STATE OF NORTH CAROLINA
COUNTY OF PITT

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
FILE NO.: 24CVS002755-730

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

Petitioners,

v.

CITY OF GREENVILLE, and RACETRAC, INC.,

Respondents.

ORDER

FILED
DATE: November 20, 2025
TIME: 4:52:34 PM
PITT COUNTY
CLERK OF SUPERIOR COURT
BY: M. Ginn

THIS MATTER came before the Court pursuant N.C.G.S. § 160A-388(e) to a Petition for Writ of Certiorari filed by the Petitioners, Brookhaven Estate Association, Inc., Garrie Moore, Vivian Kennion, and Walter Fields, seeking review of the City of Greenville's Board of Adjustment's approval of a Special Use Permit by Respondent, RaceTrac, Inc. The Court has considered the written decision of Respondent City of Greenville, the record evidence and record of proceedings, Petitioners' Petition for Writ of Certiorari, the Writ of Certiorari, the parties' briefs, and arguments of counsel.

PROCEDURAL HISTORY

1. Petitioner The Estates of Brookhaven Subdivision Homeowner's Association, Inc. d/b/a Brookhaven Community Association ("Brookhaven Community") is a registered North Carolina non-profit corporation with is principal office address at 4820 Boulder Creek Lane Raleigh, NC 27613.
2. Petitioner Garrie Moore ("Dr. Moore") owns and resides at the property located at 1701 Brookhaven Drive, Greenville, North Carolina 27834. Dr. Moore's property abuts the property line of the property at issue.
3. Dr. Moore is a member and President of the Brookhaven Community Association, Inc.
4. Petitioner Vivian Kennion owns and resides at the property located at 1711 Brookhaven Drive, Greenville, North Carolina 27834. Ms. Kennion's property also abuts the property line of the property at issue.

5. Petitioner Walter Fields owns and resides at the property located at 1713 Brookhaven Drive, Greenville, North Carolina 27834. Mr. Fields's property does not adjoin the subject Property but is located within 150 feet of the subject property.
6. Brookhaven Community, Dr. Garrie Moore, Ms. Vivian Kennion and Mr. Walter Fields have standing to file this petition pursuant to N.C.G.S. § 160D-1402(c)(2) as individuals who will suffer special damages as the result of a decision of the City of Greenville's Board of Adjustment ("BOA").
7. Respondent City of Greenville ("City of Greenville") is a body politic and corporate organized pursuant to the laws of the State of North Carolina and is a proper respondent pursuant to N.C.G.S. § 160D-1402(d) as the local government whose decision-making board made the decision being appealed.
8. Respondent RaceTrac, Inc. ("RaceTrac") is a Georgia corporation registered to do business in North Carolina with is principal address at 200 Galleria Parkway SE, Suite 900, Atlanta, GA 30339, and its registered North Carolina address at 15720 Brixham Hill Avenue #300, Charlotte, NC 28277. RaceTrac is a proper respondent pursuant to N.C.G.S. § 161D-1402(d) as the special use permit applicant.
9. The property at issue is zoned CG (General Commercial) and located 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).
10. The City of Greenville has adopted zoning regulations in which a convenience store with Gasoline Sales is a permitted use in the CG zoning district with a special use permit ("SUP") issued by the City of Greenville's Board of Adjustment. *See* Greenville City Code, Part II, Title 9, Chapter 4 ("Zoning Ordinance").
11. On 27 August 2024, RaceTrac filed a SUP application to operate a convenience store with gasoline sales at the property. The proposal included: a new 3,500 square foot building with associated parking spaces; an auto fuel canopy with six fuel pumps; and a truck fueling canopy with four fuel pumps.
12. On 28 August 2024, RaceTrac held a neighborhood meeting in which Petitioners were invited to discuss the project.
13. In accordance with N.C.G.S. § 160D-406(b); N.C.G.S. §§ 160D-705(a) and (c), N.C.G.S. § 143-318.12, and the BOA's Rules of Procedure, a property owner notice letter was mailed to Petitioners on 11 September 2024 and notice of the public hearing was published in The Daily Reflector on 14 September 2024 and 21 September 2024.
14. In the property owner notice letter sent by the City's Lead Planner, Petitioners were notified that if they had competent and material evidence relevant to this SUP application, they may participate in the upcoming evidentiary hearing. If the Petitioners had questions about how to participate in the evidentiary hearing, they were instructed to contact the City's Lead Planner who provided his phone number and email as soon as possible. Petitioners were further notified that if they planned to distribute any documents, exhibits and/or any other materials the night

of the hearing, to make sure they provided fifteen copies for the BOA and city staff and that they would be sworn in on the night of the hearing.

15. On 26 September 2024, the BOA held a quasi-judicial evidentiary hearing.
16. At the hearing, the City's Lead Planner presented and testified on behalf of the City and recommended approval. City staff submitted an agenda packet which included amongst other materials, the SUP application with RaceTrac's written responses for how the SUP request meets the seven SUP standards, including Horizon's 2026 plan, and a staff report.
17. Following the City's presentation and testimony, RaceTrac presented its case and provided five expert witnesses: (1) Tommy Pease, Development Manager for RaceTrac; (2) Robert Wingate, Civil Engineer with McAdams Engineering; (3) Travis Fluitt, Traffic Engineer of Kimley Horn and Associates; (4) Jason Hyrabusa, Fuel Engineer of Diamond Z Engineering, and (5) Sam Pate, appraiser.
18. Following RaceTrac's presentation, five individuals from Brookhaven Community spoke in opposition of the approval of the SUP: Dr. Garrie Moore, Ms. Barbara Brown, Mr. Walter Fields, Ms. Vivian Kennion, and Ms. Adrienne Reddrick. Dr. Moore testified on behalf of himself and Brookhaven Community.
19. After discussions about injury to neighboring properties, traffic safety and patterns, fuel systems, safety features, required government oversight, testimony from Brookhaven Community members, the BOA approved RaceTrac's SUP application stating that:

> 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) 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.

20. Petitioners filed a Petition for Writ of Certiorari in Pitt County Superior Court on 01 December 2024, seeking to reverse the BOA's approval of the SUP application.
21. The petition alleges four claims and requests attorney's fees, including fees under 42 U.S.C. § 1988 for a violation of Petitioner's constitutional due process rights.

22. Specifically, Petitioners contend that the BOA:
    (1) violated Petitioner's due process rights because it "denied Mr. Moore the opportunity to present expert testimony";
    (2) committed multiple errors of law by making "inappropriate findings of fact" by not considering the testimony of Dr. Moore to be expert testimony, which "prevented the BOA from ensuring necessary permit requirements were met" and was "harmful error of law," and by failing to post the BOA Rules of Procedure on the City's website, which "concealed unknown procedures" and the Petitioners "did not know what to expect or how to prepare for the BOA hearing and w[ere] disadvantaged in the proceeding";
    (3) failed to establish the proposed use would conform with Horizons 2026 (the City of Greenville Comprehensive Land Use Plan); and
    (4) arbitrarily and capriciously approved the SUP application by failing "to consider expert testimony presented by Dr. Moore and neglected to consider Horizons 2026 at all."
23. On 15 July 2025, this Court enter entered an Order granting, in part, Petitioners' Motion to Supplement the Record. The Order allowed two (2) additional affidavits for limited purpose—an Affidavit of Russell Adams, "admitted to the extent it serves to establish standing;" and an Affidavit of Garrie Moore, "allowed as to the challenge to the procedural due process of the Board of Adjustment."
24. On 1 October 2025, these matters were heard by the Undersigned Superior Court Judge.

CONCLUSIONS OF LAW

1. The Court has jurisdiction to hear the Petitioner's Petition for Writ of Certiorari.
2. When the Court grants certiorari to review a decision of a board, it functions as an appellate court rather than a trier of fact. *Hopkins v. Nash Cty*, 149 N.C. App. 446, 447 (2002).
3. The applicable standard of review "depends upon the particular issues presented on appeal." *Mann Media, Inc. v. Randolph Cnty. Planning Bd.*, 356 N.C. 1, 13 (2002).
4. In general, the Court's task when reviewing the grant or denial by a city board of a special use permit includes:
    (1) Reviewing the record for errors in law,
    (2) Insuring that procedures specified by law in both statute and ordinance are followed,
    (3) Insuring that appropriate due process rights of a petitioner are protected including the right to offer evidence, cross-examine witnesses, and inspect documents,
    (4) Insuring that decisions of town boards are supported by competent, material and substantial evidence in the whole record, and
    (5) Insuring that decisions are not arbitrary and capricious. *Id.*
5. Whether the record contains competent, material, and substantial evidence is a conclusion of law, reviewable *de novo*. N.C.G.S. § 160D-1402(j)(2) ("Where the superior

court considers the matter anew and freely substitutes its own judgement for the [board's] judgment.")

6. When a petitioner "questions (1) whether [a board's] decision was supported by the evidence or (2) whether the decision was arbitrary or capricious, then the reviewing court must apply the 'whole record' test." *ACT-UP Triangle v. Comm'n for Health Servs. of the State of N.C.*, 345 N.C. 699, 706 (1997).
7. "When utilizing the whole record test . . . the reviewing court must examine all competent evidence (the whole record) in order to determine whether the [Board of Adjustment's] decision is supported by substantial evidence." *Mann Media,* 356 N.C. at 14.
8. Substantial, competent, material evidence is evidence that is admissible, relevant to the issues in dispute, and sufficient to support the decision of a reasonable factfinder. *Blair Invs., LLC v. Roanoke Rapids City Council*, 231 N.C. App. 318, 321 (2013).
9. When findings are not supported by competent, material, and substantial evidence in the whole record, the decision must be reversed. *Morris Commc'ns Corp. v. Bd. of Adjust. of Gastonia*, 159 N.C. App. 598 (2003).
10. The approval of the special use permit required competent, material, and substantial evidence to support the findings mandated by the Zoning Ordinance:

> (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 . . . ; and
>
> (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; and

(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; and

(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; and

(6) The danger of fire or explosion.

Zoning Ordinance Section 9-4-81.

11. The burden is on the applicant, RaceTrac, to prove these seven standards. When the applicant for a SUP "produces competent, material, and substantial evidence of compliance with all ordinance requirements, the applicant has a made a *prima facie* showing of entitlement to a permit." *Howard v. City of Kinston*, 148 N.C. App. 238, 246 (2002).
12. Once applicant makes a *prima facie* showing of entitlement, the burden of establishing that the approval of the special use permit would endanger the public health, safety and welfare falls upon those who oppose the issuance of the permit. *Id.*
13. Accordingly, the Court reviews de novo Petitioners' claims one and two and utilizes the whole record test for claims three and four.
14. Petitioners assert that Dr. Moore made an attempt to be certified as an expert witness in education but his attestation that he was an expert was completely ignored, and thus his "due process right to offer evidence was infringed and there was no proper way for him to present his research and opinion.
15. The Supreme Court has addressed the requirements to ensure due process rights of parties in a SUP proceeding:

> The party whose rights are being determined must be given the opportunity to offer evidence, cross-examine adverse witnesses, inspect documents, and offer evidence in explanation and rebuttal; (2) absent stipulations or waiver such a board may not base findings as to the existence or nonexistence of crucial facts upon unsworn statements (*see Craver v. Board of Adjustment*, 267 N.C. 40 (1966)); and (3) crucial findings of fact which are "unsupported by competent, material and substantial evidence in view of the entire record as submitted" cannot stand.

Humble Oil & Ref. Co. v. Bd. of Aldermen, 284 N.C. 458, 470 (1974)

16. At the hearing, the BOA's attorney asked each opponent to come to the front and answer a series of questions regarding standing; as a part of the line of questioning, the BOA's attorney asked Dr. Moore if he was an expert in any field. In response, Dr. Moore stated "Education. I have a doctorate in Education." Dr. Moore made no other attempt to be tendered as an expert.
17. After standing had been established, Dr. Moore spoke on a variety of topics ranging from his desire to not have a gas station in his backyard, to statements about traffic, property values, and a link between convenience store food and childhood obesity. At no point during his testimony did Dr. Moore ask the BOA to be tendered as an expert and the board deny his request.
18. Moreover, whether Dr. Moore was tendered as an expert in education is immaterial to outcome of this determination. RaceTrac provided five experts in civil engineering, traffic engineering, fuel engineering, development, and appraisal. Dr. Moore was speaking in opposition on behalf of himself and the Brookhaven community, not on behalf of the nearby school or Pitt County Board of Education. Testimony from an expert in education speaking on behalf of himself and the Brookhaven Community is not sufficient to overcome the prima facia approval of the application.
19. The Court finds that the BOA did not violate Dr. Moore's due process rights by declining to tender him as an expert witness. Dr. Moore was given the opportunity to testify fully and to present his opinions and supporting materials to the BOA. The BOA was within its discretion to determine what weight, if any, to give his testimony. The failure to qualify Dr. Moore as an expert in the field of education or otherwise did not prevent Petitioners from being heard and does not rise to the level of a constitutional or procedural due process violation.
20. The Court further finds that it was not prejudicial error for the City of Greenville to have not posted the BOA's Rules of Procedure on its public website. The record shows that the rules were made available upon request and that Dr. Moore did not request access to those rules until after the hearing had concluded.
21. Moreover, prior to the hearing, the City's Lead Attorney informed Petitioners in writing that all testimony before the BOA must be sworn, competent, and material evidence to be considered. He provided his contact information should Petitioners have had any questions. This letter placed Petitioners on notice of the evidentiary

standards applicable to quasi-judicial proceedings and gave them a point of contact to inquire about the rules governing the proceeding. Further, the standard for making SUP determinations is set forth in state law, not local rules. *See* N.C.G.S. § 160D-406; N.C.G.S. § 160-705.

22. Under these circumstances, Petitioners have not demonstrated that the alleged lack of online access to the rules affected the outcome of the proceeding or deprived them of a meaningful opportunity to participate.
23. The record demonstrates that Petitioners received a fair hearing before the BOA While Petitioners assert certain procedural and evidentiary errors occurred, the Court finds that any such error, if it occurred, was not prejudicial and did not affect the outcome of the BOA's decision. The law entitles Petitioners to a fair hearing—not a perfect hearing. *See generally State v. Lawrence*, 365 N.C. 506, 517(2012). The proceedings before the BOA satisfied the essential requirements of due process and applicable statutory law.
24. Petitioners further allege that RaceTrac failed to establish that its proposed use is in general conformity with Horizons 2026 by failing to mention it during the hearing. The record reflects RaceTrac addressed this SUP standard in its written Application which was included in the BOA's materials. The staff report also includes a recommendation to the BOA that the proposed use is in compliance with the City's future land use plan. The materials submitted by City staff and RaceTrac demonstrates that the BOA considered the Comprehensive Plan as required by the Zoning Ordinance and that its decision was made in general conformity therewith.
25. Upon review of the whole record, the Court concludes that the BOA's findings of fact and decision are supported by competent, material, and substantial evidence in the whole record. The BOA applied the appropriate standards and procedures, considered all relevant testimony and documentary evidence, and rendered a decision that was neither arbitrary nor capricious.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that:

1. The Petition for Writ of Certiorari is **DENIED**.
2. The decision of the City of Greenville's Board of Adjustment approving the Special Use Permit is hereby **AFFIRMED**.

11/20/2025 10:33:38 AM

SO ORDERED, this the 20th day of November, 2025.

The Honorable Jeffrey B. Foster
Senior Resident Superior Court Judge