prior to occupancy.

**Staff Recommendation:**

In staff's opinion, the request can meet all the development standards required for issuance of a special use permit upon proper findings by the Board.

BOA 24 - 17

Date Received 8-27-2024

### CITY OF GREENVILLE SPECIAL USE PERMIT APPLICATION

Applicant Name(s) RaceTrac, Inc.

Applicant Mailing Address 200 Galleria Parkway, Suite 900, Atlanta, GA 30339

Applicant Phone Number 770-595-0309

Applicant Email Address tpease@racetrac.com

Contact Name and Mailing Address Justen Giambalvo

200 Galleria Parkway, Suite 900, Atlanta, GA 30339

Contact Phone Number ( 770 ) 595-0309

Contact Phone Number (            )           

Contact Fax Number (            )           

Contact Email Address tpease@racetrac.com

Location /Street address of proposed use 3201 N Memorial Drive Greenville, NC 27834

Tax Parcel # 4780624727

Proposed use Gas station and convenience store



The Zoning Ordinance imposes the following General Restrictions on the use requested by the applicant. Under each requirement the applicant should explain, with reference to attached plans, where applicable, how the proposed use satisfies these requirements. Answers should be supported by facts when possible.

The Board of Adjustment may grant permission for the establishment of a listed special use if the Board finds from the evidence produced after a study of the complete record that:

- (a) Conditions and Specifications. That the proposed use meets all required conditions and specifications of the Zoning Ordinance and policies of the City for submission of a special use permit. Such conditions and specifications include but are not limited to the following:

Compliance with lot area, dimensional standards, setback and other location standards, off-street parking requirements, all additional specific criteria set forth for the particular use, Section 9-4-86, of Article E, and all application submission requirements.

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Reference to the site plan and survey attached with this application show compliance with the lot area, dimensions, and setback standards. The site plan shows on-site parking. The zoning ordinance requires a special use permit for gasoline sales and for retail associated with such sales. RaceTrac has additional taken steps, including substantial revisions to the site plan, to create and maximize the buffer between the site plan and neighboring homes.

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- (b) Comprehensive Plan. That the proposed use is in general conformity with the Comprehensive Land Use Plan of the City and its extraterritorial jurisdiction.

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The Horizons 2026 plan shows this spot of land as commercial, consistent with the proposed use.

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- (c) **Health and Safety.** That the proposed use will not adversely affect the health and safety of persons residing or working in the neighborhood of the proposed use.

Such health and safety considerations include but are not limited to the following:

1. The safe and convenient location of all on-site parking and drives.
2. The existing vehicular traffic on area streets.
3. The condition and capacity of area streets which will provide access to the proposed development.
4. The visibility afforded to both pedestrians and operators of motor vehicles both on-site and off-site.
5. The reasonably anticipated increase in vehicular traffic generated by the proposed use.
6. The anticipated, existing and designed vehicular and pedestrian movements both on-site and off-site.

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Racetrac is familiar with health and safety considerations and intends to construct and operate the project in compliance with the same. Research and preparation has been conducted with respect to the traffic impact.

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The site will arrange for acceptable and safe parking and access to gasoline pumps. RaceTrac has taken steps to carefully designed the site so as to promote a safe and convenient layout promoting healthy site circulation. Additionally, national studies show that majority of traffic at gas stations is "pass by" traffic, or driven from existing traffic.

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- (d) **Detriment to Public Welfare.** That the proposed use will not be detrimental to the public welfare or to the use or development of adjacent properties or other neighborhood uses.

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This proposed use is well situated at the corner of main drives and in an area the Horizons 2026 plan marks for commercial use. There is appropriate distance from other lots and is abutted by other lots only one side. The risk posed to the public welfare is low and RaceTrac intends to comply with applicable laws and regulations associated with the proposed use and to be a meaningful and engaged community partner. RaceTrac has already identified a potential opportunity to partner with a neighboring school.

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- (e) **Existing Uses Detrimental.** That the proposed use would not be adversely affected by the existing uses in the area in which it is proposed.

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The lot is presently vacant and is marked for commercial use. The proposed use would be consistent with such commercial use.

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- (f) Injury to Properties or Improvements. That the proposed use will not injure, by value or otherwise, adjoining or abutting property or public improvements in the neighborhood.

The proposed use would in fact aid the Horizons 2026 plan in that it would add a helpful retail and economic service to the area as opposed to the presently vacant land. The improvements will provide access to residents and travelers alike to necessary services. RaceTrac's improvements to rights of way, development of currently vacant land, and landscape improvements add beauty and value to the neighboring area. The site plan offers a buffer in addition to what is required by the City.

- (g) Nuisance or Hazard. That the proposed use will not constitute a nuisance or hazard. Such nuisance or hazard considerations include but are not limited to the following:

1. The number of persons who can reasonably be expected to frequent or attend the establishment at any one time.
2. The intensity of the proposed use in relation to the intensity of adjoining and area uses.
3. The visual impact of the proposed use.
4. The method of operation or other physical activities of the proposed use.
5. The noise; odor; smoke; dust; emissions of gas, particles, solids or other objectionable or toxic characteristics which are proposed or that can reasonably be expected to be a result of the operation of the proposed use.
6. The danger of fire or explosion.

The proposed use will be consistent with other gasoline stations and convenience store locations in Greenville and do not pose any greater threat than those already existing. RaceTrac will actively monitor the site and will operate the site in a manner so as to ensure the safety and wellbeing of all individuals on the site. RaceTrac takes customary and market steps to ensure the minimization of fires and other safety hazards. RaceTrac constructs industry leading tank systems, made from high-quality, non-corrodible materials and state of the art technology.

All aspects of the site, layout, underground tanks, site lighting, landscaping, etc.. are all designed to ensure safety and customer convenience. RaceTrac has over 90 years of experience owning, operating, and designing stores just like this.

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief. I authorize the City of Greenville to place a sign on the property in question, for the purpose of alerting the general public of my request.

<i>Justin Giambalvo, VP</i>		8/26/24
Print Name	Signature of Applicant	Date
Print Name	Signature of Applicant	Date

**NOTE:** If the person who is requesting the Board of Adjustment to take action on a particular piece of property is not the owner of the property and does not have a binding option to purchase the property, then the actual owner(s) of the land must complete this form. If the person who is requesting the Board of Adjustment to take action on a particular piece of property is the owner of the property or has a binding option to purchase the property, please disregard this form. **Attach a copy of the option to purchase if the applicant has a binding option to purchase the property.**

I/We Julian Rawl am /are the owner(s) of the property located at 3201 N Memorial Drive Greenville, NC 27834

I/We hereby authorize RaceTrac, Inc. to appear by consent before the Greenville Board of Adjustment in order to ask for a special use permit to permit a gas station and convenience store

at this location. I/We understand that the special use permit, if granted, is permanent and runs with the land unless otherwise conditioned. I/We authorize the City of Greenville to advertise and present this matter in my /our name as the owner of the property.

If there are any questions, you may contact Julian W Rawl at my address, 105 Weston Estates Way Cary N.C 27513

or by telephone at (919) 481-3000 or ( )

Property owner email BWR1@WestonDev.com

Respectfully yours, [Signature] 8-26-24  
Owner Date

\_\_\_\_\_  
Owner Date

Wake County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Julian W Rawl

Date: August 26, 2024 [Signature] Notary Public

My commission expires: February 7, 2029





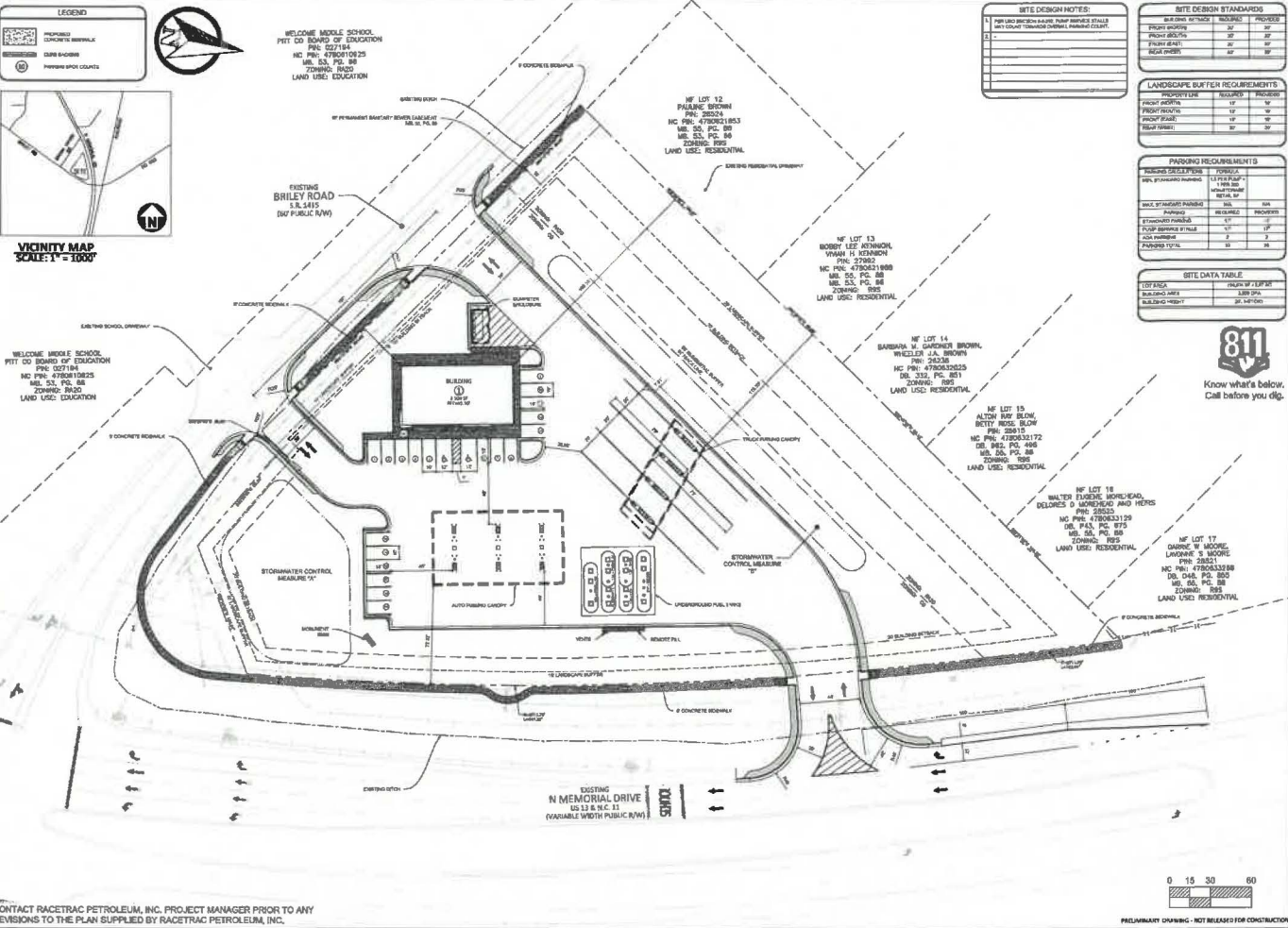
**LEGEND**

	PROPOSED CONCRETE BARRIER
	E-6-CURVE
	PRIVATE SPOT COUNTS



WELCOME MIDDLE SCHOOL  
PITTS CO. BOARD OF EDUCATION  
P.O. BOX 1027184  
NC PIN: 4780810825  
M.S. 51, P.O. 88  
ZONING: R100  
LAND USE: EDUCATION

WELCOME MIDDLE SCHOOL  
PITTS CO. BOARD OF EDUCATION  
P.O. BOX 1027184  
NC PIN: 4780810825  
M.S. 51, P.O. 88  
ZONING: R100  
LAND USE: EDUCATION



**SITE DESIGN NOTES:**

1. ALL LOTS TO BE DEVELOPED WITH PAVED DRIVEWAYS AND SIDEWALKS TO BE CONCRETE.
2. ...

**SITE DESIGN STANDARDS**

ITEM	REQUIREMENT	REMARKS
1	FRONT SETBACK	20' 0"
2	FRONT SETBACK	20' 0"
3	FRONT SETBACK	20' 0"
4	FRONT SETBACK	20' 0"

**LANDSCAPE BUFFER REQUIREMENTS**

ITEM	REQUIREMENT	REMARKS
1	FRONT SETBACK	10' 0"
2	FRONT SETBACK	10' 0"
3	FRONT SETBACK	10' 0"
4	FRONT SETBACK	10' 0"

**PARKING REQUIREMENTS**

ITEM	REQUIREMENT	REMARKS
1	MINIMUM PARKING	10 SPACES
2	MINIMUM PARKING	10 SPACES
3	MINIMUM PARKING	10 SPACES
4	MINIMUM PARKING	10 SPACES

**SITE DATA TABLE**

ITEM	REQUIREMENT	REMARKS
1	LOT AREA	1.88 AC.
2	LOT AREA	1.88 AC.
3	LOT AREA	1.88 AC.



**MCADAMS**

811 logo

Know what's below. Call before you dig.

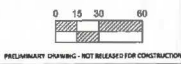
PROJECT: BRILEY ROAD IMPROVEMENTS  
DATE: 11/15/2011  
DRAWN BY: J. BROWN  
CHECKED BY: J. BROWN  
APPROVED BY: J. BROWN

BRILEY ROAD IMPROVEMENTS  
1.88 AC. LOT  
1.88 AC. LOT  
1.88 AC. LOT

BRILEY ROAD IMPROVEMENTS  
1.88 AC. LOT  
1.88 AC. LOT  
1.88 AC. LOT

BRILEY ROAD IMPROVEMENTS  
1.88 AC. LOT  
1.88 AC. LOT  
1.88 AC. LOT

CONTACT RACETRAC PETROLEUM, INC. PROJECT MANAGER PRIOR TO ANY REVISIONS TO THE PLAN SUPPLIED BY RACETRAC PETROLEUM, INC.





PLANNING AND DEVELOPMENT SERVICES  
PLANNING DIVISION

September 11, 2024

RaceTrac, Inc.  
c/o Justen Giambalvo  
200 Galleria Parkway, Suite 900  
Atlanta, GA 30339

Dear Petitioner:

The City of Greenville wishes to inform that your request for a special use permit has been placed on the Board of Adjustment agenda. The request is for a special use permit to operate a Convenience Store with Gasoline Sales pursuant to Appendix A, Use 10(b) of the Greenville City Code. The property is located at 3201 N. Memorial Drive and further identified as being tax parcel number 27195.

A public hearing will be held by the Board of Adjustment on Thursday, September 26, 2024 at 6:00 PM in the Council Chambers on the third floor of City Hall, 200 West Fifth Street.

Your presence (or that of your authorized representative) is required at this meeting to answer any questions which may arise concerning your request. If you plan to distribute any documents, exhibits and/or any other materials the night of the hearing, please make sure you provide 15 copies for the board and city staff. **Applicable presentations that you wish to show at this meeting must be electronically submitted to staff via our dropbox link at <https://www.dropbox.com/request/7pkUNJK3ctlmVWouiYmf> no later than 5:00 PM on Friday, September 20, 2024.**

To review the staff report, please visit the City of Greenville's website at [www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings](http://www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings). This information should be available for viewing by Friday, September 20, 2024. If you have any questions concerning this matter, please do not hesitate to call me at (252) 329-4608 or [cbjones@greenvillenc.gov](mailto:cbjones@greenvillenc.gov).

Sincerely,

*Bryan Jones*

Bryan Jones  
Lead Planner

Enclosure





PLANNING AND DEVELOPMENT SERVICES  
PLANNING DIVISION

September 11, 2024

Dear Greenville Area Property Owner:

The City of Greenville wishes to inform you that a formal request has been made to the Board of Adjustment by RaceTrac, Inc. to apply for a special use permit to operate a Convenience Store with Gasoline Sales pursuant to Appendix A, Use 10(b) of the Greenville City Code. The property is located at 3201 N. Memorial Drive and further identified as being tax parcel number 27195. You are receiving this notification because your property is within 250 feet of the proposed request.

A public hearing will be held by the Board of Adjustment on Thursday, September 26, 2024 at 6:00 PM in the Council Chambers on the third floor of City Hall, 200 West Fifth Street. You are welcome to attend.

Also, you may watch the meeting live on GTV9 at <https://www.greenvillenc.gov/government/city-manager-s-office/public-information-office/government-access-channel-gtv9> or by scanning the provided QR code below. Once you have accessed the website above, click the hyperlink located in the first sentence that says, "Click **HERE** to watch a live stream of GTV9."

**If you have competent and material evidence relevant to this case, you may participate in the evidentiary hearing. If you have questions about how to participate in the evidentiary hearing, please contact me as soon as possible. If you plan to distribute any documents, exhibits and/or any other materials the night of the hearing, please make sure you provide 15 copies for the board and city staff. You will be sworn in on the night of the hearing.**

For more information regarding the case, please visit the City of Greenville's website at [www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings](http://www.greenvillenc.gov/government/city-council/streaming-board-of-adjustments-meetings). This information should be available for viewing by Friday, September 20, 2024. If you have any questions concerning this matter, please feel free to contact me at 252-329-4608 or [cbjones@greenvillenc.gov](mailto:cbjones@greenvillenc.gov).

Best Regards,

*Bryan Jones*

Bryan Jones  
Lead Planner

Enclosures

1198042



OwnerName	OwnerAddress1	OwnerAddress2	OwnerAddress3	CityStateZip
BROWN PAULINE	110 BRILEY RD			GREENVILLE NC 27834
WAKEFIELD VERITY J	3321 MOYE STREET			FARMVILLE NC 27828
MOREHEAD WALTER EUGENE HEIRS	MOREHEAD DELORES D HEIRS	300 HORSESHOE DR APT L		GREENVILLE NC 27834
BROWN BARBARA M GARDNER	BROWN WHEELER J A	PO BOX 8622		GREENVILLE NC 27835
GREENVILLE GRAIN LLC	PO BOX 10009			GOLDSBORO NC 27532
KENNION BOBBY LEE	KENNION VIVIAN H	1711 BROOKHAVEN DR		GREENVILLE NC 27834
PITT CO BOARD OF EDUCATION	1717 W 5TH ST			GREENVILLE NC 27834
BLOW ALTON RAY	BLOW BETTY ROSE	P O BOX 475		BELL ARTHUR NC 27811
SPAIN PATSY JAMES	859 BRILEY RD			GREENVILLE NC 27834
FIELDS WALTER COLLINS	1713 BROOKHAVEN DR			GREENVILLE NC 27834
RAWL JULIAN W ETAL	PO BOX 8068			GREENVILLE NC 27835
MOORE GARRIE W	MOORE LAVONNE S	PO BOX 8623		GREENVILLE NC 27835
330 PACTOLUS LLC	3300 N 29TH AVE	STE 101		HOLLYWOOD FL 33020



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 Location

 Subject Property  Parcels

0 230 460 920 Feet



# **EXHIBIT F**

Rules of Procedures  
Board of Adjustment  
Greenville, North Carolina  
(rev. 2, Sep 2014)

1. GENERAL RULES

- 1-1. The Board of Adjustment is composed of a group of citizens appointed by the Greenville City Council or Pitt County Board of Commissioners.
- 1-2. The Board of Adjustment shall be governed by the terms of Chapter 106A, Article 19, Part 3, of the General Statutes of North Carolina and applicable ordinances of the City of Greenville.

2. MEMBERSHIP, TERMS

- 2-1. Membership, terms and operation of the Zoning Board of Adjustment shall be governed by Chapter 160A, Article 19, part 3, of the General Statutes of North Carolina and by Title 9, Chapter 4, Article S (Zoning) off the Greenville City Code, as amended.
- 2-2. The Board of Adjustment shall consist of seven (7) regular and four (4) alternate members. Five (5) of the regular members and three (3) of the alternate members shall reside within the corporate limits of the City of Greenville and appointed by the City Council; one (1) of the regular members and one (1) alternate member shall reside within the extraterritorial jurisdiction (ETJ) of the City of Greenville and appointed by the Pitt County Board of Commissioners.
- 2-3. When a regular member's term expires or reaches the maximum term limits or resigns prior to the expiration of the appointed term, the next numbered alternate member shall be elevated to the regular member vacant position and shall continue to serve as a regular member. A citizen appointed to fill a vacancy or unexpired term shall be designated as the respective alternate position.

3. OFFICERS AND DUTIES

- 3-1. Chairman. The Chairman shall be elected by majority vote of the full membership of the Board. The Board member having seniority will be given first consideration for nomination. Should that person decline said nomination, the nominees will then be chosen from the remaining regular Board members. The term of office shall be for one (1) year and begin on **June 1** or until a successor is elected; and he/she shall be eligible for re-election. Subject to these rules, the Chairman shall decide upon all points of order and procedure, unless directed otherwise by a majority of the Board in session at the time. The Chairman shall appoint any committees found necessary to investigate any matter before the Board. The Chairman shall have a vote on all matters before the Board.

- 3-2. Vice Chairman. A Vice Chairman shall be elected by the Board from among its regular members in the same manner and for the same terms as the Chairman. The Vice Chairman shall serve as Acting Chairman in the absence of the Chairman, and at such times, shall have the same powers and duties as the Chairman.
- 3-3. Secretary. A staff member of the City shall serve as Secretary to the Board. The Secretary, subject to the direction of the Chairman, shall keep all records, shall conduct all correspondence of the Board, shall arrange for all public notices required to be given, shall notify members of pending meetings and their agendas, shall notify parties to cases before the Board of its decision on such cases, and shall generally supervise the clerical work of the Board. The Secretary shall keep in a permanent volume the minutes of every meeting of the Board. These shall show the record of all important facts pertaining to each meeting and hearing, every resolution acted upon by the Board, and all votes of members of the Board upon any resolution or upon the final determination of any questions.

#### 4. RULES OF CONDUCT

- 4-1. Members of the Board may be removed for cause, including violation of the rules stated below.
- 4-2. Regular and alternate members are expected to attend all regular meetings of the Board of Adjustment. When any member has missed three (3) or more consecutive regular meetings or fails to attend seventy-five percent (75%) of all regular meetings, the Chairman of the Board of Adjustment shall notify the City Council or the Chairman of the Board of County Commissioners of that members attendance. (Refer to Title 2, Chapter 3 of the City Code). Appointments shall be made in accordance with Section 3-1 of these Rules of Procedure. Absence due to sickness, death, or other emergencies of the like nature shall be recognized as excused absences by the Chairman, and shall not affect the member's status. Members may request a leave of absence. Leave of absence requests shall be forwarded to City Council or to the Chairman of the Board of County Commissioners for approval.
- 4-3. No member of the board of adjustment shall participate in either the discussion or vote on any special use permit, variance or appeal from an administrative officer's decision in any manner that would violate the affected persons' constitutional right to a fair and impartial decision maker. Prohibited conflicts include but are not limited to a member having a fixed opinion prior to hearing the matter and not willing to consider changing his or her mind; and undisclosed ex parte communications with the person before the board, any witnesses, staff or other board members. Decisions on either a request for recusal by a member or objections by a person appearing before the board shall be decided by a simple majority vote.
- 4-4. No Board Member shall take part in the hearing, consideration, or determination of any



matter in which that Board Member is involved or has a financial or personal interest. Personal interest shall be defined as having a family member involved in the project under consideration, a neighborhood association involvement where a Board Member is on the governing body of such association, or where the Board Member is involved in a conflict or dispute with the applicant on a matter unrelated to the application. If a Board Member has such a conflict, he shall declare the conflict and request to be excused from voting on the issue. A majority vote of the remaining members present shall be required to excuse the member.

- 4-5. No Board member shall vote on any matter deciding an application or appeal, unless he shall have attended the public hearing on that application or appeal.
- 4-6. No Board member shall discuss any case with any parties in interest prior to the public hearing on that case, provided however, that members may receive and/or seek information pertaining to the case from any other members of the Board. (VIOLATION OF THIS RULE SHALL BE CAUSE FOR DISMISSAL.)

## 5. MEETINGS

- 5-1. Regular Meetings. Regular meetings of the Board shall be held the fourth Thursday of each month except in November and December when the Board will meet on the third Thursday of the month at 7:00 p.m. in the Council Chambers of City Hall; provided that meetings may be held at some other time, date, or convenient location in the City, if directed by the Chairman of the Board and publicly advertised as required by law.
- 5-2. Special Meetings. Special meetings of the Board may be called at any time by the Chairman or by any three (3) regular members of the Board. Notice shall be given as required by law. If a special meeting is called in order to hear an appeal or application, the need for convening a special meeting must be based on all of the following:
  - (a) The need has not been created by the applicants own actions;
  - (b) The need has been created by unusual or unexpected circumstances that cannot be handled at the next regular meeting of the Board.
- 5-3. Quorum. A quorum shall consist of six (6) members of the Board. It shall be mandatory that a quorum be present for the Board to pass upon any question relating to an appeal from an order, requirement, decision, or determination of the Building Inspector or an application for a variance or special use permit.
- 5-4. Voting. The concurring vote of four-fifths (4/5) of the full membership of the Board shall be necessary to grant any variance. A majority of the members shall be required to decide requests for special/conditional use permits, appeals from zoning officer decisions or appeals from the Historic Preservation Commission. Full membership of the Board shall be defined as seven (7) members, except it shall not include vacant positions or

disqualified members, e.g. if six (6) members are present and one member is disqualified, then five (5) members shall constitute full membership for voting purposes on the issue before the Board and not negate the Board's quorum. A majority of the Board shall be required to pass the findings of fact.

- 5-5. Conduct of Meetings. All meetings shall be open to the public. The order of business at regular meetings shall be as follows: (a) roll call; (b) approval of minutes of previous meetings; (c) hearing of cases; (d) reports of committees; (e) unfinished business; and (f) other business.

## 6. HEARINGS ON APPLICATIONS

- 6-1. Notice. The Board shall give public notice of a hearing by all of the following means:
- (a) By publishing or advertising notice of the hearing in a newspaper of general circulation in the City of Greenville once a week for two (2) successive calendar weeks, said notice to be published the first time no later than ten (10) days prior to the date established for such public hearing.
  - (b) By posting a sign on the property which is subject to the action at least seven (7) days prior to the hearing.
  - (c) By mailing notices not less than 10 days or more than 25 days prior to the hearing to the person or entity whose appeal, application or request is the subject of the hearing; the owner of the property if the owner did not initiate the hearing; owners of all parcels abutting the parcel that is the subject of the hearing; and anyone else who has been given the right of notice in the zoning or unified development ordinance. Before an application is considered as being complete, the petitioner shall be required to furnish the Planning and Community Development Department with the names and mailing addresses of the owners of all properties located abutting the parcel from the tax records maintained by Pitt County. Where the property is bounded by a street, alley, stream or similar boundary, the land owner across such boundary shall also be considered as an adjoining land owner. All such notices shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.
- 6-2. Conduct of Hearing. (1). Any party may appear in person or by agent or by attorney at the hearing. The order of business for each hearing shall be as follows: (a) A representative of the city shall give the preliminary statement of the case; (b) the applicant and those who wish to speak on his behalf shall present the argument in support of his application; (c) persons opposed to granting the application shall present the argument against the application; (d) both sides will be permitted to present rebuttals to opposing testimony; (e) a representative of the city shall present the department's views and recommendations on behalf of the citizens of the City of Greenville. Witnesses may be called and factual evidence may be submitted, but the Board shall not be limited to

consideration of such evidence as would be admissible in a court of law. The Board may, in its discretion, view the premises and obtain additional facts in the matter before arriving at a determination of the case.

(2). Hearsay evidence as defined by the NC Rules of Civil Procedure are not admissible and may not be considered. Any testimony or written documentation that falls within a recognized exception to the hearsay rule may be admitted and considered by the Board.

(3). All testimony received by the Board shall be under oath. Affidavits or unsworn documents are not admissible for consideration of the truth of the matter for which they are asserted.

6-3. Decision. (1). The decision shall be made within a reasonable time as provided in this Rules of Procedure unless a different time is provided by statute or ordinance. The Board acts in a quasi-judicial role.

(2). In that, all decisions must be made based upon competent, material and substantial evidence in the record.

(3). The decision shall be reduced to writing and signed by the chair. The decision shall show the contested facts and the board's application of the facts to the applicable standards.

(4). A separate record of each case shall be prepared and filed in the Planning and Community Development Department.

(5). Notice and Public Record of Decisions. The secretary shall give written notice of the decision in the case to the appellant and/or the applicant and to every aggrieved party who has filed a written request for such notice with the secretary or the Chairman of the Board when the hearing is held. Such notice may be delivered either by personal service or by registered mail or certified mail, return receipt requested. The final decision of the Board shall be shown in the record of the case as entered in the minutes of the Board and signed by the Chairman. The decision shall be a public record, available for inspection at all reasonable times.

6-4. Re-Hearings. An application for a rehearing may be made in the same manner as provided for an original hearing. The application may be submitted by the original petitioner or by an aggrieved party. Evidence in support of a rehearing shall initially be limited to that which is necessary to enable the Board to determine at least one (1) of the following:

1. New facts or evidence is available for which there was no capacity of being obtained at the previous meeting and that will substantially change the conditions

of the case.

2. Procedural rules which substantially changed the conditions of the case were not followed. However, no harmless error shall be grounds for granting a rehearing. A harmless error is one which would not have changed the outcome of the matter, or for which refusal to rehear does not deny a substantial right.

The application for a rehearing shall be denied if the Board in its records does not find at least one (1) of the two (2) conditions stated above to be true. A vote of a simple majority of the Board members present is required to grant an application for a rehearing. If the Board finds that a rehearing is in order, the burden of proof shall be on the person requesting the rehearing.

## 7. APPEALS AND APPLICATIONS

- 7-1. Types of Appeals. The Board shall hear and decide all appeals from decisions of administrative officials who are authorized to enforce zoning or unified development ordinances, appeals arising from the interpretation of any other ordinance regulating land use or development, and appeals of decisions of the Historic Preservation Commission.
- 7-2. Procedures for Filing Appeals. No appeal shall be heard by the Board unless notice thereof is filed within thirty days (30) days after the receipt of written notice of the decision. Notice may be served by hand delivery, electronic mail or first-class mail. It shall be conclusively presumed that all who have standing have constructive notice of the decision from the date when a sign is posted on the affected property with the words "Zoning Decision" or Subdivision Decision" in letters at least 6 inches high and containing the name and number of person to contact concerning the decision. The person serving the decision shall file prepare a certification of service noting the date and manner in which the notice was served and filed with the **City Clerk**. The sign must remain at least 10 days.
- 7-3. Filing of Appeal. Appeals must be filed in writing with the **City Clerk** within the time requirements and stating the grounds for the appeal.
- 7-4. Standing. All persons who meet the requirements of NCGS §160A-393(d) plus the city including but not limited to 1) persons having an ownership interest in the property affected by the decision; 2) has an option to purchase or contract to purchase the property which is the subject of the decision; 3) was an applicant before the decision making board/commission; 4) any person who would suffer special damages as a result of the decision; 5) an incorporated or unincorporated association to which owners or lessees of property in a designated area affected by the decision. All applications shall be made upon the form furnished for that purpose and all required information shall be provided by the applicant before an appeal or an application shall be considered as having been filed.

- 7-5. Fees. No application or notice of appeal shall be considered as having been completed until the filing fee set by the City has been paid.
- 7-4. Time of Hearing. After receipt of the completed notice of appeal from the applicant, the Secretary shall schedule a hearing at the next regular meeting or at a special meeting held in accordance with Section 5-2 of these Procedures, within thirty-six (36) days from the filing of such completed notice of appeal.
- 7-5. Notice. The Board shall give public notice of a hearing by all of the following means:
- (a) By publishing or advertising notice of the hearing in a newspaper of general circulation in the City of Greenville once a week for two (2) successive calendar weeks, said notice to be published the first time no later than ten (10) days prior to the date established for such public hearing.
  - (b) By posting a sign on the property which is subject to the action at least seven (7) days prior to the hearing.
  - (c) By mailing notices to the owners of all properties located within one hundred (100) feet of any portion of the property which is the subject of the action at least seven (7) days prior to the hearing. Before a notice of appeal is considered as being complete, the petitioner shall be required to furnish the Planning and Community Development Department with the names and mailing addresses of the owners of all properties located within one hundred (100) feet of the property which is subject to the action. (Where the property is bounded by a street, alley, stream or similar boundary, the land owner across such boundary shall also be considered as an adjoining land owner.) All such notices shall state the location of the building or lot, the general nature of the question involved, and the time and place of the hearing.
- 7-6. Conduct of Hearing.
- (1). Administrative Decisions. An appeal from a zoning official shall be conducted in the same manner as a hearing on application for special or conditional use permit including notice, receipt of evidence, conduct of hearing and decision. The official who made the decision shall be present as a witness. The appellant can present matters outside of the appeal but if any person or other party to the proceedings would be prejudiced by such presentation, the board will continue the hearing. The Board may affirm, reverse or modify the decision of the administrative official.
  - (2). Appeals from the Historic Preservation Commission. Appeals from decisions of the Historic Preservation Commission are in the nature of certiorari. The appeal will be based on the record from the Commission and raised in the appeal as provided in NCGS §160A-393(k). **Any briefs must be submitted to the Board and cross served not less**



**than seven (7) days before the appeal hearing.**

(3). Procedures for Appeals from Historic Preservation Commission. Any briefs must be submitted to the Board and cross served to the other parties not less than seven (7) days prior to the hearing. The Appeals Hearing is limited to the issues raised on appeal and filed with the Clerk's Office. There are no witnesses or additional evidence from what was presented before the HPC. Appellant presents argument first; addresses issues raised in appeal. Time 20 minutes. Secretary to Board will be time keeper. Will note 2 minutes remaining, then 1 minute and will call time. Appellant must stop at that point. The Board may ask questions of the Appellant. After completion, the Appellee presents argument. Time 20 minutes. Secretary to Board will be time keeper. Will note 2 minutes remaining, then 1 minute and will call time. Appellee must stop at that point. The Board may ask questions of the Appellee concerning the argument. Once the Appellee is finished, the Appellant may present a rebuttal limited to matters raised in Appellee argument. Time limit 10 minutes. Secretary to Board will be time keeper. Will note 2 minutes remaining, then 1 minute and will call time. Appellant must stop at that point. After the rebuttal, the hearing is closed. The Board may discuss issues in any brief submitted or matters brought up during the argument. The Board may take up to 36 days to make a final decision on the appeal. A decision may be made at the next meeting. To affirm, reverse or modify a decision from the HPC, the Board must voted by a majority to either affirm, reverse or modify.

7-7. Stays of decision.

(1). Appeals from notices of violations or other enforcement orders. Decisions are stayed pending the appeal, except when the official who made the decisions files with the Board of Adjustment a certification in the form of an affidavit stating the facts and the basis for the opinion that that a stay would cause imminent peril to life or property or the transitory nature of the property that enforcement would be difficult if stayed.

(2). Appeals from conditional or special use permits. An appeal by either the applicant or others with standing shall not stay the decision of the Board, either granting or denying the permit, pending the appeal. An appellant may request the Board to issue a stay pending the decision on the appeal. The Board must hear the application for a stay within a reasonable period of time.

## 7. GENERAL MATTERS

8-1. Expiration of Permits. Unless otherwise specified, any order or decision of the Board granting a special use permit shall expire if a building permit or certificate of occupancy for such use is not obtain by the applicant within six (6) months from the date of the decision, where the City Council authorizes such in the ordinances. Permits for variances shall run with the land or until the conditions under which the variance was granted have changed.



- 8-2. Annual Report. The Board shall prepare and submit in January of every year a report of its activities for the year then ending to the City Council. Such report shall contain a statement of the number of cases heard and a summary of the actions taken, along with any other matters which the Board deems appropriate for inclusion in such report.
- 8-3. Amendments. These rules may, within the limits allowed by law, be amended at any time by affirmative vote of not less than seven (7) members of the entire Board, provided that such amendment be presented in writing at a regular or special meeting preceding the meeting at which the vote is taken.

These rules shall become after hearing and notice and majority vote by the members.

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CHAIRMAN

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SECRETARY

# **EXHIBIT G**

To: Pitt County-County Planning and Development Services-Planning Division

From: The Brookhaven Community Members

Garrie Moore (President) & LaVonne Moore, Jackie Prayer & Derrick Jones, Bobby & Vivian Kennion, Wheeler & Barbara Brown, Walter Fields, Pauline Brown, Ray & Lois Reddrick, Rodney Smith, Marilyn Yarrell, Joyce King.

Date: September 26, 2024

Re.: **Protest of Gas Station (RaceTrac) construction/location on vacant property South of The Brookhaven Community.**

Thank you for your September 11, 2024 letter informing us of a formal request to the Board of Adjustment by RaceTrac, Inc . Below is the Brookhaven Community response to your letter. It is our intent to be present at the hearing on September 26, 2024 at 6:00 PM.

Today we will show that RacTrac's proposal to build a convenient store and Gas Station in our back yard and across the street from Wellcome Middle School will "Materially Endanger" the public health of families living in the Brookhaven Community and 413 students attending Wellcome Middle School .

You have in your hands :

1. A letter from the Bookhaven Community stating its opposition to RacTrac's proposal.
2. A 1999 Agreement with the previous owners stating our opposition to certain construction projects.
3. A list of nationally researched issues associated with gas stations located near residential communities. And,
4. A map showing that due diligence relative to gas stations location requirements to schools appears to be lacking.
5. A map and report from NC DEQ (North Carolina Department of Environmental Quality)

The Brookhaven Community has been established since 1971. Since that time, we have seen many changes such as a four-lane highway, additional homes built, train changing station, and an expanded corn storage facility. However, we have managed to maintain a

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The Brookhaven Community has been established since 1971. Since that time, we have seen many changes such as a four-lane highway, additional homes built, train changing station, and an expanded corn storage facility. However, we have managed to maintain a

reasonable quality of living despite increased noise and chemical pollutants. The addition of another source of noise, pollutants, and traffic is undesirable and unnecessary.

We recently learned that plans are in the works to build a gas station on the vacant property south of our community. In 1999 we informed Mr. Rawls (property owner at that time) that we are opposed to building a **gas station, fast food stores, and other commercial** construction projects that impede quality of life. This property is now under new management, and no one has consulted with our community or the school system (Wellcome School is located directly across the road from this property). Further, we have learned that "RaceTrac" officials are attempting to circumvent the Greenville City Council and Pitt County Commissioners by meeting with the Planning Board and Board of Adjustment. This is concerning because, if true, "RaceTrac" is usurping the power and legally authorized governing boards of Pitt County/City of Greenville.

We need your help to ensure our voices are heard to **STOP** the construction of a gas station on this property: to ensure the safety of children attending Wellcome Middle School located across the street, to prevent an increase in hazardous traffic, and to lessen odor and noise levels in the neighborhood. Given the number of gas stations/convenient stores in Pitt County, we see this potential project as corporate greed and not economic development. There already exist several gas stations (Sheets, Exxon, City Gas, Country Mart) less than 5 miles of this location and a new gas station (WAWA) under construction, across from Pitt-Greenville airport.

Equally important, is to further emphasize Noise Pollution that is already very bad. Heavy Trucks, regular traffic, and a train changing station are present 24/7. In addition to the grain processing plant across from our community, during harvesting season, we experience large tractor trailer trucks parking along the highway (Hwy 11) and running their engines all night. Dust pollution from the grain mill is already a very serious problem. At times the dust pollution is as thick as a bad fog day. We have a very serious problem with adding more noise, traffic, pollutants, and a potential crime magnet in our community.

Thank you in advance for your consideration of our serious concerns.

## Cost vs Benefits of a RaceTrac Gas station located near Brookhaven Community.

1. **Air Pollution:** Gas stations release volatile organic compounds (VOCs) and other harmful emissions from fuel storage and dispensing. These pollutants can contribute to air quality issues and respiratory problems for nearby residents.

Benefit - NONE

2. **Soil and Water Contamination:** Leaks from underground storage tanks can lead to soil and groundwater contamination. This can affect local drinking water supplies and harm the environment.

*Refer to City Council Meeting where the Council expressed concerns relative to the gas tanks C O 2 Q Highway Patrol station*

Benefit - NONE

3. **Health Risks:** Prolonged exposure to pollutants emitted from gas stations, such as benzene and formaldehyde, can increase the risk of health problems, including respiratory illnesses and certain cancers.

Benefit - NONE

4. **Noise & Light Pollution:** Gas stations can generate significant noise from fuel pumps, delivery trucks, and the operation of convenience stores, which may disturb the peace of nearby residents. High Intensity lights in parking lot and store will certainly disturb the neighborhood – making it hard to sleep.

Benefit - NONE

5. **Traffic Hazards:** Gas stations attract a high volume of vehicular traffic, which can lead to increased congestion and potential accidents in residential areas, posing risks to pedestrians and cyclists. **Especially Welcome Middle School**

Benefit - NONE

6. **Visual Impact:** The presence of gas stations can detract from the aesthetic appeal of a neighborhood, leading to decreased property values and a less pleasant living environment.

Benefit - NONE

7. **Crime and Safety Concerns:** Gas stations can sometimes attract crime, including vandalism and theft, which may affect the safety and security of nearby residents.

Benefit - NONE

*Especially Welcome School*



8. **Fires and Explosions:** Gas stations store large quantities of flammable materials, posing a risk of fires or explosions that can threaten nearby homes and infrastructure.

Benefit - NONE

9. **Environmental Justice Issues:** Communities near gas stations, particularly low-income or marginalized populations, may face disproportionate exposure to these risks, raising concerns about environmental justice.

Benefit - NONE

The RaceTrak Corporation has applied for approval from the Board of Adjustments for a special permit for a gas station facility on Briley Road. The small parcel is located adjacent to the Brookhaven neighborhood and directly across the street from the Wellcome Middle School.

The very close proximity of the proposed RaceTrac facility will create an undue burden on residents and property owners in Brookhaven neighborhood and **present a traffic safety risk to students, staff and faculty at Wellcome Middle School.**

Both Brookhaven and the school are within or adjacent to geographic locations denoted by the U.S. Census as within underserved population Block Groups (shaded purple and gray) as defined by the NC DEQ. As denoted in the map, most underground storage tank [petroleum] facilities in Greenville already are located within NC DEQ underserved block group neighborhoods.

#### Explanation of Map symbols:

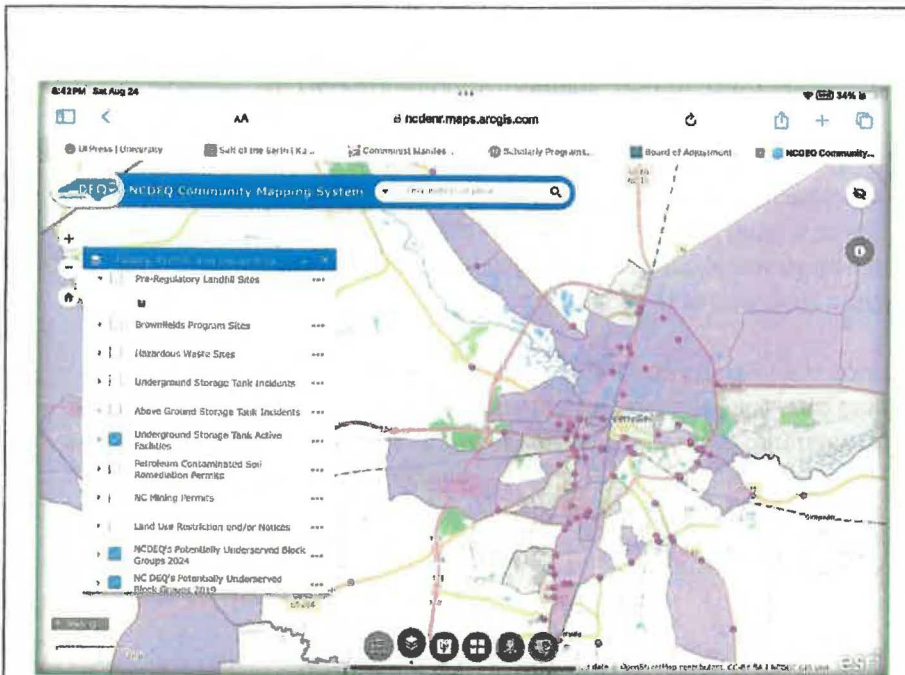
- Dark pink dots = Underground Storage Tanks (Active): This layer represents the geographic locations of active, registered UST [petroleum] facilities, Data is extracted from the Tank Inventory Management System (TIMS) database. Source: NCDEQ: Waste Management.
- Gray and pink shaded geographic areas = Potentially Underserved Block Groups 2019 and 2024: U.S. Census Block Group Data overlay on NC map selected for Poverty, Race, and Ethnicity according to NC DEQ definition of “underserved communities.” All U.S. Census American Community Survey Data hosted by the EPA on the EJSCREEN.

Grey or Pink Shaded geographic area is where conditions equals BOTH:

- 1. Race/Ethnic Composition: The share of nonwhites and Hispanic or Latino (of any race) is over fifty percent OR share of nonwhites and Hispanic or Latino (of any race) is at least ten percent higher than County or State share.
- 2. Poverty Rate: Share of Population experiencing poverty is over twenty percent AND share of households in poverty is at least five percent higher than the County or State Share.

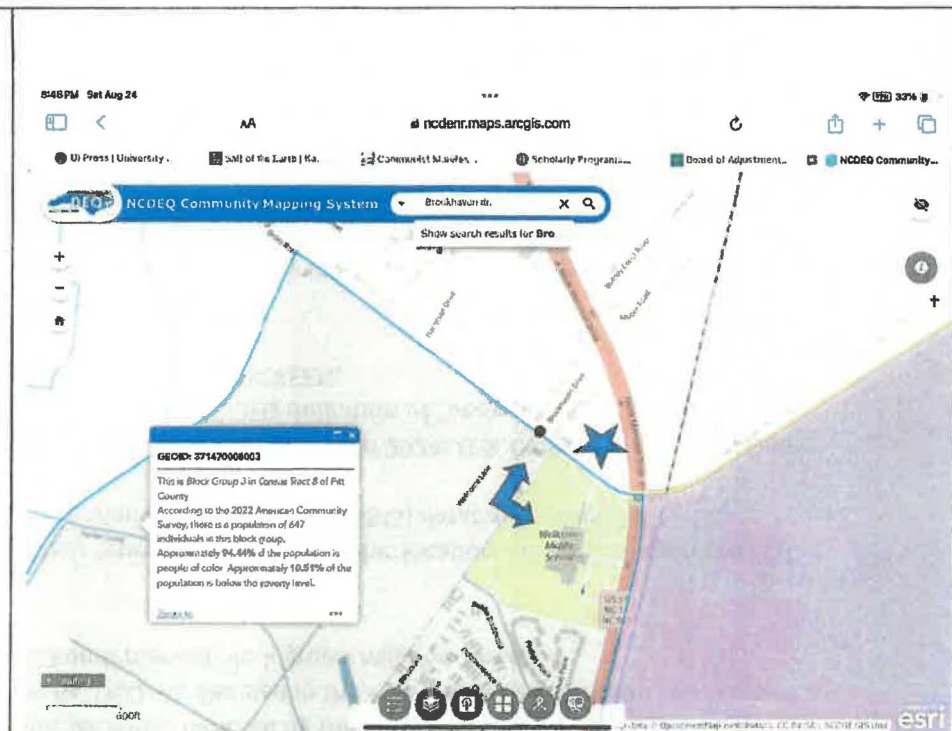
Source: NC DEQ Community Mapping System (<https://www.deq.nc.gov/outreach-education/environmental-justice/deq-north-carolina-community-mapping-system>)

## Proposed RaceTrak site and its proximity to Wellcome Middle School and Brookhaven Neighborhood



MAP 1: Underground Storage Tanks [petroleum] in Greenville, NC are represented here as gas stations, public and private (dark pink dots). Note that most UST's [petroleum] are located within or on the boundary of U.S. Census Block Groups with NC DEQ Underserved Population status.

Source: NC DEQ Community Mapping System



MAP 2: Brookhaven neighborhood (black dot): Fifteen households. The vast majority are elderly (65+), with a significant population aged 80+ years old. All households are African American in ethnicity.

Wellcome Middle School is directly across the street (Briley Rd) from the parcel where RaceTrak (blue star) has proposed its gas station facility.

Source: NC DEQ Community Mapping System



### Home Values:

- Homes near gas stations are worth 30%-50% less<sup>1</sup>
- 16% decline in property value when stations built within 300ft<sup>2</sup>
- 3-6% decrease in value when a UST release detected within 2mi<sup>3</sup>

### EPA School Siting Recommendation:

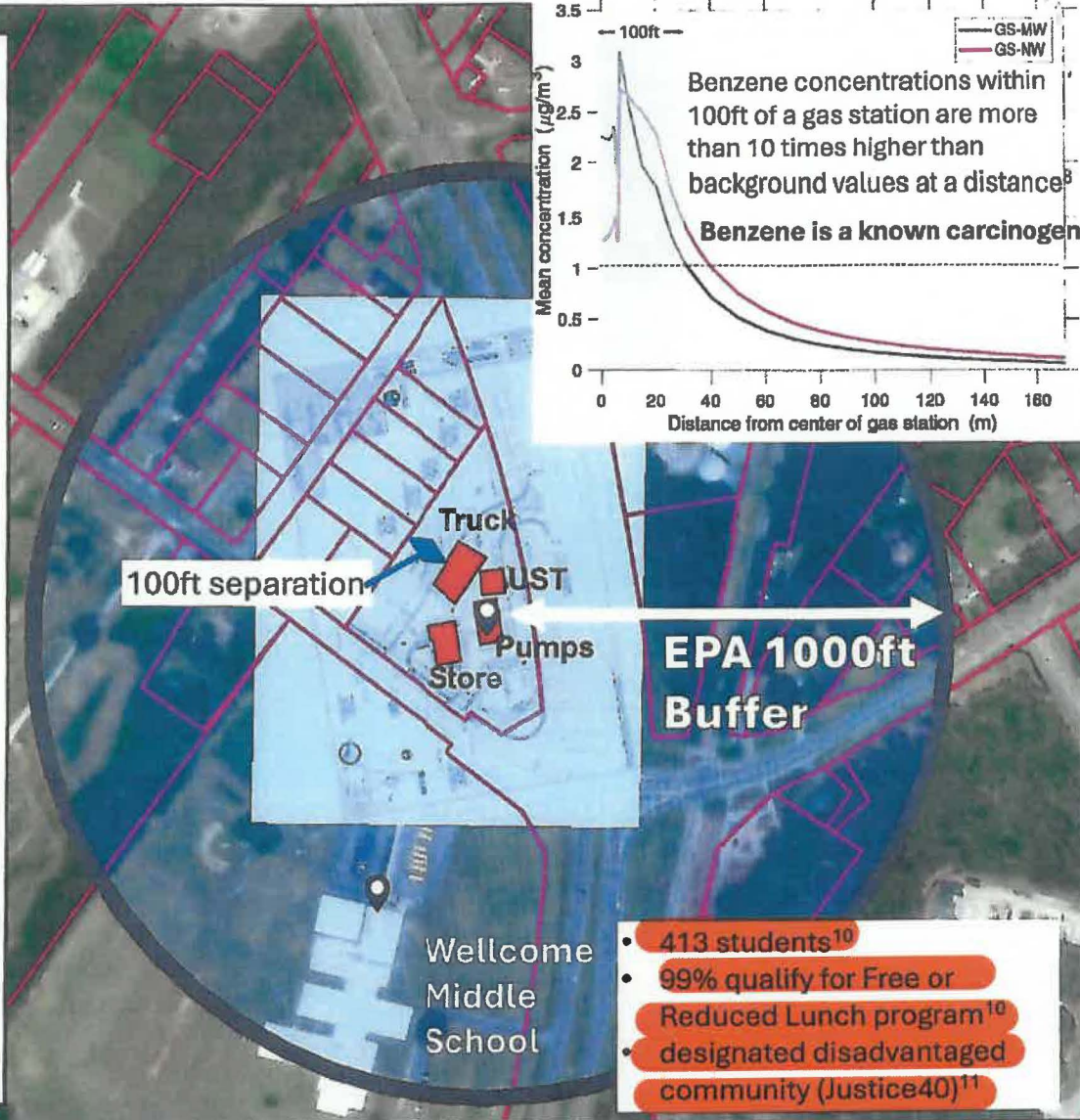
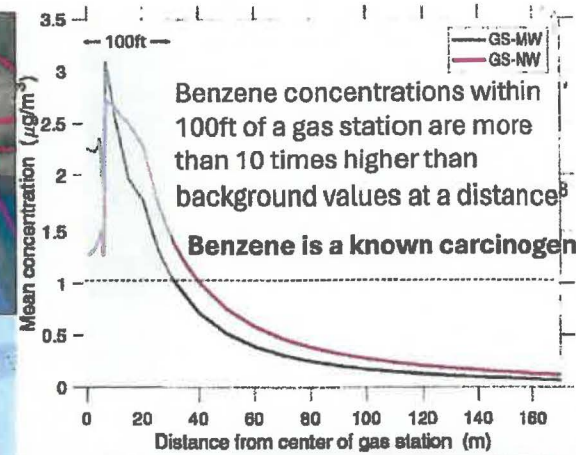
- Schools should not be placed within 1000ft of gas stations<sup>4</sup>

### Health Impacts:

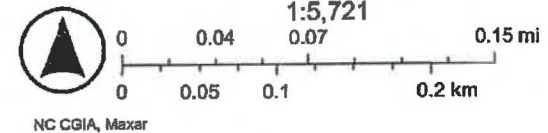
- higher rates of obesity for convenience stores <10min walk from schools<sup>5</sup>
- 21% increase in leukemia risk for people living near a gas station<sup>6</sup>
- cancer risk shown to increase 1000x in areas near gas stations<sup>7</sup>
- UST vents increase benzene exposure and risks for cancer<sup>8</sup>
- truckers have 6% greater chance of lung cancer from diesel exposure<sup>9</sup>

### Crime:

- Geographic areas with gas stations have higher crime rates<sup>12</sup>



**RaceTrac has not performed due diligence to safeguard our community from material harm.**



## Poster References

1 – McCord, 2022, Locate Alpha, <https://www.locatealpha.com/insights/the-gas-station-effect/>

2 – Zhao, Liu, Chen, 2017, JORSE, 9, 66-85.

3 – EPA, 2016, NCEE Working Paper #16-01: <https://www.epa.gov/sites/default/files/2016-05/documents/2016-01.pdf>

4 – EPA School Siting Guidelines, <https://www.epa.gov/schools/view-download-or-print-school-siting-guidelines>

5 – Howard et al., 2011, BMC Public Health, 11, 68

6 – Karakitsios et al, 2007, Atm Env, 41(9), 1889-1902:  
[https://www.sciencedirect.com/science/article/abs/pii/S1352231006010831?fr=RR-2&ref=pdf\\_download&rr=8c93642b7d5010d8](https://www.sciencedirect.com/science/article/abs/pii/S1352231006010831?fr=RR-2&ref=pdf_download&rr=8c93642b7d5010d8)

7 – Correa et al, 2012, Atm Poll Res, 3, 163-169:  
<https://www.sciencedirect.com/science/article/pii/S1309104215304384#bib0115>

8 – Hilpert et al, 2019, SciTotEnv, 650, 2239-2250:  
<https://www.sciencedirect.com/science/article/pii/S0048969718337549>

9 – <https://www.hoffmannworkcomp.com/diesel-exhaust-exposure-and-occupational-illnesses-workmens-comp-law-firm/#:~:text=These%20findings%20have%20led%20OSHA%20to%20issue,have%20heavy%20exposure%20to%20diesel%20exhaust%20fumes.>

10 - National Center for Education Statistics:

[https://nces.ed.gov/ccd/schoolsearch/school\\_detail.asp?Search=1&Miles=10&Zip=27833&ID=370001201507](https://nces.ed.gov/ccd/schoolsearch/school_detail.asp?Search=1&Miles=10&Zip=27833&ID=370001201507)

11 – EPA EJ Screen: <https://www.epa.gov/ejscreen>

12 – Boehme et al, 2022, Southeastern Geographer, 62(1), 59-78:  
<https://www.jstor.org/stable/27117108>

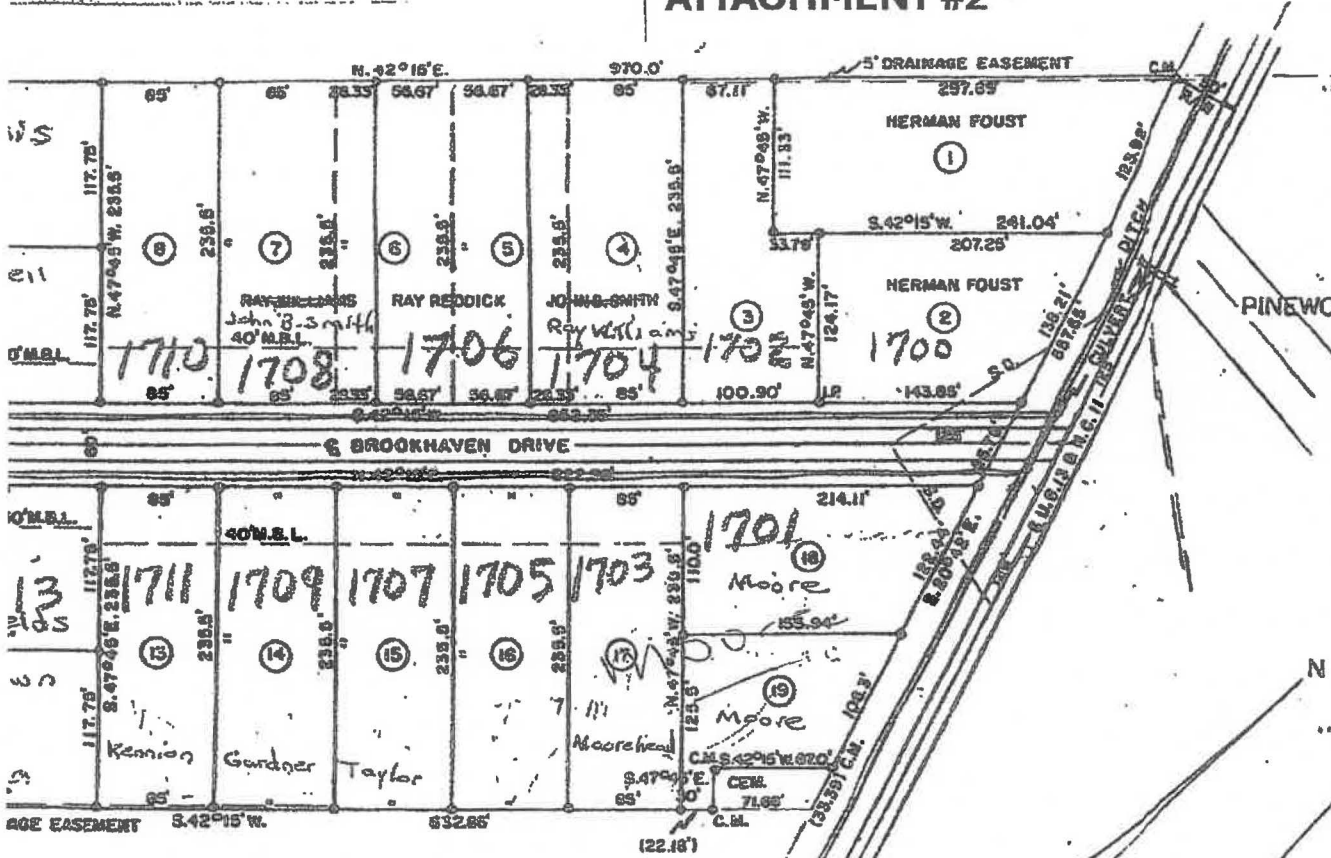


ATTACHMENT #2

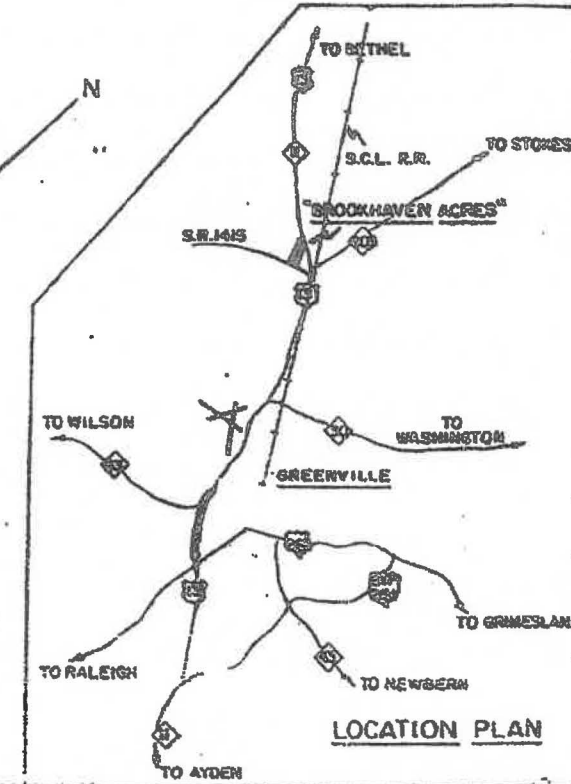
W. B. DUKE  
REG. SURV.

NORTH CAROLINA  
PITT COUNTY  
THE UNDERSIGNED HEREBY CERTIFIES THAT  
THIS SURVEY AND SUBDIVISION OF LOTS WAS MADE  
AT HIS REQUEST.  
*Edna [Signature]*  
OWNER

NORTH CAROLINA  
PITT COUNTY  
I HEREBY CERTIFY THAT THE WATER AND  
SEWERAGE FACILITIES INSTALLED OR PROPOSED  
FOR INSTALLATION MEET THE NECESSARY PUBLIC  
HEALTH REQUIREMENTS AND ARE HEREBY APPROVE  
THIS THE 12 DAY OF March, 1973  
*[Signature]*  
COUNTY HEALTH INSPECTOR OR REP.



PINEWOOD SUBDIVISION

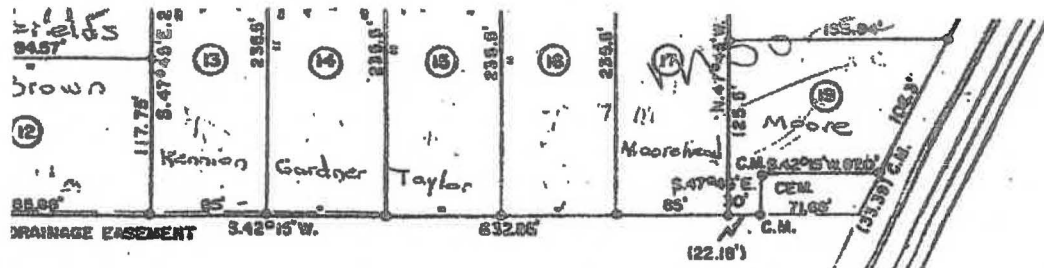


NOTE:  
10.16 - TRACT ACREAGE  
19 LOTS - 21,000 SQ. FT. MIN.  
1 LOT - 12,900 SQ. FT. (COMM.)

PLAN OF LAND  
AND  
SUBDIVISION OF LOTS  
SURVEYED FOR  
**ROOKHAVEN ACRES**<sup>89</sup>  
ITEENVILLE TOWNSHIP — PITT COUNTY, N.C.  
W.B. DUKE, R.L.S. — MARCH, 1971  
SCALE, 1" = 100'

Map Book 21, Page 75





ED RAWLS LAND

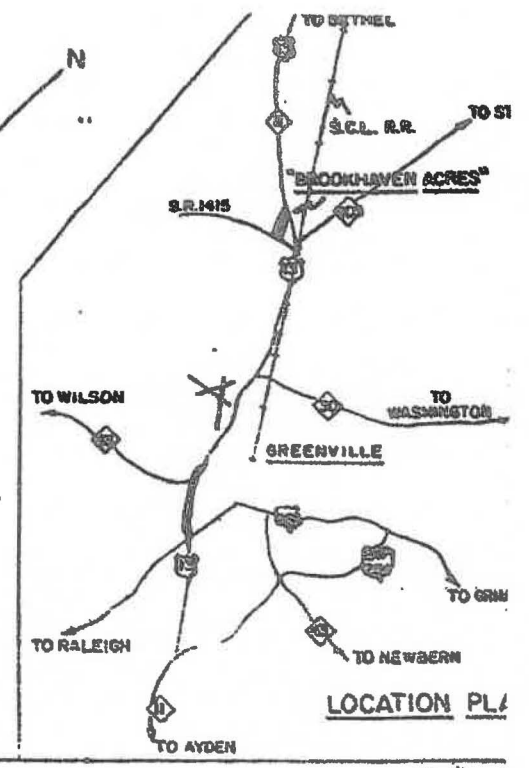
TO GREENVILLE 2 MI.

MAR. 1969

PLAN OF LAND  
AND  
**SUBDIVISION OF LOTS**  
SURVEYED FOR  
**"BROOKHAVEN ACRES"**  
GREENVILLE TOWNSHIP — PITT COUNTY, N.C.  
W.B. DUKE, R.L.S. — MARCH, 1971  
SCALE, 1" = 100'

NOTE:  
10.16 - TRACT ACREAGE  
19 LOTS - 27,000 SQ. FT. MIN.  
1 LOT - 12,900 SQ. FT. (COMM.)

*Map Book 21, Page 75*



**LOCATION PLAT**

42.5

W. B. DUKE  
REG. SURV.

NORTH CAROLINA  
PITT COUNTY

THE UNDERSIGNED HEREBY CERTIFIES THAT  
THIS SURVEY AND SUBDIVISION OF LOTS WAS MADE  
AT HIS REQUEST.

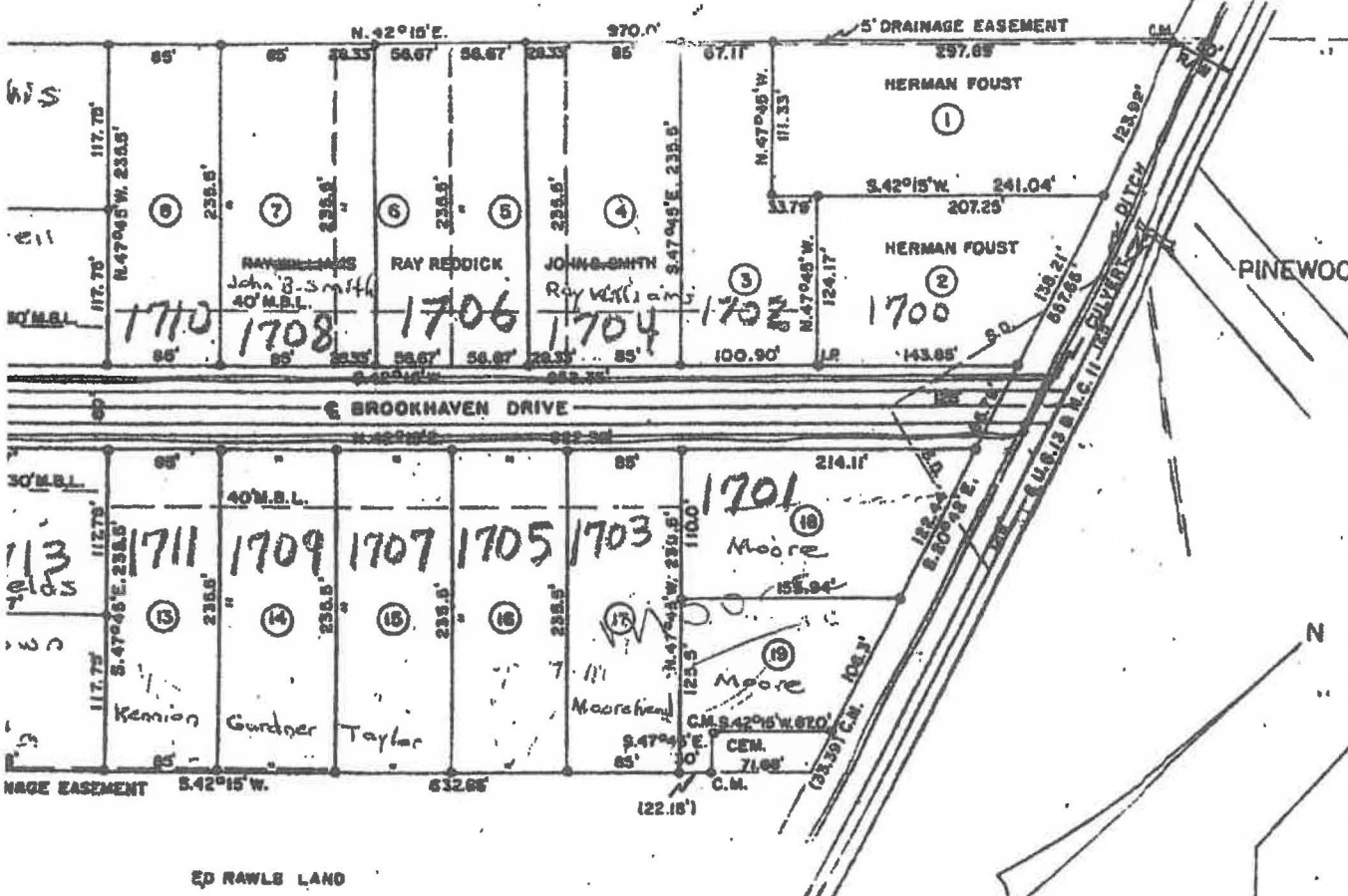
*Edna W...*  
OWNER

PINEWOOD SUBDIVISION

NORTH CAROLINA  
PITT COUNTY

I HEREBY CERTIFY THAT THE WATER AND  
SEWERAGE FACILITIES INSTALLED OR PROPOSED  
FOR INSTALLATION MEET THE NECESSARY PUBLIC  
HEALTH REQUIREMENTS AND ARE HEREBY APPROVE  
THIS THE 12 DAY OF March, 1970

*James H. ...*  
COUNTY HEALTH DIRECTOR OR REP



PLAN OF LAND  
AND  
SUBDIVISION OF LOTS  
SURVEYED FOR  
**BROOKHAVEN ACRES**<sup>88</sup>  
GREENVILLE TOWNSHIP, PITT COUNTY, N.C.  
W.B. DUKE, R.L.S. — MARCH, 1971  
SCALE, 1"=100'

NOTE:  
10.16 - TRACT ACREAGE  
19 LOTS - 27,000 SQ. FT. MIN.  
1 LOT - 12,900 SQ. FT. (COMM.)

*Map Book 21, Page 75*

**COPY**

# Darden Commercial Realty

CARL DARDEN

*Charles Centre*  
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P.O. BOX 492  
GREENVILLE, NC 27835  
PHONE (252) 758-1983  
FAX (252) 355-5276

**ATTACHMENT #1**

June 30, 1999

Mr. Garrie Moore  
P. O. Box 8623  
Greenville, North Carolina 27835

Dear Garrie:

Again, I thank you and the Brookhaven Community Association for allowing me to meet with you to finalize our conditions concerning the uses for development that you oppose in General Commercial (CG) zoning relating to the Julian Rawl property at U. S. 13 and the Briley Road. Listed below are the uses that are opposed by the Brookhaven Community Association:

- Night Clubs
- Massage Parlor
- Bingo
- Game room (pool hall, pin ball, video game, etc.)
- Chemical or factory facility
- Mini-storage
- Liquor store
- Pawn shop
- Convenient mart with gas sales
- Service station
- Pornography shop