

Clarence G. Grier
County Manager

Sally Shutt
Assistant County Manager



Rawls Howard
Director

David Moon
Deputy Director

Board of Adjustment

Members Present

Linda Amos-Vice Chair
Vickie Mullins
Marva Lucas-Moore
Brenée Orozco-Alt
Donald Brooks-Alt

Absent Members

Gregory Parks-Chair
Robert Davis
Gary Silverman-Alt
Kenneth Turner-Alt
Jovan Bowser-Alt

Staff/Others Present

David Moon
Christopher Portman
Amanda Ozanich
Robert Hasty (Asst County Attorney)

MINUTES
May 18, 2023
6:00 PM

Chair Amos called the meeting to order at 6:01 p.m. in Public Hearing Room #3 of the Historic Courthouse.

1. INVOCATION

Vickie Mullins read the invocation.

PLEDGE OF ALLEGIANCE

Recited by all.

2. ROLL CALL

Mr. Moon called the roll. Linda Amos-Vice Chair, Vickie Mullins, Marva Lucas-Moore, Brenée Orozco-Alt, and Donald Brooks-Alt are present. Mr. Moon stated we have a quorum.

SWEAR IN OF STAFF

Chair Amos swore in staff Christopher Portman and David Moon.

3. ADJUSTMENTS TO THE AGENDA

There were none.

4. APPROVAL OF THE JANUARY AND APRIL 2023, MINUTES

Vickie Mullins: Made motion to approve minutes and **Ms. Moore:** 2nd motion. All in Favor

5. ABSTENTIONS BY BOARD MEMBERS/BOARD MEMBER DISCLOSURES (SITE VISITS AND/OR PERSONAL AFFILIATIONS)

There were none.

6. PUBLIC HEARING DEFERRALS/WITHDRAWALS

There were none.

7. POLICY STATEMENT REGARDING APPEAL PROCESS:

Mr. Moon read the policy statement.

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8. PUBLIC HEARING(S)

BOA-2023-0005: Consideration of a Special Use Permit to allow a Day Care Facility in an A1 Agricultural District on 0.47 +/- acres, located at 1391 Sand Hill Road; submitted by Eric McAllister (applicant) on behalf of Gray's Creek Learning Academy Properties, LLC (owners).

David Moon:

I am David Moon, deputy director of planning and inspections. Also here this evening are four other staff. Amanda Ozanich is to my far left. She is the BOA meeting clerk. To my immediate left is Chris Portman. He's a senior planner with the Current Planning Division and will be presenting the case after my introduction. And we also have Rob Hasty with the County Attorney's office. He is the legal counsel for the Board of Adjustment.

The case before you is in the southwestern area of the County, south of the town of Hope Mills. The request is for a special use permit. A special use in general is a use that is allowed within a assigned zoning district if the applicant demonstrates to the Board of Adjustment, and the Board of Adjustment finds, the use to be consistent with the county's code and in character with the nature of the surrounding property. Otherwise, the use is not allowed within the district. A site plan is required with that request to demonstrate compatibility with the surrounding area. The Board of Adjustment has the authority to approve, deny or approve with conditions. It's a simple majority vote required to establish a motion. So, we have five members present this evening. Three of the five votes in favor of the motion will be necessary. Your decision is final. The appeal was read previously, so any appeal to the board goes to the Superior Court. Within the codes is a definition of a daycare facility, which is a building or dwelling regularly used for recreation or supervisory care of nine or more persons, not including the operator's own family during any 24-hour period. For this case, the daycare is for children. Under the county zoning code for daycares, where located within residential areas, there are certain criteria that they must meet. Portman will be addressing those criteria when he gives his presentation. I'll turn the floor over to Mr. Portman, who will give a presentation on the request for the daycare.

Christopher Portman

Thank you, David. The applicant, owner of the property is Grace Creek Learning Academy Properties LLC and the agent applying on behalf of them is Eric McAllister. They're requesting the special use permit for the daycare on 0.47 acres. This is the existing and surrounding uses of the property. As you can see there is single family residential and there are some manufactured homes directly across the street, but majority of the area is single family or wooded lands. This is the surrounding zoning. You can see it's A1 agricultural, our residential. There's MP industrial.

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As well as R40 and R15 conditional zoning. There are no water or sewer lines available to the property and there are no hydric or hydric inclusion soils on the property as well. This is the subject property. This is the north side, you can see the fence in the back behind the building. That is where the play area is located. This is the west view looking down Sand Hill Rd. The South view looking directly across the street, and the East view looking down Sand Hill. This is a closer version of the existing home, the property that currently has a building that was previously occupied as pamper hugs and loves after school facility. This daycare facility did close and ceased operation at the start of 2020. And they are now coming here to reopen a facility. The county records indicate that there was not a special use permit obtained in the past four daycare at this property, making the previous daycare business a legal, non-conforming use when it was in operation. As the daycare business ceased operation for more than one continuous year, a legal non-conforming use automatically becomes a non-conforming use that cannot occur in the A1 zoning district and a special use permit has to be obtained. This is the site plan that is proposed for the daycare. As you can see in the middle, that is the existing building. You can see their driveway entering and exiting out of the property. You can see the fencing location where the play areas will be. I believe with a ramp this site plan is in compliance with Section 906 of the zoning ordinance for daycare facilities. Some of the key conditions for this site is that it's use is limited to a daycare facility as set forth with the special use site plan, and NC DOT driveway permit must be obtained. Paved parking spaces and drive aisles must be installed before permits are given and the expiration date of the permit is two years to obtain a site plan approval. This concludes the staff presentation and you all are to discuss for vote or ask any questions we can answer.

David Moon:

Madam Chair, I would like to add that, as required by law, the applicant must agree to the conditions within the special use permit. Before you this evening is a copy of the special use permit with the applicant signature. The applicant was unable to attend. As I mentioned before, but he did sign and agree to those conditions. That concludes staff presentation and you're welcome to open the floor for the public hearing.

Linda Amos

OK. Do you guys have any?

Marva Lucas-Moore

I do have a question. So, it appears that the applicant, I know he's not present, but he's agreed to all the conditions set forth for the special use.

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David Moon

Correct, including the site plan, which is an exhibit to the special use conditions of approval.

Marva Lucas-Moore

OK. Thank you.

Donald Brooks

They understand that there's no water and sewage for this area.

Christopher Portman

Correct. There is no water and sewer present. It is further down the property, but it's not within 300 feet of the subject property. It is on septic and well.

Donald Brooks

So, it's the in the plan to connect to?

Christopher Portman

Not unless the water and sewer line are extended out and that would be through the utility provider at that point. But there is an existing well and septic tank on the property. Once, if there is water and sewer lines to be extended out to that property, they would more than likely be required to connect at that point.

Linda Amos

Any other questions?

OK. Do we have anyone that would like to present any information to the board?

David Moon

Madam Chair, we have one person who has indicated interest to speak and that is Roger McAllister. He's representative for the applicant.

Linda Amos

You could come forward. So, we have to swear you in. Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God.

Rodger McCallister

I do.

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Linda Amos

Ok thank you. You can proceed with your information.

David Moon

Can you provide your name and address?

Rodger McCallister

First, let me say how do you do this morning, this afternoon. Ladies and gentlemen, my name is Roger McAllister. I'm the father of Eric McAllister and I'm standing in for my son because he happened to be out of town today.

Linda Amos

We need to get your address.

Rodger McCallister

My address is 1432 Sand Hill Rd., but the property that we are trying to get reopened is at 1395 and has been a daycare over 20 years. It was closed. We had over 20 years from 1999 to 2020 when the business was started, during the pandemic. To reopen would be a great success to the community, and the center will be open 6:00 AM to 6:00 PM and we are even open for providing service for Walmart distribution and the surrounding businesses. The 1395 location would be open by the same owner as the preexisting center, by my son and previous partner live down at the other end of the road, which was a 5-star facility. Garrett McCaskill has over 20 years of education in education field, had worked in the Cumberland County School system as assistant principal and a professor at Fayetteville State University. He has a bachelor's degree in political science from UNC Chapel Hill, a master's degree in political science, and a master's degree in education administration from Fayetteville State. He currently owns 2 daycares, one in Saint Paul and one in Lumberton, at this time. I think this will be a good, qualified to reopen this service in this Community because I think you may know, I mean they have done open 5 new subdivision on Sand Hill Rd. and they're in the process of building 350 houses on the other side of Walmart 350 condos and one of the daycares. That's the other side of the road, Sandirio is closing. And I mean it would be greatly appreciated if you can look into where we can reopen. It's not, it's not a new business, just trying to reopen, it was closed since in 2020 due to the pandemic.

Linda Amos

OK. Does anyone have any questions for?

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Vickie Mullins

I have one. Mr. McAllister, thank you for being here.

Is there a reason that you didn't have a permit or did I read it wrong. Beforehand, before you even closed, is there a reason why you didn't get the permit? Before you close for the pandemic. I can understand that but is there a reason why there wasn't a permit then?

Rodger McCallister

Well, it was. I know, I think before they closed.

Vickie Mullins

Right. We did or I may have read it wrong, but I was just wondering why there wasn't a permit. I mean, you said you were there for 20 years. You know, and of course 2020 you had to close because of the pandemic, so I was just wondering if you knew the reasoning why there wasn't a permit.

Rodger McCallister

Well, I me personally, I thought it was until the I think 2020. I think when it closed down, I didn't know when It did, I think they lost it.

Vickie Mullins

OK. Thank you.

Brenée Orozco

Question sir, Mr. McCallister, would you please tell us whether that fence in the backyard is, how high is that?

Rodger McCallister

I think it's five feet, the fence in the background. I know according to code that they had to do it when they had when this opened.

David Moon

I believe it's a state requirement for the fence around the play area.

Brenée Orozco

To be at least four feet. I was just wondering how high was it?

Linda Amos

Thank you, Sir. Any other questions? Thank you, Mr. McCallister.

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David Moon

There are no other speakers, Madam Chair, so you can close the public meeting and then ask for a motion from the board members. There is a suggested motion as part of the package. If you go to the end, with a motion to approve or to deny. That would be found on the last page where it says "motion".

Linda Amos

The public hearing is now closed, and we will move towards making a motion.

Marva Lucas-Moore

I'll make the motion to approve the special use for daycare, subject to the conditions of approval and the special use permit subject to the conditions set forth in the special use permit in fine that the special use one will not materially endanger. The public health or safety is supported according to the plan submitted and recommended. Two, that it meets all required conditions and specifications. Three, maintains or enhances the value of adjoining and abutting properties, or that the use is for public necessity, and the last one, the location and character of the use if developed according to the plan submitted and recommended, will be in harmony with the area in which it's to be located, and in general conformity with the County's most recent comprehensive land use plan.

David Moon

And I believe you were adding on the findings are based on the facts supported by information in the staff report and Exhibit H the applicant's response, yes.

Marva Lucas-Moore

That's Correct.

Linda Amos

The motion has been made. Any second?

Vickie Mullins

I Second.

Linda Amos

All in favor?

All are in favor.

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OK. Now we have some other matters to discuss. So, Sir, if you don't have any other questions, you may be excused.

David Moon

Next on the agenda is a selection of the chair and vice chair based on the rules and procedures and the counties adopted standards for the board of adjustments. By July 1st or around that time, July 1st every year, the Board of Adjustment is to select a chair and vice chair. The board makes the final approval. It does not have to go to the board of County Commissioners. You do not have to make that decision tonight. You can choose to delay it to next month. If we don't have a meeting next month because of the lack of agenda, then the existing chair and vice chair continue in those roles until such time as the board takes a vote to continue or to replace those designations. So, it's your choice if you want to make a make an action this evening, however, only those that are regular members can serve as the chair or the vice chair.

Linda Amos

Does anyone have any questions?

Vickie Mullins

I would say leave it how it is.

Leave Mr. Parks chair, and Ms. Amos vice chair.

Marva Lucas-Moore

I agree with that motion. So, we going for them. OK.

Vickie Mullins

OK, I'll make a motion that we recommend that Greg Parks.

David Moon

It's not a, it's not a recommendation. It would be to approve.

Vickie Mullins

Yeah, I make a motion that we approve for Greg Parks to remain as chair for the board of adjustments and Linda Amos to be the vice chair.

Marva Lucas-Moore

I second that motion.

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Linda Amos

OK, motion has been made and approved by a second.

All in favor say aye.

Any nehs? (none).

Motion carries.

OK the next item is discussion about updates. Is that something for you?

David Moon

Yes, I'm just going to reiterate a e-mail I sent to all the board members regular and alternates that the School of Government, I believe it's on June the 8th, is having a virtual workshop on quasi-judicial procedures. Members that have been on the board for several months attended a workshop that we had here. It would be similar, but it would be a good source to gain further information. Contact me if you haven't already and you wish to take the course. There's a fee of the department will pay. It's about a 1/2 day class and I encourage you if it haven't already and have the time to do so, to participate in the course. You can come down to our office and watch it at our office, or we can send you the link and you can watch from home or your office.

Linda Amos

I was considering this. Is it June 8th or 9th.

David Moon

I believe it's June 8th. So, you can check that other e-mail I'll send out another reminder tomorrow and about the date and time and if you're interested, let me know. As I said, I've already had two that I've registered for that course.

Vickie Mullins

It is helpful. It is good.

Brennee Orozco

I'm sure it will take care of some misunderstandings.

David Moon

I have no further items for discussion unless the board Member may. If not, then we can move to adjournment.

Robert Hasty

May I say something?

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Yes.

Robert Hasty

I just wanted to remind you all of these motions. On these findings, they have to be specific. The evidence has to have something to support it and that's important to the Court of Appeals. It said that in the case, and if it one of these were to be challenged. It could be overruled very easily if there aren't any sufficient findings that the board has made. This case is pretty cut and dried, but just for future and what we asked is that the applicant provide those findings for you because their burden to do that and that's what these exhibits this exhibit H is right in this case, the applicant actually didn't really answer the question, just kind of repeated the question. So, this is where it says the use will not materially endanger the public health and safety of located according to the plans submitted A proposed he just said no, these will of the property will not endanger the public health and safety of the community. It's not really specific and something like that you could have. That, you know, prior daycare was an operation for 20 years and no indication public compensation to her disturb, something like that and we're that same thing for #2. He didn't really provide anything. But, you know, you can say all the. The ordinance provisions of Section 906 were met and happens already. To the and sign the conditions of approval of set forecast. Something of that nature. And so just for the future. Just remember that. Remember, look at these exhibits and make sure that the applicant has. Sufficiently addressed, and if not, you can ask them you know. What supports this, and what's worse, that if it's not already these cases do, it's been a while, but you know they do a lot of these are appealed to. What supports this? Superior Court and I just don't one reversed on something like that.

Vickie Mullins

So do we. Specify for each exhibit like a through four, can we just?

Robert Hasty

Well, you could. You don't really have to get that detailed. It just has to be something in in the record to support each of those findings so more specific than just feeding the words.

Linda Amos

So, they are only right. So, they can do their own write up for the finders, but it has to be substantiated and defined, and that they write up. Is that what you're?

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Robert Hasty

Saying, yeah, well, I mean it should be something specific here. He just said yes to the question, But I think it was. I mean he didn't about any based on, yeah.

But I mean the evidence is there just, but that's something that either you know the applicant, you can press them on it or if you can find it yourself just from because I mean the applicants aren't good enough. This is the hardest thing to do and it's to pick all that out of there. Because that language is just, it's wordy and a little non-specific, but unfortunately quarter of appeals, it said it has to be facts in the record to support those. So if you'll just look, look at those when you get these cases, that would just look at exhibit. H or I or whatever it may be, and for that particular case where the applicant is set forth. And that's what we usually do is incorporate it into the motion if it's sufficient, but just make sure it looks sufficient. You have to come in here and dig a little to make sure that that it's all there.

Linda Amos

You can help us out.

Brenée Orozco

Before we leave today, Madam Chairman, when's the next day so you won't notice? The next our next meeting date.

David Moon

Our meetings are always, for the Board of adjustment, the third Thursday of each month at 6:00 PM in this room. So, in June, that will be June 15th. That's the third Thursday of June. That's a little bit earlier than usual, but the 15th of June.

Christopher Portman

I don't believe we have cases. But I'll have to check.

David Moon

So if we don't have any cases for that meeting, we'll send out an e-mail and let you know that the meeting has been canceled due to the lack of agenda.

Linda Amos

Is there a motion?

Brenée Orozco

I move to adjourn.

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Vickie Mullins

I Second the motion.

Linda Amos

All in favor?

Any Neh's? (None)