

1 **NEW BERN BOARD OF ADJUSTMENT**
2 **MINUTES**

3
4 **August 31, 2015**

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6 The New Bern Board of Adjustment held a work session on Monday, August 31, 2015 at 5:30
7 pm in the Development Services conference room located on 303 First Street.
8

9 **Members Present:** Ms. Sarah Afflerbach – Chair
10 Ms. Beth Walker – Vice-Chair
11 Mr. Peter Adolph
12 Mr. Benjamin Beasley
13 Mr. Kenneth Brown
14 Mr. Jeffrey Midgett
15 Mr. John Murrell
16 Mr. John Riggs
17 Mr. PJ Walker
18

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20 **Members Excused:** Ms. Lois Jamison
21

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23 **Members Absent:** Mr. Richard Parsons
24 Mr. Alfred Barfield
25

26
27 **Staff Present:** Mr. Greg McCoy, Land & Community Development Administrator
28 **Mr.** Kevin Robinson, City Planner
29 Mr. Scott Davis, City Attorney
30

31 Chair Sarah Afflerbach called the meeting to order.
32

33 Roll call was taken and a quorum was declared.
34

35
36 **New Business:**
37

- 38 1. Reconsideration of a Special Use Permit request to construct and operate a tier one solar
39 facility on a 25.06 acre tract. The site is located at 1185 NC Highway 55 West and is
40 further identified in Craven County as Township 8, Map Number 222, and Lot Number
41 094.
42

43 **Staff Comments:** Mr. Scott Davis explained the procedural process for reconsideration of a
44 denied Special Use Permit. The application was denied on the Harmony aspect of it. The Board

45 did not find that the project would be in harmony with the surrounding area. The applicant filed
46 an appeal of that issue. It is the applicant's position that the Board did not have sufficient
47 evidence upon which they could make that finding. The second procedural problem is that the
48 State statute and the City's ordinance requires that when a permit is denied based on is failure to
49 satisfy an element that the Board has to find fact specifically as part of the process for 2 reasons;
50 1. So that the applicant understands why they failed to meet that element and secondly if the
51 matter is appealed a judge will know what evidence the Board was looking at and considering in
52 denying the application. Procedurally there is no record showing that motion with the supporting
53 facts. Instead of the appeal going to a judge, Mr. Davis suggested that the Board handle it this
54 way themselves.

55
56 Mr. Davis explained that the harmony element of the finding of facts is a very difficult element.
57 Typically the applicant simply shows that the property is zoned for the use they are applying for
58 and staff confirms if it is zoned properly. From there it is up to any opponents to show credible
59 valid evidence otherwise. Generalized fears or opinions of adjacent property owners is not
60 sufficient evidence. That is speculative, sentimental and personal is not admissible. He
61 explained a few recent cases that were appealed in court based on the Harmony element as well.

62
63 The Board was directed to review the first 11 pages of the transcript from the previous meeting
64 and decide if any public comments on this application regarding the harmony element could be
65 considered substantial evidence.

66
67 Chair Afflerbach stated that there would not be any public comments on this reconsideration
68 tonight. Vice-chair Walker stated that it is important to remember that if the property is zoned
69 properly and a Solar Farm is an allowable use than that in and of itself means that it is in
70 harmony.

71
72 **Motion:** Mr. Walker made a motion based upon the definitions clarified this evening that the
73 location and character of the use, if developed according to the plan as submitted and approved
74 will be in harmony with the area in which it is to be located and in general conformity with the
75 plan of development of the city. Mr. Walker stated the finding of fact is based on the clarification
76 of the definitions by council this evening and that the record does not show any compelling
77 contrary evidence. Mr. Adolph seconded. Motion carried by a unanimous roll call vote.

78
79 Chair Afflerbach stated the conditions recommended by staff:

- 80 1. In order to provide an immediate six foot high screen, erect a 3 to 4 foot berm along the
81 length of the property adjacent to Highway 55 and install a Type "A" screen on top of the
82 berm.
- 83 2. In order to minimize disruption to adjacent neighbors, no construction will take place at the
84 site before 7am and after 7pm.

85
86 Mr. Davis stated that the first condition is in the record as being discussed in the previous
87 meeting and that there is ample evidence in the record that this project will be in a rural area.
88 The Type A screen with a berm and denser vegetation is in keeping with a rural area.

Motion: Mr. Adolph moved to approve/issue the Special Use Permit subject to the following conditions:

1. In order to provide an immediate six foot high screen, erect a 3 to 4 foot berm along the length of the property adjacent to Highway 55 and install a Type "A" screen on top of the berm.
2. In order to minimize disruption to adjacent neighbors, no construction will take place at the site before 7am and after 7pm.

Mr. Beasley seconded. Motion carried by unanimous roll call vote.

2. Consideration of a Special Use Permit request to operate a church on a 9.69 acre parcel using existing buildings. The site is located at 1732 Racetrack Road and is further identified in Craven County as Township 8, Map Number 240, and Lot Number 135.

Witnesses were sworn in. Chair Afflerbach explained the process for consideration of this application.

Staff Comments: Mr. McCoy presented the application. The application is for a Church. It is currently zoned I-1 light industrial and that it is allowed on the property by Special Use Permit if the property is larger than 2 acres, which it is. No permits will be issued from our Inspections department until approvals are in place from the City, State and any other agency required related to this case.

Applicant Comments: Mr. Jason Smith, pastor of Latitude Church explained how he came to New Bern and would like to have his Church here.

Board Comments: Chair Afflerbach went through the Findings of Fact.

Public Comment: *Glenn Fink*- one of the partners of an adjacent property at 3101 Neuse Blvd. – stated that he wants to make sure that he will not lose the use of his property as a result of this Special Use Permit decision.

Chair Afflerbach stated that she doesn't see how it would affect the use of adjacent properties.

Motion: Mr. Walker moved to close the public comment period. Mr. Brown seconded. Motion carried by unanimous vote.

Findings of fact:

1. The requested permit is within the Board of Adjustment's jurisdiction according to the table of permissible uses;

Motion P. Adolph; Second K. Brown

Motion carried by unanimous vote

2. The application is complete;

Motion P. Adolph ; Second J. Murrell

Motion carried by unanimous vote

135
136 3. If completed as proposed in the application and as presented tonight, the development
137 will comply with all the requirements of this ordinance;

138 **Motion K. Brown** made a motion that if completed as proposed in the application
139 development will comply with all requirements of this ordinance and all City State and
140 Federal ordinance.; **Second B. Beasley**

141 **Motion carried by unanimous vote**
142

143 4. The use will not materially endanger the public health or safety if located where
144 proposed and developed according to the plan as submitted;

145 **Motion: J. Midgett** made a motion to approve the plan as proposed based on the fact
146 that it does not show any public health or safety issues that would negatively affect the
147 public; **Second K. Brown**

148 **Motion carried by unanimous vote**
149

150 5. The use will not substantially reduce the value of adjoining or abutting property, or
151 that the use is a public necessity;

152 **Motion B.Walker** made a motion that since the property will be occupied it will not
153 reduce the value of adjoining or abutting property; **Second P.J. Walker**

154 **Motion carried by unanimous vote**
155

156 6. The location and character of the use, if developed according to the plan as submitted
157 and approved, will be in harmony with the area in which it is to be located and in general
158 conformity with the plan of development of the city;

159 **Motion P. Adolph** moved that if developed according to the plan as submitted and
160 approved will be in harmony in the area in which it is to be located and in general
161 conformity with the plan of development of the City in that it's basically properly zoned
162 as it is and it's only the difference in its size that would make it any different and that
163 won't; **Second K. Brown**

164 **Motion carried by unanimous vote**
165

166 **Motion:** Mr. Midgett made a motion to issue a Special Use Permit to this project based
167 on the finding that they have met all the qualifications and necessities needed to be
168 found/ deemed reasonable and permitted under the current zoning of this project. Mr. P.J.
169 Walker seconded.

170 **Discussion:** Staff Kevin Robinson explained a condition suggested by Staff for this
171 project. The proposed project is in the City's Pedestrian plan and staff recommends that
172 sidewalks be included in the development of this property adjacent to the street along
173 Racetrack Road. Mr. Robinson further stated that eventually Racetrack Road will be
174 connected to the improvements made on Elizabeth Ave.

175 **Motion:** Mr. Brown made a motion to open the meeting for public comment about the
176 suggested conditions. Mr. Murrell seconded. Motion carried by unanimous vote.
177

178 **Public Comment:** Chair Afflerbach stated the 2 suggested conditions:
179

1. A second point of access to Racetrack Road as indicated on the

180 plan.

181 Staff stated that a 30' wide second access point to Racetrack Road
182 is noted on the plan.

- 183 2. Provide a 5' minimum sidewalk adjacent to Racetrack Road as
184 noted in the handouts submitted by Kevin Robinson.
185

186 Mr. Jason Smith, pastor of Latitude Church stated they are in total agreement with
187 whatever the Board decides to do. He asked for an amendment to when the City decides
188 to put in the other sidewalks that they would agree to add theirs at that time.

189 Staff Robinson stated that would be agreeable, but at this time a fee in lieu would be the
190 proper process for that and we don't have that process in place yet. That would require a
191 change at the State level for the City to be able to do that. Staff is working on that right
192 now if you'd like to include that as part of the condition as an either/or situation that
193 would probably be appropriate. Right now he does not believe the City can legally do a
194 fee in lieu of. If it could be done as an option until the legalities can be sorted out that
195 would be agreeable.
196

197 **Motion:** Mr. Adolph made a motion to close the public comment portion of the meeting.
198 Mr. Brown seconded. Motion carried by unanimous vote.
199

200 **Board Discussion:** There was discussion about the condition for sidewalks including
201 allowing a delayed deadline for installation. If they make the condition that they are
202 required to provide for sidewalks that would allow the City some time to work with them
203 on a possible fee in lieu option if it becomes available in time.
204

205 **Motion:** Mr. Midgett amended his previous motion to include the following conditions:

- 206 1. Developer to include a second access point on Racetrack Road as noted on the
207 plan.
208 2. That the Developer provides a sidewalk adjacent to Racetrack Road and that the
209 City put in place the methodology to work with them on the fee in lieu.


210 Mr. Walker seconded.

211 Motion carried by unanimous vote.
212

213 With no further discussion, meeting adjourned. The next regularly scheduled meeting is on
214 Monday, September 28, 2015 at **5:30 pm** in the City Hall Courtroom, 2nd floor, 300 Pollock
215 Street.
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221 Sarah Afflerbach, Chair


Greg McCoy, Board Clerk