MINUTES OF THE GREENSBORO BOARD OF ADJUSTMENT February 22, 2010

A regular meeting of the Greensboro Board of Adjustment was held on Monday, February 22, 2010 at 5:30 PM in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Rick Pinto, Chair, Scott Brewington, Clinton Turner, Cheryl Huffman, Brian Pearce, Bill Strickland, Ryan Shell, and Russ Parmele. Staff present were: Rawls Howard, Zoning Administrator, Chris Marland as well as Jim Clark, City Attorney's Office.

Chair Pinto called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Mr. Turner stated that he voted in favor of the motion on page 3, not against.

Ms. Huffman moved to approve the minutes of the January 25, 2010 meeting as amended, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Rawls Howard and Chris Marland were sworn in for their testimony related to matters listed on the agenda.

CONTINUANCES/WITHDRAWALS

No one appearing before the Board asked to be granted a continuance.

NEW BUSINESS

VARIANCE

(a) BOA-10-02: **2422 RETRIEVER LANE** Robert and Lois Losyk request a variance from a rear setback requirement. *Violation*: A portion of a proposed attached screened porch will encroach 4 feet into a minimum 15-foot rear setback. Table 30-4-6-1 and Section 30-4-6-1(D)(2)(b), Present Zoning- RS-12(CL), BS-230, Cross Street-Lake Brandt Road. **(GRANTED)**

Rawls Howard stated the property is located in Howards Walk Subdivision at the north end of the cul-de-sac on Retriever Lane west of Lake Brandt Road on zoning map block sheet 230. The applicant is proposing to cover an existing patio with a screened porch. The patio is

located at the rear of the existing house. A portion of the addition will encroach 4 feet into a 15-foot rear setback.

The proposed dimensions for the screened porch are 19 feet by 12.5 feet for a total area of approximately 273 square feet. The property is currently zoned RS-12(CL) (Residential Single Family with Cluster Zoning Development option). The property was eligible to develop using cluster zoning requirements. The lot size and setbacks were reduced to the RS-7 zoning district requirements. The objective of cluster development is to place houses closer together on smaller lots than normally permitted in the zoning district and to place land which would otherwise have been included in private lots into public dedication or common elements for open space. The current rear setback requirement for RS-7 is 20 feet; however, Section 30-4-6-1(D)(2)(b) states: "Rear setbacks may be reduced to fifteen (15) feet if rear property lines abut public drainageway and open space areas or if rear property lines abut common elements open spaces at least thirty (30) feet in width." The rear of this lot abuts common elements that exceed thirty 30 feet in width; thus the applicant's required rear setback may be reduced to 15 feet. The applicant also has other common elements area contiguous to his property. The common elements area is located east of the applicant's lot and contains a permanent watershed wet detention pond.

Chair Pinto asked for anyone wishing to speak in favor of the request.

Robert Losyk, 2422 Retriever Lane, presented photographs of the property and letters from neighbors to the Board. He stated that if they were to comply with the strict letter of the ordinance they would have practical difficulties and unnecessary hardship. They can make no reasonable use of the patio eight months out of the year due to the proximity of the ponds. The incredible amount of mosquitoes, gnats, and the geese that travel between the two ponds make the area unusable. He stated the geese defecate on the open patio and steps. He has had to repaint the patio from the many cleanings it requires. He has contacted the City about mosquito abatement, but they cannot provide such services, nor can they do anything about the geese. The only way to alleviate the difficulty and unnecessary hardship is to screen in the existing patio.

The patio already exists, and the footprint has been there since the construction of the home. The patio is at an angle. As a result of the angle the patio encroaches in the setback at one end, for less than four feet. The other end is within the setback. He calculated that the construction would be 94%-96% out of the setback. Only about 4%-6% would be encroaching into the setback.

The hardship is a direct result of the application of the ordinance to the property. If granted it would preserve the spirit of the ordinance, and they would have reasonable use of the property. The public safety and welfare would be assured. The neighbors adjacent to the property would not be able to see the screened in patio due to the location of the property. There are no neighbors behind them.

Chair Pinto asked if the letters were from the neighbors on either side of the property.
Mr. Losyk stated that they are from the two closest neighbors. A pond is on one side of his property.

Chair Pinto asked if the applicant would limit the size of the screening to the footprint of the existing patio. Mr. Losyk stated that he would.

Chair Pinto asked how high off the ground the patio is. Mr. Losyk stated that the patio is approximately 1 to 2 feet off the ground on one end, and approximately 3 to 4 foot at the other end.

No one spoke in opposition to the request.

Ms. Huffman stated that since the footprint of the patio already exists then there is no further encroachment. Also the encroachment is only on one end of the patio.

Chair Pinto stated that the cluster developments already have decreased setbacks. He also stated that the Board would have to decide if no reasonable use could be made.

Mr. Brewington stated that the pond is causing issues, and this is not the first time these issues have come before the Board. Mr. Turner asked staff if there has been a similar case in the neighborhood. Mr. Howard stated that the previous case was in another area close by, but it was denied, appealed, and the appeal was denied.

Mr. Brewington stated that screening the porch in if it is a number of feet off the ground could make the area safer as well.

Mr. Parmele moved that the zoning enforcement officer, in the case of BOA-10-02, be overruled and the variance granted based upon the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance. If the applicant complies with the provisions of the ordinance, they can make no reasonable use of the property because the property is located in a cluster zoning development which restricts the setbacks of the property and the challenge with respect to mosquitoes, geese, and the proximity to the ponds makes the current patio virtually unusable. The hardship of which the applicant complains results from unique circumstances related to the property because of the close proximity to the ponds directly adjacent to the property. This impacts the quality of life and the usefulness of the patio. The hardship results from the application of this ordinance to the property because it does not allow the applicant to cover the patio, and make reasonable use of it. The hardship is not the result of the applicant's own action as the ordinance is written and the current location of the house with respect to the ponds. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because by making this modification it will allow the homeowner to better utilize the patio and the property, and does not detract from the neighborhood. The granting of the variance insures the public safety and welfare and does substantial justice because there will be no harm to the neighbors, the geese will not be interrupted in their annual migrations, the homeowner will be able to use the property more fully, and architecturally it does not impact the surrounding properties. Mr. Turner seconded the motion. Chair Pinto stated that the Board took into evidence two affidavits from neighbors showing no opposition to the request, as well as a number of photographs that clarify some of the testimony. The Board voted unanimously, 7-0, in favor of the motion. (Ayes: Pinto, Turner, Brewington, Shell, Parmele, Huffman, Strickland. Nays: None.)

APPEAL OF NOTICE OF VIOLATION

(b) BOA-10-03: **2511 FONTAINE ROAD** Oxford House Inc. appeals a Notice of Violation in reference to the use of the property for more then four (4) unrelated individuals living together. Section 30-2-2.7, Present Zoning-RS-9, BS-72, Cross Street-Cheltenham Boulevard.

Mr. Howard stated the zoning office received a complaint on December 9, 2009 that there is a family care located at the referenced address, and that the home location did not meet the ¼ mile spacing requirement. Enforcement staff conducted an inspection and found multiple people living in the house. The residents told the officer they were a half-way house. The field officer issued a Notice of Violation in reference to Section 30-5-2.37 for a family care home which did not meet the spacing requirement. On or around December 28, 2009, the zoning office received a letter from the applicant's attorney that references the use of the property, related issues, and Oxford House guidelines information. After discussion with the staff, it was determined that they did not meet the City's definition of a family care home as the house had no administrative or supervisory personnel. The attorney informed staff that there were 8 or more unrelated persons living in the house. Staff then informed the attorney that despite not being a family care home, they were, in fact, in violation of the City's definition of a family by having that many unrelated people in a structure in a residential district. As such, they would be issued a Notice of Violation for this infraction and the previous one would be rescinded. On January 5, 2010, the City issued a different Notice of Violation in reference to Section 30-2-2.7 which references the definition of family. On or around Jan 14, 2010, the City Attorney's Office received a letter from the applicant's attorney which acknowledged the Notice of Violation, along with his disagreement over how the City was applying its family definition, and intent for due process. On January 20, 2010 the applicant's attorney filed their appeal of the January 5, 2010 Notice of Violation.

Mr. Howard stated that when talking with the attorney for the appellant he stated there were three options available for recourse. He informed the attorney that a text amendment, rezoning, and an appeal of the notice of violation were all options for this matter.

Mr. Turner asked where the other family care home was that was closer than ¼ mile. Mr. Howard stated he could get that information for him, but the violation does not deal with the family care home ordinance.

Mr. Shell asked what the appellant would have sought from a text amendment. Mr. Howard stated that would change the City's definition of 'family'.

Chair pinto asked for anyone wishing to speak in favor of the appeal.

Greg Hefner, 1510 Twisted Oak Dr. Chapel Hill, NC, asked if the zoning officer that issued the citation will be available for cross examination. Mr. Howard stated that he was not in attendance. He stated that the City has not classified the home as a family care home; rather they have classified the home to be more than a single family. The issue is the limitation of a maximum of 4 unrelated people. His client would like to remain having seven residents with the possibility of an eighth.

Chair Pinto asked if it was the appellant's position that the statute has been misconstrued, or are they here to argue for a change in the ordinance. Mr. Hefner stated that he is not arguing that the definition was misapplied, but the federal law requires the city to make an accommodation to these particular residence. It is on this basis that the residents should have been classified as a family or exempted them from the limitation of the ordinance.

Chair Pinto stated that the authority of the Board is to ascertain if application of the ordinance was reasonable, not whether the application of the ordinance violates federal law. He stated the Board was more than willing to hear what the appellant had to say, but the Board could only determine if the ordinance was enforced reasonably. The appellant would then have to appeal the decision of the Board to the Superior Court.

Mr. Hefner stated that it was not his position at this point that any federal law had been violated. His contention is that federal law requires or allows the City to grant a reasonable accommodation for these residents. Until the City denies these accommodations no violation of the Fair Housing Act has occurred. Once violated, the appellant would file an action in federal court. The reason they filled this appeal, as opposed to the other two options, is because he did not understand how a rezoning would accommodate the definition of family and the text amendment might set a precedent the City is uncomfortable with. He felt this was the only option that granted specific relief without creating a precedent.

Mr. Pinto asked Jim Clark, City Attorney's Office, if the Board had the authority to grant exceptions in this case. Mr. Clark stated that the Board has an interpretive power, but it is limited. The limits would need to be set by the Board. In general he agrees with the comments by the Chair. But he can not tell the Board that the interpretation that Mr. Hefner stated whether the Board has the to make that as an interpretation as an accommodation as being reasonable interpretation of a zoning officials administration in light of other existing law, might be a reasonable course of action. He can say that the letter of what the Board is required to do is in line with the Chair's comments.

Chair Pinto asked if the Board could ultimately decide that the ordinance was interpreted properly by staff, i.e. this does not come under the definition of a 'family' and the notice of violation was appropriate, but in our discretion we think the City ought to provide a reasonable accommodation for this situation, therefore the Board overrules the violation. Mr. Clark read from the ordinance "in interpreting the code on appeal the Board has all the authority of the enforcement officer, and may, if it reads provisions of the code differently from the officer, reverse or modify the officer's decision". That is an interpretation strictly of the code. From the ordinance: "This power may be exercised only when the Board believes that the officer misread the code or acted without authority". Mr. Clark stated that it is hard to believe, given the evidence, that the officer misread the code. The question becomes, 'Did the officer act without authority?'. We know what the authority is that exists within the code of ordinances. But is superseding federal law, FHA Amendments of 1988, and applying that in their daily duties part of their job?

In terms of what this Board is capable of doing, the Board is the arbiter as to the fullest extent of the Board's power. In determining whether or not the zoning officer read the code properly, that is not really up for debate. The question becomes whether or not the zoning officer acted without authority, in light of 1) the code of ordinances or 2) the code

of ordinances as applied in relation to other federal law. Mr. Clark believes that is only in light of the code of ordinances. That has been how the Board has approached this in the past. He can not tell the Board that if they decide to broaden their authority slightly it would be wrong. That is solely to the Board's discretion.

Mr. Clark stated that with regard to the other two options that were discussed with the appellant, granting an accommodation in this case is not something the Legal Department is authorized to do. This should be an action by a governing body of the City. But no one can say what the outcome of any other City governing body might be with regard to the other alternatives of rezoning and text amendment.

Mr. Hefner asked if the Board believes it can apply or grant a reasonable accommodation under the Federal Fair Housing Act. He stated that his client would prefer to work this out without a legal remedy.

Chair Pinto stated that this exact issue has not come before the Board, and they can talk as a Board as to whether they think they can grant an accommodation based on the federal law. Chair Pinto stated that they could also table the item to allow the appellant to try the other means to a resolution.

Mr. Clark stated if the client consents, it may be wiser for the Board to take this matter under advisement and continue the matter, as it stands, and to take its initial consideration under advisement. That may open an avenue towards one of the other options.

Mr. Howard stated that there are still some considerations, given that the house is built for a single family structure. If they get a rezoning for multi-family they would have to have more than one unit, and there may be construction cost issues. There are other considerations to consider for the rezoning option. He is willing to talk with the appellant more about the other options.

Ms. Huffman asked if the text amendment would be a rewriting for the one property. Mr. Howard stated that it would affect the entire city. She asked if rezoning would require money, time, and construction. Mr. Howard said that it could, but he would have to review the code and options.

Mr. Brewington stated that an expansion of authority would be necessary. If the Board was to uphold the enforcement officer, and the appellant appealed to Superior Court, it seems the Board would get more feedback relative to the Board's authority. Mr. Brewington expressed a concern that ruling in the matter would set a precedent. He feels expanding the Board's authority makes things different.

Chair Pinto stated that because Mr. Hefner is going to base his comments federal, and the law of accommodation, the Board could enter area where they must decide if, at the local level, is it the responsibility of the enforcement officer to understand federal implications of accommodation. At the city level, one might argue, that four unrelated people is an accommodation. A line must be drawn. If we are to rule based on that concept it maybe worthwhile to move it up to the State Court level for clarification.

Chair Pinto stated that the residents are still at the residence, and would remain there until some Board makes a decision. Mr. Hefner stated that he would entertain the option of tabling the matter to some future date to explore other options. Chair Pinto asked if a sixty day continuance would be appropriate. Mr. Howard stated that the process could take longer than that. Mr. Clark suggested that the Board could just table the matter for an indeterminate amount of time under Robert's Rules. Mr. Hefner agreed to the option to table the item.

Mr. Parmele asked that if and when the appellant did come back they discuss Oxford House in general; the how and what of the program.

Ms. Huffman stated that through her research she saw no maximum number of residents for the homes. Mr. Hefner stated that if he were to go forward, 90% of what would be presented would be information on how Oxford House operates. He presented the Oxford House manual to the Board as evidence. The appellant, Kathleen Gibson-Meyers, stated that the average number of residents is about 10-12.

Ms. Huffman asked Mr. Hefner if there was North Carolina case law regarding Oxford House specifically. Mr. Hefner stated that there was only federal case law. Mr. Clark stated that there were no State Court matters.

Chair Pinto moved with regard to case BOA-10-03, appeal of a notice of violation, to table the matter for 90 days until the May regular meeting, with the consent of the appealing party through its attorney Mr. Hefner, seconded by Mr. Parmele. The Board voted unanimously, 7-0, in favor of the motion. (Ayes: Pinto, Turner, Brewington, Shell, Parmele, Huffman, Strickland. Nays: None.)

OTHER BUSINESS

Discussion on possible amendment concerning changing voting requirements:

Mr. Howard stated during a legal review with outside counsel it was suggested that the voting requirement procedures may need to be amended. The culture at BOA has always been four votes. In the ordinance it states that to grant a variance, special exception, interpretation, etc. there must be four votes. In the opinion of outside counsel this is in conflict with the special State legislative language that grants the power for those votes. In the opinion of the outside counsel the Charter is out of date and needs to be updated. The interpretation is that the four votes only count when the Board is going to reverse or modify any order, requirement, decision, determination, or interpretation of an administrative officer charged with enforcing the ordinance. In his opinion, the issue is that the votes only count when some one is trying to appeal the zoning enforcement officer's interpretation, not for variances, special exceptions, or any of the other things that are granted. The new LDO is revised to reflect that interpretation, and any action by the Board on any case can be decided with four votes. Mr. Howard stated he feels the matter is still interpretive; the language just needs to be cleaned up.

Chair Pinto asked if it would be clarified in the LDO so that it remains as it has been interpreted in the past. Mr. Howard said that it would.

Mr. Clark stated that the application of State law, with regard to the City Charter, has the requirement of deciding every case with a 4/5 majority, except appeals of zoning enforcement officer interpretations. That has not how the City legal department has interpreted this in the past. Until this material is changed, the City will continue to use the four votes rule.

The Board indicated support for the four votes policy.

Discussion

Mr. Turner asked what to expect during tomorrows seminar. Mr. Howard did not have any details on the seminar's agenda. The seminar will be held at the Coliseum, with registration starting at 1:00 PM.

Ms. Huffman stated concern about the fact that the Oxford House did not have a limit on the maximum number of residents. Mr. Howard stated that the amount of units required can help regulate that issue. Building inspections and safety will also have a role. Staff would probably scrutinize, and not recommend rezoning to multifamily in the middle of a single family area.

Mr. Howard stated that he has heard from a lot of neighbors through emails and other correspondence that they are livid about what is going on there right now. As staff he is still giving them all options that might be available to resolve the violation.

Ms. Huffman stated she feels it might have been better to go ahead and decide the case. Chair Pinto stated that if Mr. Howard finds, in working with the appellant, that they need to come back to the Board they do not need to wait the entire 90 days. If he wants to take 90 days he can, but the Board would welcome the hearing earlier if desired by the appellant.

A Board member asked what the neighbor complaints were. Mr. Howard stated the observations they are getting from the neighbors is traffic, nonresidents coming in and out at all times of the night, the residents are all women, and a lot of men are showing up, fights, and other issues. Mr. Shell asked if there were any police reports for the residence. Mr. Howard stated that he would find out, but he would not doubt if there were some police reports.

Mr. Clark cautioned the Board, stating there was quorum present, and the matter of the case is closed. All of the discussion can only be considered discussion, and can not be considered in any future action.

ACKNOWLEDGEMENT OF ABSENSES:

The absence of Ms. Trexler was acknowledged.

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ADJOURN:

There being no further business before the Board, the meeting adjourned at 7:09 PM.

Respectfully submitted,

Rick Pinto, Chair
Greensboro Board of Adjustment

RP/jd

MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
MARCH 22, 2010

A regular meeting of the Greensboro Board of Adjustment was held on Monday, March 22, 2010 at 5:30 PM in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Rick Pinto, Chair, Scott Brewington, Clinton Turner, Cheryl Huffman, Bill Strickland, and Russ Parmele. Staff present were: Loray Averett, Zoning Service Cordinate, Rawls Howard, Zoning Administrator, as well as Jim Clark, City Attorney's Office.

Chair Pinto called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Mr. Strickland moved to approve the minutes of the February 22, 2010 meeting as submitted, seconded by Ms. Huffman. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Rawls Howard and Loray Averett were sworn in for their testimony related to matters listed on the agenda.

CONTINUANCES/WITHDRAWALS

Mr. Howard stated that the applicants for case BOA-10-05, 4922 Mary Street, have asked to withdraw the matter.

NEW BUSINESS

VARIANCE

(a) BOA-10-04: **200 BLOCK ALMA PINNIX DRIVE** Sally Millikin, Agent for Fountain Manor Homeowner's Association requests a variance from the maximum fence height requirement. *Variance:* An existing fence which is proposed to be replaced along Alma Pinnix Drive exceeds the maximum height of 4 feet by 2 feet within 15-feet of the Alma Pinnix Drive right-of-way. Section 30-4-9.6(A), Present Zoning RM-8, BS-53, Cross Street-North Elm Street. (GRANTED)

Rawls Howard stated the applicant is requesting to replace a 6-foot chain link fence with a 6-foot wooden privacy fence which exceeds the maximum height of 4 feet by 2-feet within 15-feet of the Alma Pinnix Drive right-of-way. The lot is located south of East Cone Boulevard and east of North Elm Street on zoning map block sheet 53. Planning records reflect the units were built in 1976. It is zoned RM-8. Prior to the 1992 UDO, the property was zoned Institutional 100. The property is unique in shape and consists of approximately 6.5 acres. The lot has a small amount of street frontage on

N. Elm Street, Shannon Drive, and approximately 1,000 linear feet of frontage along Alma Pinnix Drive, (formerly known as Page Street). The property contains multifamily buildings which are known as Fountain Manor Condominiums. There is a 6 foot tall chain link on the applicant's property located along the Alma Pinnix Drive right-of-way. Then fence is located 9 feet from the Alma Pinnix Drive right-of-way line. Planning Department records do not reflect any variance or previous approvals for this fence height. The applicant is proposing to remove the chain link fence and place a wooden privacy fence in the same location at the same height of 6 feet. In the residential districts, the previous and existing ordinances do not permit fences taller than 4 feet within 15-feet of the right-of-way, except as noted. The applicant has made mention of other fences in the area that are taller than 4 feet. Other zoning designations and other land uses did allow for taller fences.

Chair Pinto asked for anyone wishing to speak in favor of the request.

Sally Millikin, 9-D Fountain Manor Dr., representing the homeowners association board, presented photos to the Board of the existing fence and an example of proposed fencing. She stated that the existing fence is quite old and deteriorating. The people who live along Alma Pinnix Dr., particularly adjacent to Page High School, are very exposed to students. People receive cats calls from the students, drug dealing has been witnessed, and there have been several vandalisms and robberies. There are several places in the fence that are easily compromised. Repairs have been attempted, but at this point replacement is necessary. The wooden fence would give the neighbors more privacy and security than exists now. The reason the request is being made is because the area was a lake in the past, and the existing fence is at the top of a hill. If the fence was moved back to 15 feet, it would be further down the hill, and would allow easy visibility over the fence. Visibility creates exposure to cat calls. The current fence is approximately 9 feet off of the right-of-way. The variance would be for 6 feet. They feel the variance would be better for the public safety. It is certainly a visual improvement. The existing fence has served a good purpose, and a variance would be in harmony and will preserve the spirit of the ordinance, and does no harm.

Ms. Huffman asked how students are able to see through the fence if there are cedar slats weaved through the chain link. Ms. Millikin stated that the slats only provide about 2/3^{rds} coverage. With the deterioration, they only provide about half coverage.

Ms. Huffman asked how people were getting over the fence. Ms. Millikin stated that people were getting through holes in the fence. The proposed wooden fence would be much harder to compromise.

Mr. Turner asked if the fence would create any line of sight issues for traffic. Ms. Millikin stated that there is no vehicular access from Alma Pinnix Drive, so there would be no traffic coming out from the development.

Mr. Parmele asked if the intent was to eventually replace the entire fence, not just the fence along Alma Pinnix Dr. Ms. Millikin stated that would probably be the ultimate goal, but this section is much more critical.

Mr. Parmele asked if the current fence was in place because it was installed prior to the zoning ordinance. Mr. Howard stated that the pre-1992 ordinance had essentially the same height and setback requirements. Ms. Millikin stated that they do not know when the fence was installed, but the fence was put in sometime in the early seventies.

Mr. Strickland asked what would happen to the existing fence if the variance is not allowed.
Mr. Howard stated that if a complaint was given for the fence they would be required to take the fence down to the acceptable height for the ordinance.

Mr. Parmele asked if the fence were to be moved back to the 15-feet setback would old growth trees need to be removed. Ms. Millikin stated that many of the trees and established shrubs would need to be removed, and there are several large trees.

Chair Pinto asked if the applicant has spoken to Page High School or the Board of Education about this issue. Ms. Millikin stated that she had not.

Chair Pinto asked about the existing chain link fence that abuts the eastern most corner of the existing fence. Ms. Millikin stated that they were told that the fence was put up by the City, and it is 6 feet in height. Mr. Howard stated that there is no policy for fence construction, and there is no evidence the fence was put up by the City.

Mr. Strickland asked if the construction of a new fence would cause the removal of any of the trees discussed earlier. Ms. Millikin stated that the new fence would follow the existing fence line, and it is unlikely that any trees would need to be removed.

John Hammer, 2312 Princess Anne Street, stated that he attended Saint Pious and Page, and the fence was there in the 1960s. The fence was there when the area was a reservoir, and well before the area was zoned for residential use. He felt it probably would be grandfathered.

No one spoke in opposition, and the public hearing was closed.

Mr. Strickland asked if the fence existed in the 1960s would it be grandfathered in the new ordinance. Mr. Howard stated that the applicant would have to prove that the fence existed before the much older ordinance. Staff has no indication other than the condition of the fence.

Mr. Parmele moved that the zoning enforcement officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provision of the ordinance, they can make no reasonable use of the property because the replacement of the fence is necessary due to the age of the fence and its deterioration, and the resulting acts of vandalism, drug dealing, comments from passers by, and the ease of compromising the existing fence, thus impacting the reasonable use of the property. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because the historical age of the fence dates back to a time when the resulting deterioration requires that it be replaced. The property at the time of installation was a reservoir. The current fence at the top of the hill, at the time of installation was a reasonable distance and location. To move the fence to a 15-foot setback, in certain locations, would result in a location slanting down the hill, and would reduce the amount of privacy and protection for which it was intended. The hardship results from the application of this ordinance to the property because the current ordinance does not take into account the situation where it was initially installed when no condominiums were in place, and at the time was sufficient in that scenario. Hence, the ordinance has been modified through the years, and thus conflicts with the current ordinance. The hardship is not the result of the applicant's own actions because the fence was installed at some point prior to the current ordinance, and in probability back in the early 1960s prior to the current ordinance. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it is generally going to make the area safer, more attractive, and less susceptible to injury or malfeasance. The granting of the variance ensures the public safety and welfare and does substantial justice because additionally it will help with safety, and increase security. Mr. Turner seconded the motion. The Board voted unanimously, 6-0, in favor of the motion. (Ayes: Pinot, Parmele, Turner, Huffman, Strickland, Brewington. Nays: None.)

OTHER BUSINESS

Mr. Howard stated that staff received a letter informing staff that Chair Pinto's and Mr. Parmele's terms are coming up in June, and they are not eligible for an additional term. Staff will petition the Clerk for replacements as soon as possible. Mr. Shell's term is also coming up, and his is submitting documentation to serve another term.

Mr. Howard stated that the withdrawn Mary Street case is likely to be brought back to the Board by the other side involved.

ACKNOWLEDGES OF ABESENCES;

The absences of Ryan Shell, Brian Perace and Kelly Trexler were acknowledged.

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ADJOURNMENT:

There being no further business before the Board, the meeting adjourned at 6:28 pm.

Respectfully submitted,

Rick Pinto, Chair
Greensboro Board of Adjustment

RP/jd

MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
APRIL 26, 2010

A regular meeting of the Greensboro Board of Adjustment was held on Monday, April 26, 2010 at 5:30 PM in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Rick Pinto, Chair, Clinton Turner, Cheryl Huffman, Kelly Trexler and Russ Parmele. Staff present were: Rawls Howard, Zoning Administrator, Loray Averett, Zoning Services Coordinator, as well as Jim Clark, City Attorney's Office.

Chair Pinto called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Mr. Parmele moved to approve the minutes of the March 22, 2010 meeting as written, seconded by Ms. Trexler. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Rawls Howard and Loray Averett were sworn in for their testimony related to matters listed on the agenda.

There was no Old Business before the Board.

CONTINUANCES/WITHDRAWALS

APPEAL OF AN ADMINISTRATION INTERPRETATION

(a) BOA-10-12: 4922 MARY STREET Terry Walsh appeals the zoning interpretation by the office of the Planning Director that the proposed operation of a sexually oriented business located at 4922 Mary Street represents an illegal nonconforming use under the City of Greensboro Development Ordinance. Section 30-9-6.4(A)(1), Present Zoning-HI, BS-115, Cross Street-Edwardia Drive. (CONTINUED)

Rawls Howard stated that the applicant for BOA 10-12, 4922 Mary street wished to ask for a continuance on this matter.

Richard Shope, representing 4922 Mary street, was sworn in and stated that they only received information on this matter last Friday. They do not feel they have had sufficient time to prepare a case since this has been such a long-term case and he asked that it be continued to the June meeting, instead of the May meeting.

Terri Walsh, owner of 4922 Mary Street, who resides at 5912 Billett Road, Oak Ridge, NC, stated that this was not on the agenda for last month's meeting and when she found out about it, she spoke with the Zoning Office and did not find out until last week that the Board may not grant a continuation unless she appeared before the Board and she would have to search for counsel to represent her in the case.

Dick Greene, 3200 Northline Avenue, stated that he represents Christi's Cabaret, which is in opposition to the appeal. The matter was on last month and was withdrawn based on the reversal of a decision that's now back before the Board. He has out-of-state counsel and out-of-state witnesses but he understands Mr. Shope's position. He will leave it to the Board to make their decision and ruling in the matter. He also agreed that the matter be placed on the June agenda instead of the May agenda.

James Fogleman, 1009 McDowell Drive, stated that he objects to the change of this case.

Chair Pinto stated that the only matter before the Board tonight is whether it will be heard or continued to another meeting date.

Mr. Turner moved that this matter be continued to the June 2010 meeting, seconded by Ms. Trexler. The Board voted unanimously in favor of the motion.

Counsel Jim Clark stated that even though it is a privilege to be admitted as out-of-state counsel, it is something that also raises a Constitutional right of selection of Counsel and since it is procedural and also something that is favored under the Constitution, it is something that the Board should take into consideration when making their decision. All the requirements have been met with copies of the documentation provided to the Board members.

Ms. Huffman moved to agree to the pro-hoc motion by Mr. Murray to appear in this matter at the June 2010 meeting, seconded by Mr. Parmele. The Board voted 5-0 in favor of the motion.

No other matters came before the Board for continuance or withdrawal.

NEW BUSINESS

VARIANCE

(a) BOA-10-06: 4900 LAKE JEANETTE ROAD Samuel Anderson requests variances from the rear and side setback requirements. *Variance #1:* A proposed attached garage will encroach 25 feet into a required 30 foot rear setback. *Variance #2:* The proposed garage will encroach 3 feet into a 15 foot side street setback adjacent to Roberson Comer Road. Table 30-4-6-1, Present Zoning-RS-12, BS-175, Cross Street-Roberson Comer Road. (BOTH VARIANCE REQUESTS DENIED)

Speakers were sworn as to their testimony in the following matter.

Rawls Howard stated that the applicant is requesting variances for an attached garage that will encroach 25 feet into a 30-foot rear setback and 3 feet into a 15-foot side setback adjacent to Roberson Comer Road. This case was previously heard and approved at the December 28, 1998 meeting. The property is located south of Lake Jeanette Road and north of Roberson Comer Road on zoning map block sheet 175 and is currently zoned RS-12 (Residential Single Family, 12,000 square feet per lot). Tax records indicate the house was built in 1941. The applicant is proposing to construct an attached garage to the existing single family dwelling. Garage dimensions are proposed to be 20 feet by 24 feet. The rights-of-way dedication for Lake Jeanette Road and Roberson Comer Road are both sixty (60) feet. These dedications and road widening have caused the lot to become nonconforming and the existing structure

to encroach into minimum current setbacks. The lot contains 9,842 square feet in area instead of the minimum requirement for RS-12, which is 12,000 square feet. The existing structure also encroaches into the minimum setbacks. The lot is a unique shape. The garage addition is proposed to be constructed on the eastern side of the property. The eastern lot line is adjacent to Roberson Comer Road. Due to the angle of the proposed garage, the western rear portion of the garage will be 5 feet from the rear and the eastern rear portion will be 14 feet from the rear lot line. The garage is proposed to be angled to best fit the foot-print of the existing house and the angled lot line adjacent to Roberson Comer Road. The side encroachment adjacent to Roberson Comer Road is parallel to the Roberson Comer Road right-of-way. This variance request was previously granted at the December 28, 1998 meeting; however, the applicant did not commence construction within 12 months of the variance being granted, thus the variance expired. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density on RS-12 will typically be 3.0 units per acre or less.

Allen Wilson, land surveyor located at 402 Blandwood Avenue, stated that he was representing Mr. Anderson in this matter to answer any questions the Board may have. This matter came before the Board previously in 1998 or 1999 and was granted at that time. The neighborhood has changed a little as the property owner has dedicated some right-of-way to the City. The area has grown with housing and apartments and what he now plans for the property, really blends in well with the neighborhood and the surrounding area. He hopes to be able to construct a 2-car garage for storage of some antique vehicles to keep them out of the elements and to ensure their safe-keeping. The proposed construction would not restrict any site distance requirements and will not affect the traffic movement at the intersection.

The Board members asked several questions of Mr. Wilson to clarify the matter and he answered those questions.

There was no one speaking in opposition to the matter.

Discussion by the Board members:

Ms. Huffman stated that she did not see how the proposed new construction would affect the views at all because the location is set behind the house far enough away from traffic at the intersection and it would probably protect his property. Mr. Parmele stated that he has concerns about the sight and having it so close to the road it may create a hazard. Mr. Pinto stated that if the set-back is eliminated if could cause some problems in the future and he has a problem coming up with a reasonable use except the applicant's own wishes and uses. He has concerns about elimination of the full 25 feet of the required setback line at the rear of the property. Ms. Trexler stated that she was concerned that he lost a portion of his property that could now be used, except for the fact that he had signed over part of the property so many years ago.

Mr. Howard cautioned the Board that they would need to take action on both portions of the variance request.

Mr. Pinto moved to deny the Variance in request #1, in regard to BOA-10-06, and based on the stated findings of fact, he moved that the Zoning Enforcement officer be upheld and the variance denied based upon the following: it is the determination of this Board that reasonable use can be made of the property without the granting of the variance, that the request for, specifically variance #1, the 25 foot variance of the 30 foot rear setback, virtually eliminates the rear setback, that the hardship of which the applicant complains did not result from anything that he did as the lot shape is unique, but the evidence falls short of showing that no reasonable use can be made of the property but for the granting of the variance. There is also some question about sight distance safety issues if a garage were configured as proposed. seconded by Mr. Turner. The Board voted 3-2 and the Variance #1 was denied. (Ayes: Pinto, Turner and Huffman. Nays: Trexler and Parmele.)

In regard to Variance #2, in regard to BOA-10-06, and based on the stated findings of fact as incorporating the same findings as in Variance #1,seconded by Ms. Huffman. The Board voted 4-1 and the Variance #1 was denied. (Ayes: Pinto, Turner, Parmele and Huffman. Nays: Trexler)

(b) BOA-10-07: 3700 WHITWORTH DRIVE Wade Jurney Homes, Inc and Stephanie Miller request a variance from the minimum side setback requirement. *Variance:* A proposed single family dwelling will encroach 0.4 feet into a 5-foot side setback. Tables 30-4-6-1 and 30-4-6.2, Present Zoning-RS-12(CL), BS-131, Cross Street-McKnight Mill Road. (GRANTED)

Rawls Howard stated that the applicant is requesting a variance for an existing foundation for a single family dwelling which encroaches 0.4 feet into a 5-foot side setback. The property is located on the north side of Whitworth Drive east of McKnight Mill Road on zoning map block sheet 131 and is zoned RS-12 CL-(Cluster Development). The applicant has begun construction, and through a staking error, has placed the foundation for a single family dwelling 0.4 feet too close to a side property line. The lot narrows in width as the depth increases in length. When the applicant discovered the foundation error, they stopped construction and filed for a variance request. The survey illustrates that only a small portion of the foundation area located towards the rear of the proposed house encroaches. At the top of the survey is a Side Tie Detail drawing that shows how the applicant proposed a small land swap with the adjacent lot owner, but was not successful with the proposal. The RS-12(CL), Residential Single-Family District (Cluster) is primarily intended to accommodate single-family detached dwellings the same as RS-7 developments where public water and sewer services are required. The overall gross density on RS-12(CL) will typically be 5.0 units per acre or less.

All witnesses were sworn as to their testimony related to the above matter.

Peter Glud, with Borum Wade Associates, 621 Eugene Court, stated that he speaks on behalf of the applicant, Wade Journey Homes/

James Lemons, Wade Journey, 190 Lemon Tree Trail, Stokesdale, NC, stated that he is the superintendent on the site.

Mr. Glud went on to say that this is an existing lot on the established subdivision and they now wish to build on the vacant lot which will be a comparable size house to the ones on either side of it and make sure it is the same size. In order to do that, it could only fit one way on this lot because of the configuration of the lot and it touches the setbacks on three (3) locations. It is felt that a smaller house would detract from the existing subdivision. He produced photos of the property for the Board members' review and explained the significance of each.

Speaking in opposition to this variance request was Charlie and Vicky Aiken, 3636 Whitworth Drive, next to this property and they both stated that they do not want to have the houses too close to each other and they feel that anything built on the lot should be compatible with the existing neighborhood. There is also concern about the drainage pipes reverting water to the existing properties because of the topography from lot to lot within the neighborhood. The speakers responded to questions posed by the Board members.

Toni Keeling, 3634 Whitworth Drive stated that she is also in opposition to the way the proposed house is being built on the property because it is sitting cock-eyed on the property and does not fit well with the existing neighborhood.

Beverly Ironcastle, 3635 Whitworth Drive, stated that she does not feel the proposed construction is uniform with the rest of the neighborhood and when a mistake is made you do whatever you have to do

to correct it and this is not a correction, it is only a band-aid fix for the rest of the neighbors in this community.

Tim Pitt, 3626 Whitworth Drive, stated that he is down the street from the Aikens family and he is also opposed to the proposed construction continuing. It came up at the annual neighborhood meeting and most of the people attending that meeting were in opposition to the construction of this house on the site as planned. They do not feel that they should have to pay the penalty for someone else's mix-up and possible damages to their property.

In response to questions by the Board, Mr. Lemons stated that they do not anticipate any problem with water drainage problems on the property as they go back in and provide a berm and seed and mat and shoot the grade with lasers to make sure there is proper fall from front to back or whatever is necessary to avoid problems in the future.

Discussion by the Board members:

Mr. Parmele felt that it would be cost-prohibitive to revise the plans for the house and placement of the house on the property and building a smaller house would not be attractive for the rest of the neighborhood. Ms. Trexler stated that she did not feel the builder has done a good job of working with the neighbors and feels that if there were adequate communication with them, there would be a lot less turmoil. There have been concerns stated about the size of the house in regard to square footage of the home. Mr. Pinto feels that it was an honest mistake and he doesn't feel that the applicant should have to rip up the entire foundation or make the angle of the house different because one corner of the house is 5 inches over the minimum existing setback line.

Mr. Turner moved that in regard to BOA-10-07, based on the findings of fact as previously stated, be incorporated into the record by reference and moved that the Zoning Enforcement officer be overruled and the variance granted as there are practical difficulties or unnecessary hardships for the applicant if the variance is denied, that result from following the strict letter of the ordinance. If the applicant complies with the ordinance he can make no reasonable use of the property because of the ordinance as outlined previously. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because of the unique shape of the property and because of the 1 foot encroachment into the setback line. The hardship results from the application of this ordinance to the property because of the ordinance restricting them from 4/10 of a foot from the setback line. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it keeps the neighborhood intact. The granting of the ordinance assures the public safety and welfare and does substantial justice because it continues to improve the neighborhood, seconded by Ms. Trexler. Ms. Huffman asked that a friendly amendment be added to ask the builder to meet with the existing homeowners on at least two (2) consecutive meetings for at least two (2) hours per term. Mr. Turner stated that he agreed with that friendly amendment. The Board voted unanimously (5-0) in favor of the motion. (Ayes: Pinto, Parmele, Trexler, Huffman, and Turner. Nays: None.)

Counsel Clark reported to the Board that they can make the modification with regard to the premises, but if it is with respect to other properties and not the premises for which this is being done, it would appear to be outside of the power of the Board to impose that condition. The matter would have to be with regard to the premises only.

Therefore, Ms. Huffman withdrew her friendly amendment.

At this time a five (5) minute break was taken from the meeting.

(c) BOA-10-08: 321 CRAIG STREET Elaine Dillard requests a variance from a major thoroughfare (Randleman Road). *Variance:* A proposed room addition will encroach 11.88 feet into a 45-foot setback adjacent to Randleman Road. Table 30-4-6-1, Present Zoning-RS-7, BS-19, Cross Street-Randleman Road. (GRANTED)

Rawls Howard stated that the applicant is requesting a variance for a proposed bedroom addition to encroach 11.88 feet into a 45-foot major thoroughfare setback adjacent to Randleman Road. The property is located at the southeastern intersection of Craig Street and Randleman Road on zoning map block sheet 19 and is zoned RS-7. The lot contains approximately 14,552 square feet and is rectangular in shape. Tax records indicate the house was built in 1965. The lot is part of the Warnersville Subdivision and is recorded in plat Book 40, Page 40 at the Guilford County Register of Deeds office. The lot is a corner lot. Any structures proposed for this lot are required to meet two street setbacks. Randleman Road is classified as a major thoroughfare. Major thoroughfares have greater minimum setbacks than other street classifications, such as minor thoroughfares, collector, and sub-collector streets. The rear corner of the existing house also encroaches 11.88 feet into the 45-foot major thoroughfare setback. The applicant is proposing to keep the proposed addition in line with the existing dwelling. The addition is proposed to be approximately 496 square feet in area. The RS-7, Residential Single-Family District is primarily intended to accommodate high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-7 will typically be 5.0 units per acre or less.

Speaker was sworn in for her testimony in the matter.

Elaine Dillard, the property owner, stated that she wishes to add a 16' X 31' room at the rear of the existing house. There will not be any additional encroachment on more than is already encroaching toward Randleman Road. She was unaware that the property already encroached previously. She purchased the home in 2009 and no one told her that there was a setback issue at that time.

There was no one speaking in opposition to the request.

Discussion by Board members:

Mr. Parmele feels that there is already an existing encroachment into the setback and he feels the additional encroach will not encroach any further than the already existing encroachment and other Board members pointed out that there is not a neighbor that will be impacted by the encroachment.

Mr. Parmele moved that in regard to BOA-10-08, based on the findings of fact as previously stated and being incorporated into the record by reference and moved that the Zoning Enforcement officer be overruled and the variance granted as there are practical difficulties or unnecessary hardships for the applicant if the variance is denied, that result from following the strict letter of the ordinance. If the applicant complies with the ordinance she can make no reasonable use of the property because an encroachment already exists on the existing structure. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because an encroachment already exists. The hardship results from the application of this ordinance to the property because the setback was instituted after the construction of the house back in 1965. The hardship is not the result of the applicant's own actions because she purchased the house in 2009, unaware of the existing encroachment. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the new design will be in harmony with the existing construction. The granting of the variance assures the public safety and welfare and does substantial justice because no other neighbors or other properties will be impacted by the additional structure, seconded by Mr. Turner. The Board voted unanimously (5-0) in favor of the motion. (Ayes: Pinto, Parmele, Trexler, Huffman, and Turner. Nays: None.)

(d) BOA-10-09: 2002 HARDIE STREET Angie McCormick requests variances from the maximum fence height requirement. *Variance #1:* An existing fence exceeds the maximum height of 4 feet by 2 feet within 15-feet of the Hardie Street right-of-way. Section 30-4-9.6(A). *Variance #2:* Sections of the same fence exceeds the maximum height of 7 feet by 1 foot. Section 30-4-9.6(A). Present Zoning-RS-7, BS-21, Cross Street-Phoebe Drive. (DENIED)

Rawls Howard stated that the applicant is requesting variances from the maximum fence height requirements. An existing fence exceeds the maximum height of 4 feet by 2 feet within 15-feet of the Hardie Street right-of-way and sections of the same fence exceed the maximum height of 7 feet by 1 foot. The lot is located on the western side of Hardie Street north of Bailiff Street on zoning map block sheet 21. Tax records reflect the house was built in 1967. The applicant had a fence installed on the property sometime in 2009. On March 16, 2010, the Zoning Division received a complaint about a fence that was too tall at the referenced address. The zoning officer responded to the complaint and on April 1, 2010 issued the applicant a Notice of Violation. The Notice of Violation was for a fence that is too tall within 6 feet of the right-of-way and for the other fence sections that were taller than 7 feet. On April 1, 2010, the applicant filed a variance request regarding the fence height violations. The fence is constructed out of wood/vinyl and serves as a privacy fence. The applicant did not submit a survey drawing of the lot with the fence location; however, the fence appears to be on her property. Based on GIS records, visual field inspection and photos, the fence is in violation of two section height requirements. The Greensboro Department of Transportation Engineer, Carrie Reeves was asked to field check the fence for possible sight easement issues. The RS-7, Residential Single-Family District is primarily intended to accommodate high density single-family detached dwellings in developments where public water and sewer service is required. The overall gross density in RS-7 will typically be 5.0 units per acre or less.

Speakers were sworn as to their testimony in regard to the variance request.

Angie McCormick, the property owner, presented three photos for the Board members' review. She stated that she has lived at this address for 43 years and there are currently 5 women living in the house, her mother, sisters and a niece. She stated that safety and privacy are a big issue and concern because of the proximity to the local school. The house is adjacent to Jackson Middle School and the back yard faces the soccer and the football fields. This is a high crime rate neighborhood and didn't use to be as bad in earlier years. The use of the house for anyone would have privacy and safety issues. She asked the Board members to consider just removing one panel of the fencing to enable safety when backing out of the driveway to the sidewalk. Removing all the panels would destroy privacy between the two houses and she would like as much privacy as possible. She was unaware of the ordinance regarding the height of the fence and C&A Fencing installed the fence and did not tell her that there was a problem. She feels that there are unique circumstances related to the property because of the safety and fear and concerns from the neighbors. She explained the lighting within the neighborhood and indicated that the lights shine directly into the bedroom windows.

Phillip Atkins, 192 Sheep Rock Road, Snow Camp, NC, representing the applicant, stated that the photos show the lighting on the building and has circled where the lights are located and the impact on privacy issues. The light from the neighbor's house and the city street light shines into the bedrooms which are on that side of the house and into the bathroom causing a loss of privacy. A 7 foot fence will not block the lighting and an 8 foot fence will block the intrusive lighting. The proposed height of the fencing will provide the needed privacy for this property.

Speaking in opposition to the request, was Steve Smith, 1916 Hardie Street, was sworn in and stated that he is opposed to the request. He stated that there is also a restraining order with this neighbor because of her calling the police and erecting a “No Trespassing” sign on the property. There has been criminal activity against the resident of the neighbor. He also presented photos related to the property for the Board members’ review. He stated that his flood lights are pointing at his driveway and he has nowhere else to place them. He pointed out that it would not be a costly issue to take apart the fence and have it installed properly. He plans to re-sell his property and move away because of all the animosity and it is highly imposing on his re-sale value of his home.

Discussion by the Board members:

The Board members commented that there are height ordinances in place for a reason, especially within 15 feet of streets due to safety hazards. They also felt that the height restrictions also address safety issues related to property and safely being able to leave a property in a safe manner. It was also pointed out that the fence company should have been aware and made the applicant aware of the height restrictions and the ordinance.

Carrie Reeves, GDOT, also raised sight issues with the 15 foot portion of the variance request and they have requested that nothing be within that sight easement for safety issues. The fence should be outside of the right-of-way, which appears to be roughly 5 feet back of sidewalk. There are sight triangles as a requirement and it is an ordinance requirement for residential driveways. Based on the street being a collector street and the speed limit posted, a 20’ by 250’ sight triangle, which is measured 20 feet from back of walkway over to the center of the nearest on-coming lane.

Mr. Pinto moved to deny the Variance in request #1, in regard to BOA-10-09, and based on the stated findings of fact, he moved that the Zoning Enforcement officer be upheld and the variance denied based upon the following: it is the determination of this Board that reasonable use can be made of the property without the granting of the variance, that the request for, specifically variance #1, as the 2 foot variance within 15 feet of the Hardie Street right-of-way be upheld and the variance denied. The applicant has failed to show that no reasonable use could be made of the property but for the granting of the variance. There has been testimony that confirms that the fence, as constructed within 15 feet of Hardie Street poses a safety hazard and that it limits vision of anyone coming out of the neighboring driveways. There are no unique circumstances relating to the property that would require a 6 foot fence within 15 feet of Hardie Street and the hardship is the result of the applicant’s own actions as they erected the fence when the ordinance was already in place. The variance would not be in harmony with the general purpose and intent of the ordinance and would not preserve its spirit, seconded by Ms. Huffmann. The Board voted 5-0 and the Variance #1 was denied. (Ayes: Pinto, Turner and Huffman, Trexler and Parmele. Nays: None.)

In regard to Variance #2, in regard to BOA-10-09, and based on the stated findings of fact as incorporating the same findings as in Variance #1, that the portion of the fence that is adjacent to the side of the house which is 8 feet, be allowed, thereby requesting a 1 foot variance from the 7 foot height requirement. There was no showing by the applicant that no reasonable use of the property can be made of her property but for allowing a variance to extend a 7 foot fence to 8 feet and the ordinance was in place at the time, the hardship is not the result of any unusual circumstance or unique circumstance with regard to the property and that the variance would not be in harmony with the general purpose and intent of the ordinance, and in fact, a 7 foot fence would be appropriate, seconded by Ms. Huffman. The Board voted 5-0 and the Variance #2 was denied. (Ayes: Pinto, Turner, Parmele and Huffman and Trexler. Nays: None.)

(e) BOA-10-10: 3018 SHADY LAWN DRIVE Linda Southard requests a variance from the maximum square footage allowed for detached buildings in residential districts. *Variance:* The combination of an existing detached accessory building (192 square feet) and a proposed detached accessory building (720 square feet) will exceed the maximum square footage allowed of 700 square feet by 212 square feet. Section 30-4-8.4, Present Zoning-RS-9, BS-83, Cross Street - Brookcliff Drive. (DENIED)

Loray Averett stated the applicant is requesting a variance from the maximum square footage allowed for detached buildings in residential districts. The combination of an existing detached accessory building (192 square feet) and a proposed detached accessory building (720 square feet) will exceed the maximum square footage allowed of 700 square feet by 212 square feet. The property is located on the north side of Shady Lawn Drive east of Brookcliff Drive on zoning map block sheet 83 and is currently zoned RS-9 (Residential Single Family - 9,000 square feet per lot). The applicant is proposing to construct a detached garage (24 feet x 30 feet) which will contain 720 square feet. There is an existing detached storage building that contains 192 square feet. The existing and proposed detached accessory structures would total 912 square feet. Section 30-4-8.4: For residential development in residential districts, the maximum total area of all accessory buildings for uses listed in Section 30-4-8.2(B)(1) shall not exceed fifty (50) percent of the gross floor area of the principal building or six hundred (600) square feet, whichever is greater. Based on the drawing submitted by the applicant, the dwelling contains approximately 1,400 square feet. Based on Section 30-4-8.4, the applicant is allowed to have a total of 700 square feet of detached accessory building(s). On March 31, 2010, the applicant applied for a building permit. Zoning did not approve the building permit because the proposed garage did not comply with the maximum size allowed. The lot is rectangular in shape. The existing storage building and the proposed detached garage are both located in the rear of the lot behind the house. The RS-9, Residential Single-Family District is primarily intended to accommodate moderate to high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density on RS-9 will typically be 4.0 units per acre or less.

Linda Southard-Smith and Dan Smith, 3018 Shady Lawn Drive, the property owners were sworn in and stated that she wishes to build a 2-car garage on her property. She recently married and is trying to merge two households into one. The existing driveway is very narrow and there are three vehicles that must be accommodated. Another unique item about the property is people on this particular street do not park on the street because there is a lot of pedestrian traffic and there is no sidewalk. So, to avoid having to park on the street, it is felt that a good solution would be a 2-car garage on the property. It was pointed out that there are other garage buildings within the neighborhood that are comparable in size.

There was no one speaking in opposition to the matter.

Discussion by Board members:

Board members stated that they feel the proposed garage would not be intrusive into the neighborhood and seems to be a good plan for this particular property. There are other detached garage units within the neighborhood and they do not seem to intrude into the neighborhood. The proposed construction would also benefit the property owner by keeping vehicles off the street for pedestrian traffic in the area.

Mr. Parmele moved that in regard to BOA-10-10, based on the findings of fact as previously stated and being incorporated into the record by reference and moved that the Zoning Enforcement officer be upheld and the variance denied as there are no practical difficulties or unnecessary hardships, that result from following the strict letter of the ordinance. If the applicant complies with the ordinance they can make reasonable use of the property because there is already an existing structure in the rear of the property and they could either remove the existing structure and build their desired 700 square foot building or down-size the proposed construction to comply with the square footage requirement. The hardship of

which the applicant complains does not result from unique circumstances related to the applicant's property because a 700 square foot structure could be put on the property. The hardship does not result from the application of this ordinance to the property, because the ordinance does allow a 700 square foot structure that would accomplish the goal of providing coverage for vehicles as well as tools and equipment and storage items. The hardship is the result of the applicant's own actions because the applicants wish to retain the smaller, 190 square foot structure in addition to the new structure, as well. The variance is not in harmony with the general purpose and intent of the ordinance and does not preserve its spirit because if the variance is granted it would exceed the harmony and general purpose of the ordinance by an additional 200 plus square feet. The granting of the variance does not assure the public safety and welfare and does not do substantial justice because the other neighborhood homeowners comply with the Zoning Ordinance and this would not be justified in that subdivision, seconded by Ms. Trexler. The Board voted unanimously (5-0) in favor of the motion. (Ayes: Pinto, Parmele, Trexler, Huffmann, and Turner. Nays: None.)

SPECIAL EXCEPTION:

(a) BOA-10-11: 3113 MCCONNELL ROAD Ronald King requests a Special Exception as authorized by Section 30-5-2.37(B) to allow a separation of 25 feet from one family care home (6 or less persons) to another family care home (6 or less persons) when 1,320 feet is required. Present Zoning-RS-7, Block Sheet-35, Cross Street-Franklin Boulevard. (GRANTED)

Rawls Howard stated the applicant is proposing to locate a family care home 25 feet from an existing family care home which is located at 735 Shirley Lane. The lot is located on the north side of McConnell Road east of Franklin Boulevard on zoning map block sheet 35. It is zoned RS-7 (Residential Single-family). The applicant is proposing to locate a family care home (6 or less persons) at 3113 McConnell Road. The proposed home would be approximately 25 feet from an existing family care home, which is located at 735 Shirley Lane. The homes are required to be separated by a minimum radius of ¼ mile, which is 1,320 linear feet. Privilege License records reflect that the family care home located at 735 Shirley Lane is in current operation and required renewals are in compliance. The homes are separated by more than 1,000 linear feet of woods and stream buffers. The proposed home on McConnell Road is located at the front of the lot adjacent to McConnell Road. The existing family care home is located at the north rear of the McConnell Road location facing Shirley Lane. The RM-8, Residential Multi-family District is primarily intended to accommodate duplexes, twin homes, townhouses, cluster housing, and similar residential uses at a density of 8.0 units per acre or less.

Counsel Clark noted for the Board to have the findings to specifically take note of the exception being made for the house as situated so that would not be open for any further movement in the future.

The applicants, Mariam Wallace, 4601 Foxtrot Road, and Ronald King, the property owner, were sworn as to their testimony in the matter. They stated that she is hoping to open a Family Care home at 3113 McConnell Road because it is separated by all the woods and a small creek on the rear property. It is felt that anyone from the subject property to Shirley Lane would have a difficult time getting through the property and they would have to go around about 1 mile as there is no access from McConnell Road to Shirley Lane because of the woods and the creek. The house would accommodate approximately 6 women as there is a great need for this type of facility. The clients would be exposed to counseling, job and career training and educational needs. There are no plans to move the home in any way on the property any closer to the other care facility and they would have no objection to the Board adding that condition if the Special Exception is approved. The clients do not have vehicles or anything that would cause a lot of vehicular traffic, although there will be parking spaces provided for staff.

Discussion by Board members:

Mr. Parmele as well as other Board members pointed out that because there is no direct access from the proposed facility to the other, existing home and someone would have to drive at least one mile to get to it, he feels that there is enough separation between the homes. Even though the lots are only 25 feet apart, it is clearly enough separation because of the wooded nature of the lot and the stream that runs through it, provide enough physical separation between the two homes.

Mr. Parmele moved that in regard to BOA-10-11, 3113 McConnell Road, based on the findings of fact as previously stated and being incorporated into the record by reference and moved that the Zoning Enforcement officer be overruled and the Special Exception granted as the Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit because there are practical difficulties or unnecessary hardships for the applicant if the Special Exception is denied, that result from following the strict letter of the ordinance. In addition, the separation between the two homes, consists of a heavily wooded area as well as stream buffers and it would require someone to drive over one mile to get from one facility to the other, making it inaccessible from one facility to the other. The granting of the Special Exception assures the public safety and welfare and does substantial justice because it allows the operation of a Family Care Home with enough separation from an existing Family Care home such that neither property would be impacted by the other and the surrounding neighborhoods would benefit from the existing buffer from the wooded area as well as the stream and other natural boundaries. This is conditioned on the premise that the existing home, owned by Ronald King, remains in its current state and location with no additions to be made in the future, seconded by Ms. Trexler. The Board voted unanimously (5-0) in favor of the motion. (Ayes: Pinto, Parmele, Trexler, Huffman, and Turner. Nays: None.)

APPEAL OF AN ADMINISTRATION INTERPRETATION

(a) BOA-10-12: 4922 MARY STREET Terry Walsh appeals the zoning interpretation by the office of the Planning Director that the proposed operation of a sexually oriented business located at 4922 Mary Street represents an illegal nonconforming use under the City of Greensboro Development Ordinance. Section 30-9-6.4(A)(1), Present Zoning-HI, BS-115, Cross Street-Edwardia Drive. (CONTINUED TO JUNE MEETING)

OTHER BUSINESS

Mr. Hails stated that he appreciates the Board members service to the public this evening. He stated that staff has been working on a revised ordinance for some time and has gone through public review and public hearings for the past several months. City Council did indicate that they are going to consider possible adoption of it on June 15th, 2010. Staff is cautiously hopeful that a new ordinance will soon be before the Board for consideration. He gave several examples of what changes may be addressed: variances of 12" or less to be handled by staff, under an equal or better performance criteria; reducing the special setbacks along some thoroughfares that have been in the ordinance for a long time; City Council will address a possible change in the Family Care Home spacing requirements; and attendance by Board members and alternates in the future; as well as possible time limits placed on speakers at some point in the future.

Mr. Parmele asked if his and Mr. Pinto's last meeting would be in May or June. Mr. Howard stated that he would check with the Clerk's office for verification and he would let them know.

ACKNOWLEDGEMENT OF ABSENSES:

The absence of Mr. Strickland, Mr. Pearce, Mr. Brewington and Mr. Shell were acknowledged.

* * * * * * *

ADJOURN:

There being no further business before the Board, the meeting adjourned at 9:22 P.M.

Respectfully submitted,

Rick Pinto, Chair
Greensboro Board of Adjustment

RP/jd

MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
MAY 24, 2010

A regular meeting of the Greensboro Board of Adjustment was held on Monday, May 24, 2010 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board member present were: Rick Pinto, Chair, Clinton Turner, Cheryl Huffman, Brian Pearce, Scott Brewington and Russ Parmele. Staff present were: Rawls Howard, Zoning Administrator, Loray Averett, Zoning Services Coordinator, as well as Jim Clark, City Attorney's Office and Virginia Spillman, City Flood Plain Administrator.

Chair Pinto called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Ms. Huffman stated that she would like to report that on page 5, 4th paragraph, the last sentence should be changed to read "there are 5 inches that encroach into the minimum setback requirement."

Ms. Huffman moved to approve the minutes of the April 26, 2010 meeting as corrected, seconded by Mr. Pearce. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Rawls Howard and Loray Averett were sworn in for their testimony related to matters listed on the agenda.

OLD BUSINESS

APPEAL OF A NOTICE OF VIOLATION

(a) BOA-10-03: 2511 FONTAINE ROAD Oxford House Inc. appeals a Notice of Violation in reference to the use of the property for more than four (4) unrelated individuals living together. This case was continued from the February 22, 2010 meeting. Section 30-2-2.7, Present Zoning-RS-9, BS-72, Cross Street-Cheltenham Boulevard. (CONTINUED FOR 30 DAYS)

Rawls Howard stated that the applicant, through his representative will ask for a continuance of this matter.

Troy Manns, 18 Willow Bridge Drive, Durham, NC, speaking on behalf of 2511 Fontaine Road, was sworn in and asked that this matter be continued for 60 days, to allow the text amendment to run its course.

After some discussion, Mr. Parmele amended his original motion to allow a 30 day continuance, seconded by Ms. Huffman. The Board voted 6-0 in favor of the motion. (Ayes: Pinto, Huffman, Turner, Parmele, Brewington, and Pearce. Nays: None.)

NEW BUSINESS

VARIANCE

(a) BOA-10-13: 1111 LATHAM ROAD Charles and Kay Ivey request a variance\ from the minimum flood level elevation. Variance: The finished floor elevation for a proposed two-story residential addition will be at a 740.62 base flood elevation which is 3.88 feet below the required finished floor base flood elevation of 744.5 feet. Sections 30-9-6.12 (Flood Damage Prevention Appeals, Appeal and Variance Considerations) and 30-7-5.6(B)(d), Present Zoning-RS-9, BS-11, Cross Street-West Northwood Street. (GRANTED)

Rawls Howard stated that Charles and Kay Ivey request a variance from the minimum flood level elevation. The finished floor elevation for a proposed two-story residential addition will be at 740.62 base flood elevation which is 3.88 feet below the required finished floor base flood elevation of 744.5 feet. (Flood Damage Prevention Appeals, (Appeal and Variance Considerations) The property is located on the western side of Latham Road north of West Wendover Avenue on zoning map block sheet 11 and is zoned RS-9. The lot contains approximately 10,800 square feet and is rectangular in shape. Tax records indicate the house was built in 1930. Information in Exhibit B indicates the house may have been placed on the lot at a later date. The lot is part of the Latham Park Subdivision and is recorded in Plat Book 6, Page 179 at the Guilford County Register of Deeds office. The applicant is requesting to construct a two-story addition which will contain approximately 700 square feet. The property has flood elevation criteria to comply with and the proposed addition will not meet the minimum floor level elevation criteria. The finished floor will be 3.88 feet below the minimum flood elevation for this property. The existing house is considered "grandfathered" because it existed prior to the current flood elevation requirements. The applicant is proposing to keep the finished floor for the proposed addition at the same level as the existing house.

Charles Ivey, the applicant, was sworn in and stated that he wishes to add onto the rear of his house. He purchased the property in 1985 and the proposed addition would be to the kitchen as well as an upstairs bedroom. The flood requirements, at this point in time, require them to have a level that is 3 feet above the existing flood plain, which means they will have to go 4 feet above what the current house level is. That makes it impractical to add onto the kitchen as there would be a 4 foot step which would ride up to the second floor. When the house was originally moved to this location and renovations and additions were done, they complied with the existing ordinance at that time and was built above the then-existing ordinance. He feels that one of the difficulties to use the property is because of having to increase the level by 4 feet. He also feels

that his rights in regard to adding onto the structure are taken away and without the variance they are unable to use their property for the intention for which it was originally built. This is a unique circumstance as this is something that happened after they purchased the property.

Bill Drake, 1113 Latham Road, was sworn in and stated that he has discussed this matter with the applicant and he has no objection to their request.

Ms. Spillman, City Flood Plain Administrator, answered several questions posed by the Board members.

No one spoke in opposition to the request.

Mr. Pearce stated that in regard to BOA-10-13, 1111 Latham Road, asked that the findings as presented by staff be incorporated and the Zoning Enforcement Officer be overruled and the variance granted as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, he can make no reasonable use of the property because the house that was placed on the property was during a period where the flood plain was drawn in a different location than it currently is and the applicant can make no alterations to his house without a variance unless those alterations are built at a level above that of the current house. The hardship of which the applicant complains results from the unique circumstances related to the property because as previously mentioned, the house was placed on the property prior to the current drawing of the current flood plain. The hardship results from the application of this ordinance to the property for the same reasons and the hardship is not the result of the applicant's own actions for the same reasons. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because of the arguments as stated in the applicant's presentation. The granting of the variance assures the public safety and welfare and does substantial justice because of the same arguments, seconded by Ms. Huffman, The Board voted 5-1 in favor of the motion. (Ayes: Pinto, Huffman, Parmele, Brewington and Pearce. Nays: Turner.)

(b) BOA-10-14: 1111 HAMMEL ROAD John Cozma and Debra Sommerville request a variance from the minimum front street setback requirement. Variance: A proposed attached garage to an existing single-family dwelling will encroach 8.2 feet into a 30-foot front street setback. Table 30-4-6-1, Present Zoning-RS-12, BS-10, Cross Street-Cleburne Street. (DENIED)

Rawls Howard stated that the applicant is requesting a variance for a proposed attached garage which will encroach 8.2 feet into a 30-foot front street setback. The property is located on the south side of Hammel Road west of Cleburne Street on zoning map block sheet 10 and is zoned RS-12. The lot contains approximately 14,760 square feet and is rectangular in shape. Tax records indicate the house was built in 1959. The house is centered on the lot. The applicant is proposing to add an attached garage to the front of the house. Based on Exhibit C, a new driveway location is proposed. The driveway location suggests that the garage door(s) will face the interior lot line and not the front property line adjacent to the street. The garage dimensions are proposed to be 22 feet x 24 feet for a total square footage of 528 square feet. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-

family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-7 will typically be 3.0 units per acre or less.

John Cozma, the applicant, was sworn in and stated that they wish to construct a two-car garage on this property, oriented with the garage opening toward the interior lot line of the property. The property currently has no covered parking and the two-car parking pad is situated in the front yard of the property. There is limited access to the rear yard and the proposed construction would take the parking out of the front yard area. Photos of the property in its current state were provided for information. He is trying to avoid the loss of the mature trees in the rear yard. They are also concerned about water run-off and water damage to the rear of the property because of the slope of the land. Relevant factors are that the proposed structure will be situated behind the existing tree line of the street. It is also felt that the structure will enhance the property value and contribute to the overall aesthetics and character of the neighborhood. Other homes in the area have a similar configuration.

Debra Sommerville, 1111 Hammel Road, was sworn in and stated that the architects they have talked to stated that the proposed location is the best location for the proposed new structure.

Opposition

Christine Garten, 1109 Hammel, was sworn in and stated that she is opposed to the proposed variance for this property. Other neighbors are also opposed to the construction of the 2-car garage in the location where it is proposed to be located. She presented a petition with the signatures of 23 residents who are opposed to the variance being granted. It is felt that the proposed structure would be detrimental to property values in this area. Photographs were also presented for review.

Mr. Brewington left for the remainder of the meeting.

Phillip White, 1110 Hammel Road; James Lewis, 1101 Hammel Road; Robert Wrap, 1108 Hammel Road, and Ken Garten, 1109 Hammel Road were all sworn in and stated that they are opposed to the construction of the proposed 2-car garage in the proposed location. There were also complaints that no drawings have been shown to the neighbors.

Mr. Pearce stated that in regard to BOA-10-14, 1111 Hammel Road, the information as submitted by the Enforcement Officer be incorporated into the record as findings of fact. He moved that the Zoning Enforcement Officer be upheld and the variance denied as if the applicant complies with the provisions of the ordinance he can make reasonable use of the property because it was admitted by the applicant that there are other positions on the property where the garage can be placed and there has been no evidence stating that it is necessary to have a garage. The hardship of which the applicant complains does not result from unique circumstances related to the applicant's property because this property is as shown on the tax map as part of the packet submitted and the lot is not oddly shaped in any manner and is common for the neighborhood. The hardship does not result from the application of the ordinance to the property for the same reasons and the hardship is a result of the applicant's own actions. The variance is not in harmony with the general purpose and intent of the ordinance and does not preserve its spirit because this variance actually goes against what the purpose of the setbacks are for, seconded by Mr. Turner. The Board voted 6-0 in favor of the motion. (Ayes: Pinto, Huffman, Turner, Parmele, Brewington and Pearce. Nays: None.)

Thereupon, there was a five minute recess in the meeting.

(c) BOA-10-15: 4 CRAWFORD COURT Hugh Holston requests a variance from a rear setback requirement. Variance: A proposed covered structure (screened porch) over an existing terrace will encroach 7.5 feet into a minimum 25-foot rear setback. This property had a previous variance request heard and denied at the October 24, 1994 meeting. Table 30-4-6-1, Present Zoning-RS-7, BS-19, Cross Street-Randleman Road. (GRANTED)

Loray Averett, stated that the property is located at the southwestern intersection of Crawford Court and Glendale Court on zoning map block sheet 205. Tax records indicate that the house was built in 1993. The applicant had a previous variance request heard at the October 24, 1998 meeting. That request was for the proposed structure to encroach 12 feet into a 25 foot rear setback. The request was denied. After receiving this request and reviewing the past request, it has been determined that the previous request was inaccurately measured and should have been for 7.5 feet instead of 12 feet (as previously heard). A copy of those minutes is included in each member's packet. The applicant's encroachment request has been reduced from 12 feet to 7.5 feet. The applicant is proposing to construct a covered structure/screened porch over a portion of the existing terrace which is located at the rear of the house. The structure is proposed to be the same size as the existing terrace. It will be 15 feet x 22.9 feet, for a total of 298 square feet. The rear lot line angles as the line runs from west to east. Due to the angle of the rear lot line, the encroachment area on the eastern rear portion is reduced from 7.5 feet to 2 feet. In summary, the maximum rear encroachment will be 7.5 feet and from that point, due to the angled lot line, reduces down to 2 feet. The RS-9, Residential Single-Family District is primarily intended to accommodate moderate to high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12 will typically be 4.0 units per acre or less.

Hugh Holston, the applicant, was sworn in and stated that the property is irregularly shaped compared to other properties in the neighborhood. There is a vacant lot to the rear of the property. He wishes to construct a screened-in porch on the rear of the main structure. Photos presented show that the proposed construction would not be intrusive to the rest of the neighborhood and is not easily viewed from the rear of the property.

No one spoke in opposition to the request.

Mr. Turner stated that in regard to BOA-10-15, #5 Crawford Court, and based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled and the variance be granted. There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of the property because of the odd shape and the rear setback where the existing terrace already encroaches into the rear setback. The applicant is looking to build upwards instead of going deeply into the setback. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because of the irregular and unusual and unique shape of the lot. The hardship results from the application of the ordinance to the property because of the unique and narrow and irregular shape of the property. Other lots in the subdivision are deeper relative to this particular property. The hardship is not the

result of the applicant's own actions because of the original subdivision of the land that created this unique lot. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it does not interfere with the general appearance of the neighborhood. The granting of the variance assures public safety and welfare and does substantial justice because it has no effect on the ingress or egress as far as safety is concerned, seconded by Ms. Huffman. The Board voted 6-0 in favor of the motion. (Ayes: Pinto, Huffman, Turner, Parmele, Brewington and Pearce. Nays: None.)

SPECIAL EXCEPTION

(a) BOA-10-16: 1806 ELEVENTH STREET Drc Aiken-Chen requests a Special Exception as authorized by Section 30-5-2.37(B) to allow a separation of 1,105 feet from one family care home (6 or less persons) to another family care home (6 or less persons) when 1,320 feet is required. Present Zoning-RM-18, Block Sheet-30, Cross Street-Alpine Street. (GRANTED)

Rawls Howard stated that the applicant is proposing to locate a family care home 1,105 feet from an existing family care which is located at 1706 Rayston Drive. The minimum spacing separation requirement is 1,320 feet. It is 215 feet too close. The lot is located on the south side of Eleventh Street east of Alpine Street and northwest of Phillips Avenue on zoning map block sheet 30. It is zoned RM-18 (Residential Multi-family 18). The applicant is proposing to locate a family care home (6 or less persons) at 1806 Eleventh Street. It is approximately 1,105 feet from an existing family care home, which is located at 1706 Rayston Drive. The homes are required to be separated by a minimum radius of ¼ mile, which is 1,320 linear feet. Privilege license records reflect that the family care home located at 1706 Rayston Drive is in current operation and required renewals are in compliance. The RM-18, Residential Multifamily District is primarily intended to accommodate multifamily uses at a density of 26.0 units per acre or less.

Jim Clark stated that the City Attorney's Office discussed how to handle this situation and the adoption of the new ordinance says that it takes effect immediately. By the time the new ordinance is adopted, however it is staff's understanding that the past course of performance for Boards and Commissions have been to treat filed applications as being addressed under the law then existing as opposed to at the time that it is heard. It is felt that there are certain fundamental right and equity considerations that would dictate that as well as having indications from other departments as well as within the legal department.

Drc Aiken-Chen, the applicant, was sworn in and stated that she is the owner of the property. She is asking the Board to approve the Special Exception for the use of this property as a family care home.

Wanda Hobson, the applicant was sworn in and stated that she runs the family care home which would offer residence for clients over the age of 18 years old. The proposed home is in an entirely separate neighborhood from the pre-existing home and there is plenty of separation between the two homes by a church, fences and natural vegetation and it is on a one-way street.

In response to a questions, Charles Green, 1806 Eleventh Street, was sworn in and stated that if driving a vehicle, it would be 8/10 of a mile separation by roadway.

No one spoke in opposition to the Special Exception.

Mr. Parmele stated that in regard to BOA-10-16, 1806 Eleventh Street, he moved to grant the Special Exception because the Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the proposed house is separated from the existing house by three separate neighborhoods as well as a .08 of a mile driving distance as well as multiple streets that need to be accessed to go from one home to the other. The granting of the Special Exception assures the public safety and welfare and does substantial justice because similarly, enough separation between the two homes exists because of the three separate neighborhoods, multiple street connectors and the .08 mile drive distance between the two homes, seconded by Mr. Turner. The Board voted 5-1 in favor of the motion. (Ayes: Pinto, Turner, Parmele, Brewington and Pearce. Nays: Huffman.)

OTHER BUSINESS

Jim Clark said that in regard to the Mary Street case, if the City Council does not approve the text amendment will the parties want to take some additional time to prepare and look to go beyond that because he feels their focus has been to dealing with the text amendment up to this point and would the Board be interested in a special meeting in regards to this. There was discussion about a possible special meeting in regard to this case.

ABSENCES:

The absence of Mr. Strickland was acknowledged.

* * * * * * * * *

ADJOURN:

There being no further business before the Board, the meeting adjourned at 8:41 p.m.

Respectfully submitted,

Rick Pinto, Chair
Greensboro Board of Adjustment

RP/jd

MINUTES OF THE GREENSBORO BOARD OF ADJUSTMENT JUNE 28, 2010

A meeting of the Greensboro Board of Adjustment was held on Monday, June 28, 2010 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Rick Pinto, Chair, Clinton Turner, Cheryl Huffman, Bill Strickland, Scott Brewington, and Russ Parmele. Staff present were: Rawls Howard, Zoning Administrator, Loray Averett, Zoning Services Coordinator, Dick Hails, Planning Director, as well as Jim Clark, City Attorney's Office.

Chair Pinto called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

Chair Pinto decided to hear item BOA-10-18 first due to time issues related to the other cases.

APPROVAL OF MINUTES

Ms. Huffman moved to approve the minutes of the May 24, 2010 meeting, seconded by Mr. Turner. The Board voted 6-0 in favor of the motion. **(APPROVED)**

SWEARING IN OF STAFF

Rawls Howard, Loray Averett, and Dick Hails were sworn in for their testimony related to matters listed on the agenda.

NEW BUSINESS

2) SPECIAL EXCEPTION

(a) **BOA-10-16: 805-3E GRENTTON PLACE** Presidia Real Estate Group, LLC, through Applicant Eleanya Agidi, requests a Special Exception as authorized by Section 30-5-2.37(B) to allow separation encroachments to the current development standards.

Special Exception Request #1: The proposed family care home will be 1,757 feet from one family care home (6 or less persons) to another family care home, located at 1515 Dodson Street, (6 or less persons) when 2,640 feet is required. **(DENIED)**

Special Exception #2: The family care home will also be 1.693 feet from one family care home (6 or less persons) to another family care home, located at 6005 White Chapel way, (6 or less persons) when 2,640 feet is required. **(DENIED)**
Present Zoning – CD - RM-18, Block Sheet – 177, Cross Street – Yanceyville Street.

Rawls Howard stated the proposal is to locate a family care home which is too close to existing family care homes. The request is two fold: Special Exception Request #1: The proposed family care home will be 1,757 feet from one family care home (6 or less persons) to another family care home, located at 1515 Dodson Street, (6 or less persons) when 2,.640 feet is required. Special Exception #2: The family care home will also be 1.693 feet from one family care home (6 or less persons) to another family care home, located at 6005 White Chapel way, (6 or less persons) when 2,640 feet is required. He reminded the Board that last month the

City Council ruled that the spacing requirement increased from a ¼ mile to a ½ mile. The lot is located on the western side of Yanceyville St. east of Lees Chapel Rd. on Zoning Map Block Sheet 177. It is currently zoned CD-RM-18. The applicant is proposing to locate a family care home with 9 or less persons at this address. Privilege License records reflect that both of the existing family care homes are in operation, and all required

renewals and licenses are in compliance with the City of Greensboro. The proposal is for the North side of Lees Chapel Rd. and the existing homes are on the south side of Lees Chapel Rd. Lees Chapel Rd. is classified as a major thoroughfare. The existing land use is a multifamily dwelling unit, and all of the adjacent zoning is RS-12 except to the west it has an RM-12 zoning designation.

Chair Pinto asked if there was anyone present wishing to speak in favor of the item. The speakers were sworn in.

Eleanya Agidi, 805-3F Grentton Pl., stated that he lived next door to this proposed family care home. He moved to the new apartment to relocate his group home which had existed at 2230 N. Elm St., but there was a court order to sell the home and they were forced to move. By the time they moved on the first of May, the rule had changed to ½ mile. He submitted the lease which was signed on May 1st, 2010.

Chair Pinto asked Mr. Agidi about the area and the roads that divide the existing group homes from the proposed site. Mr. Agidi stated that the area is a newly developed area. Lees Chapel Rd. is a major road of five lanes, and it is at times very busy. Yanceyville St. and Yanceyville Rd. are also very busy multilane roads. The development is an apartment complex. The proposed unit is a three bedroom apartment he wishes to use for three clients.

Mr. Brewington asked how far the walking distance would be between the proposed family care home and the existing family care homes. Mr. Agidi stated that the distance is a walkable distance, but it is not in walking distance.

Mr. Parmele asked how many units were in the building. Mr. Agidi stated there were a total of four units in the building, he rents one as his residence and one for the group home. Mr. Parmele asked if there was any regulation about having a group home in a single family residence. Mr. Howard stated there is no regulation that requires the home to be located in single family buildings, and the landlord has given permission to allow this use.

Chair Pinto asked if the special exception would run with the property owner. Mr. Howard stated that the exception runs with the applicant for the exception. That could be either the land owner, the operator, or in some cases they are the same. Ms. Averett stated that in multifamily zoning districts, family care homes are permitted to have 9 or less persons.

Mr. Strickland asked if there were any conditions in the zoning of the property that would prohibit this use. Ms. Averett stated that there were not.

Ms. Huffman asked why the applicant waited before coming to the Board if the lease was signed on May 1st. Mr. Agidi stated that he needed to get his Privilege License renewed first. It was only after he went to renew the license that he was informed of the separation change. He stated his license was current for the previous address, but needed to get it renewed after the move to the current address.

No one spoke in opposition to the item. Chair Pinto closed the public hearing and opened Board discussion.

Chair Pinto stated that this was seen last month as the rule was in the process of changing.

Ms. Huffman stated that she understands the separation changes being an issue, but she is more concerned about the proximity of the two other family care homes and the number of multi-dwelling units that surround the request.

Mr. Brewington stated there were no major barriers between the existing and proposed sites. The roads are major thoroughfares, and the practical distance is substantial, but the timing is unfortunate. Mr. Parmele stated that the rule change by Council was to avoid clustering, and this request would not avoid clustering.

After some discussion, Mr. Parmele moved to uphold the zoning enforcement officer for Special Exception Request #1, and the variance denied based on the following: The variance is not in harmony with the general purpose and intent of the ordinance. It does not preserve its spirit because the proposed location of the family care home is 1,757 feet when from another family care home when 2,640 feet is required. The granting of the variance does not ensure the public safety and does not do substantial justice because of the close proximity of the existing family care home and the concern about clustering. Seconded by Mr. Strickland. The Board voted 4-2 in favor of the motion. (Ayes: Parmele, Strickland, Turner, Huffman. Nays: Pinto, Brewington.)

Mr. Parmele move to uphold the zoning enforcement officer for Special Exception Request #2, and the variance denied based on the following: The variance is not in harmony with the general purpose and intent of the ordinance. It does not preserve its spirit because the proposed location of the family care home is 1,693 feet when from another family care home when 2,640 feet is required. The granting of the variance does not ensure the public safety and does not do substantial justice because of the close proximity of the existing family care home and the concern about clustering. Seconded by Mr. Strickland. The Board voted 4-2 in favor of the motion. (Ayes: Parmele, Strickland, Turner, Huffman. Nays: Pinto, Brewington.)

OLD BUSINESS

1) APPEAL OF NOTICE OF VIOLATION

(a) **BOA-10-03: 2511 FONTAINE ROAD** Oxford House, Inc. appeals a Notice of Violation In reference to the use of the property for more than four (4) unrelated individuals living together. This case was continued from the February 22, 2010 and the May 24, 2010 meetings. Section 30-2-2-7, Present Zoning – RS-9, BU-72, Cross Street - Cheltenham Boulevard. **(DENIED)**

Rawls Howard stated that the applicant, through his attorney, Greg Heafner, has filed an appeal of a Notice of Violation in reference to the use of the property for more than 4 unrelated individuals living together. This case was continued from the February 22, 2010 and May 24, 2010 meetings. The zoning office received a complaint on December 9, 2009 that there is a family care located at the referenced address and that the home location did not meet the ¼ mile spacing requirement. Enforcement staff conducted an inspection and found multiple people living in the house. The residents told the officer they were a half-way house. The field officer issued a Notice of Violation in reference to Section 30-5-2.37 for a family care home which did not meet the spacing requirement. On or around December 28, 2009, the zoning office received a letter from the applicant's attorney that references the use of the property, related issues, and Oxford House guidelines information. After discussion with the staff, it was determined that they did not meet the City's definition of a family care home as the house had no administrative or supervisory personnel. The attorney informed staff that there were 8 or more unrelated persons living in the house. Staff then informed the attorney that despite not being a family care home, they were, in fact, in violation of the City's definition of a family by having that many unrelated people in a structure in a residential district. As such, they would be issued a Notice of Violation for this infraction and the previous one would be rescinded. On January 5, 2010, the City issued a revised Notice of Violation in reference to Section 30-2-2.7 which references the definition of family. On or around Jan 14, 2010, the City Attorney's Office received a letter from the applicant's attorney which acknowledged the Notice of Violation, along with his concerns over how the City was applying its family definition, and requests for intent due processes. On January 20, 2010, the applicant's attorney filed their appeal of the January 5, 2010 Notice of Violation. On February 22, 2010, the case was continued to the May 24, 2010 meeting. On May 24, 2010, the case was continued to the June 28, 2010 meeting. The continuance was granted in order to give the applicant an opportunity to have his text amendment heard and ruled upon at the June 15, 2010 City Council meeting. On June 15, 2010 City Council denied the applicant's request concerning his text amendment. The RS-9, Residential Single-Family District is primarily intended to accommodate moderate to high density single-family detached dwellings in developments where public water and sewer services is required. The overall gross density in RS-9 will typically be 4.0 units per acre or less.

Chair Pinto asked if there was anyone present wishing to speak in favor of this matter. The speakers were sworn in.

Greg Heafner, 1510 Twisted Oak Dr., Chapel Hill, NC, presented a number of items to the Board including: a request for a written decision on the item, a copy of the Oxford House Manual, a list of Oxford Houses currently in existence in Greensboro, a written report from Dr. Leonard Jason, DePaul University, and the letters sent to staff over the course of this matter. He stated that he came before the Board in February on the same appeal, the Board expressed the opinion they would be unable to grant the relief he sought, and it was suggested to him that he explore alternate means of relief. He sought a text amendment, the Planning Board declined to endorse the text amendment, and the City Council voted against the text amendment. Other than the City's own opposition, there has been no public opposition.

Mr. Heafner stated that he seeks reasonable accommodation for this group of people under the federal Fair Housing Act. Oxford House has a need for that accommodation because it cannot operate with any less than six persons. The written report from Dr. Jason explains why. The Oxford House Manual explains that the houses cannot have less than six under their own guidelines. There is a federal statute that funds Oxford House, which also states that the Oxford House model-type home cannot have less than six people to get any funding. There is no way that Oxford House could operate any of these 17 homes with less than six people. All of the Oxford House homes listed show an average of 7 or 8. Houses operate with a vacancy or two at a time. It is common for a house to operate with a few as five people. Due to these reasons they cannot operate with a maximum of four persons. There is also a therapeutic need. The City has agreed that the Oxford House model is not a family care home or a group care home. He argued that they are a family, so there is an exception needed to the limit of four. Without that accommodation an Oxford House cannot exist in this city. Council denied the text change that was catered to allow only Oxford House to operate this type of arrangement. If the accommodation is not made at this hearing, then it would be his understanding that an Oxford House cannot exist.

Chair Pinto asked if it was Mr. Heafner's position that if the request is denied, in essence all 17 homes would be in violation. Mr. Heafner stated he felt they would be under the possibility of notices of violation. If not he would ask what is different about the others. Chair Pinto stated the difference is that someone made a complaint about the Fontaine Rd. address, and the department is complaint driven. Mr. Heafner stated that he did not like the term 'complaint', because after review the Town initiated the meeting. But there have not been any complaints like there are too many cars, or the people are doing something wrong, or the police are coming. Over the 17 years that Oxford Houses have been operating in Greensboro, he is not aware of any complaint until this one.

Mr. Heafner stated that there is an unopposed and unquestioned need, from a therapeutic, financial, and practical stand point, for the reasonable accommodation being asked for. The second aspect of the federal statute is to show there is not an undue burden on the City. He would contend that the record demonstrates that with the 16 or 17 Oxford Houses over at least the last ten years with no complaint until now show there is not an undue burden. Therefore he believes it is right for an accommodation.

Chair Pinto asked why the City's ordinance of allowing 4 unrelated persons to live together in a single family residence would not be an accommodation. Mr. Heafner stated that the group living in the hones are recovering alcoholics, and as such are a protected class of people. The accommodation required is case specific, and in this case a reasonable accommodation would be 8 persons. He believes the ordinance, as written, is not an accommodation at all because it does not mention its purpose.

Dick Hails asked if Mr. Heafner was aware that the living arrangement at 2511 Fontaine Rd. fits the ordinance's definition for a rooming house, which is permitted in a number of zoning districts in the City, just not in a single family zoning district. Mr. Heafner stated that he was not aware of that, but single family living situations are a key component to the Oxford House program.

Mr. Brewington left the meeting at 6:42, as an unexcused absence.

Ms. Huffman asked what the limit on the homes would be. Based on previous information, Ms. Gibson-Meyers gave an estimated average of 10-12 per home, and the manual does not list a limit at all. Mr. Heafner stated that Ms. Gibson-Meyers is a national worker, and the average is likely from nationwide Oxford Houses. In

North Carolina, or Greensboro, it is lower. The list of homes in Greensboro shows around 7 or 8. He believes they would agree to a limit. Ms. Huffman asked if single family homes was a key to the program, why were at least two of the Oxford Houses listed in apartments. Mr. Heafner stated that each house is autonomous, but approved by state Oxford House employees. The employees must have investigated the apartments for use and deemed them appropriate.

No one spoke in opposition to the matter.

Chair Pinto asked Mr. Clark to explain his thoughts on the Board's authority related to this matter. Mr. Clark stated that in his opinion the Board should take a narrow view of their authority and stay as close to their direct authority as given through ordinance. The Board, under N.C.G.S. 160A-388, has the authority to hear and decide appeals made by an administrative official, and it may reverse or affirm, wholly or partly, or may modify the order and shall make any determination that in its opinion ought to be made in the premises. Mr. Clark stated that in his opinion 'in the premises' is dealing with just the determination as to the enforcement of this ordinance. If the Board goes more broadly it would probably begin to encroach into areas that are more legislative in nature. It is clear under the Fair Housing Act that cities do have the obligation to grant a reasonable accommodation where it is proper, but the determination of that is probably best left at the City Council level.

The public hearing was closed and the matter was opened to Board discussion.

Mr. Turner cited the Oxford House Manual and stated that the manual calls for the house to be occupied for their purposes only if it does not violate local zoning or health and safety laws.

Ms. Huffman stated that the manual has certain requirements or preferences, but in action the Oxford Houses are contradicting themselves. To ask this Board for clarification on this issue is a concern. Also, this type of living arrangement is allowed in other zoning districts.

Chair Pinto stated that the basic issue is to decide if the zoning enforcement officer 1) correctly read the definition of family and applied it in this situation, and 2) whether that officer should take into consideration if the decision was reasonable based on the protected class and the federal law. That is asking this Board for an interpretation and decision it might not have the authority to do. As the ordinance is written the zoning enforcement officer is applying it appropriately, Oxford Houses can operate in Greensboro so, an accommodation has been made, and he is inclined to deny.

Mr. Strickland agreed with what was stated, and feels he has not been convinced that the Board should grant the appeal.

Chair Pinto wanted the record to reflect that the Board considered the accommodations that the City could have given, and believes that the City has in place provisions to accommodate use by Oxford House including other zoning districts.

Chair Pinto moved in case BOA-10-03, the Appeal of Notice of Violation for 2511 Fontaine Road, in reference to the use of property for more than four unrelated individuals living together, that the Board reject the appeal and uphold the zoning enforcement officer's Notice of Violation, and in support stated the zoning enforcement officer correctly read the ordinance, Oxford House does have more than four unrelated individuals living together, and that the Board, after considering all evidence including that of the appellant that reasonable accommodations need to be given to allow Oxford House residents at 2511 Fontaine Road to be up to eight individuals in that home, does not find that evidence to be convincing, and believes that the zoning enforcement officer properly read and construed the ordinance. Ms. Huffman seconded the motion. The Board voted 6-0 in favor of the motion. (Ayes: Pinto, Huffman, Strickland, Turner, Parmele, Brewington. Nays: None.) Mr. Brewington's vote was recorded in the affirmative due to an unexcused absence in accordance with state law.

Chair Pinto gave a recess at 7:12 PM, and the Board reconvened at 7:20 PM.

2) **APPEAL OF AN ADMINISTRATION INTERPRETATION**

(a) **BOA-10-12: 4922 MARY STREET** Terry Walsh appeals the zoning interpretation by the office of the Planning Director that the proposed operation of a sexually oriented business located at 4922 Mary Street represents an illegal nonconforming use under the City of Greensboro Development Ordinance. This case was continued from the April 26, 2010 meeting. Section 30-9-6.4(A)(1), Present Zoning – HI, BS-115, Cross Street - Edwardia Drive.

Mr. Clark asked that the Board recognize that these two matters are consolidated into one proceeding due to compliance with state law and the matter of admitting Mr. Murray being admitted *pro hoc vice*. Chair Pinto moved in BOA-10-12 and BOA-10-17, 4922 Mary Street, that those matters be consolidated for one proceeding, and that Mr. Murray's *pro hoc vice* admission be applicable to both matters, seconded by Ms. Huffman. The Board voted 6-0 in favor of the motion. (Ayes: Pinto, Huffman, Strickland, Turner, Parmele, Brewington. Nays: None.) Because Mr. Brewington left the meeting unexcused, his vote was counted in the affirmative.

Rawls Howard stated that Terry Walsh appeals the zoning interpretation by the office of the Planning Director that the proposed operation of a sexually oriented business located at 4922 Mary Street represents an illegal nonconforming use under the City of Greensboro Development Ordinance. The applicant appeals the March 12, 2010, determination and zoning interpretation of the City Planning Director. The property is located on the north side of Mary Street west of South Edwardia Drive on zoning map block sheet 115. Business records indicate that Greensboro Ballroom/Cabaret has been in existence at this location since 1990. The applicant is requesting an interpretation of a letter dated March 12, 2010 concerning the decision of the Planning Director that 4922 Mary Street was never legally established as a sexually oriented business, and is therefore not eligible for nonconforming use status (grandfathering). In 1990, the City zoning map reflects the property was zoned Ind H (Industrial H). The permitted uses in the **1990** permitted use chart did not reflect that sexually oriented businesses were permitted in the Ind H (Industrial H) zoning district. Sec 30-2001: On receiving an application for a use not specifically listed in this section, the enforcement person shall determine if there is a listed use which is similar and shall enforce for the requested use all requirements applicable to the similar use. Based on this 1990 ordinance requirement, it was determined that this property could not have been a legally existing sexually oriented business at such time. When the City did a citywide rezoning, effective July 1, 1992, the property zoning name was changed to HI (Heavy Industrial). The current zoning ordinance permits sexually oriented business uses in the HI (Heavy Industrial) zoning district, if compliance with development standards concerning minimum spacing requirements are met. The HI, Heavy Industrial District is primarily intended to accommodate a wide range of assembling, fabricating, and manufacturing activities. The district is established for the purpose of providing appropriate locations and development regulations for uses which may have significant environmental impacts or require special measures to ensure compatibility with adjoining properties. The existing use is the Greensboro Cabaret, to the north, west, and east is HI, and to the south is LI. Attached in the packet is a map that shows the relative spacing requirements from the subject site to various places of worship, residential uses, and to another sexually oriented business.

Dick Hails read from a letter on March 12th, 2010, to Ms. Walsh, in response to a request for a review of interpretation as to whether sexually oriented businesses are a grandfathered use at 4922 Mary St. The letter stated that the sexually oriented business was never legally established in conformance with existing zoning and development ordinance provisions in place in 1991. Industrial H zoning uses do not include 'live adult entertainment', or any exactly equivalent use category. There is a clear listing entitled 'adult bookstore, adult motion picture theater, adult mini-motion picture' theater in the table of uses. The text preceding this table states that for all uses not specifically listed in the section, the code enforcement officer shall determine if there is a listed use which is similar, and shall enforce for the requested use all requirements applicable to the similar use. Staff found that the category 'adult bookstore…' is similar to the live sexually oriented business use under discussion. The 'adult bookstore…' use was not permitted in Industrial H zoning district. The use also had

spacing requirements of 1,200 feet from other such uses and 500 feet from any residential zoning district. Because the use was not a permitted use in the Industrial H category, the sexually oriented business was never legally established.

Chair Pinto asked if there was anyone present wishing to speak in opposition to the interpretation. The speakers were sworn in.

Richard Shoppe, 426 W. Friendly Ave., attorney representing Terry Walsh, presented exhibits to the Board including affidavits from persons acknowledging that an adult oriented business was in operation at 4922 Mary Street, and a copy of the code that staff believes was in effect in 1990.

Terry Walsh, 4922 Mary St., stated that she owned and operated a dance studio at the address. She stated she teaches dance at the same building, and also rents the building out for various types of events.
Mr. Shoppe stated they were there to challenge an interpretation by the City Planning Director of the zoning ordinance. Ms. Walsh stated that she does rent the building out for sexually oriented business type events. She stated she has been renting the building out for adult use since 1990. She presented a power bill to
Mr. Hails previously to show that the business was open in 1990. The business was rented to promoters that leased the building for adult entertainment. Mr. Shoppe presented copies of Privilege Licenses to the Board. Ms. Walsh stated that the licenses show that the license was changed in 2009 to include the sexually oriented business use. Previous to this change she did not know that it was required. Mr. Shoppe then asked
Ms. Walsh to explain the affidavits. Ms. Walsh stated that the affidavits were from patrons who knew adult entertainment was going on at the site. Mr. Shoppe and Ms. Walsh went over the affidavits with the Board.

Chair Pinto stated that staff acknowledges that there was sexually oriented business use at the site in 1990; the issue in this case is that staff found that the use was not legally established or allowed by the zoning at that time.

Mr. Shoppe stated that the issue is whether the Planning Director properly interpreted the zoning ordinance. The disagreement is on the similar use identified by the zoning officer in order to determine zoning regulations. Mr. Shoppe disagrees with the finding that the use as an adult cabaret was most similar to the adult bookstore category. No bookstore of any kind is allowed in that zoning classification, however other things which are similar to an adult cabaret are allowed including: dance halls, assembly halls, side shows, and stage shows. The activity that is going on at the property is not similar to an adult bookstore. Today, no bookstore is allowed in the current HI zoning, but sexually oriented businesses are allowed. He cited page 2040 of the current Zoning Ordinance has very similar language in directing the enforcement officer as to what to do when a specific use is not listed, but also includes that the enforcement officer should rely primarily upon similarity of operational characteristics and similarity of impacts upon adjacent properties. Operationally and impact wise, an adult bookstore and an adult cabaret do not have any similarities. Although adopted in a later ordinance, it shows the intent of the City Council in interpreting uses. In the 1990 ordinance, the City had not considered an adult cabaret. When considered look at the similarity of impact and operational use. Mr. Shoppe stated that the zoning changed to HI in 1992, but Greensboro Cabaret was already established and holding sexually oriented business use events.

Chair Pinto asked when the church and residential uses were established. Mr. Shoppe stated the church use was very recent, and the residential is also fairly recent. The business in question was established before the church, the residential, and Christie's Cabaret, and was therefore not in violation of spacing requirements when established.

Mr. Parmele asked what the nature of the business was listed as in 1990. Ms. Walsh stated that she did not remember exactly, but she was allowed to rent her building. Mr. Parmele stated that his point was he doubted if a business license would have been granted for a sexually oriented business.

Mr. Shoppe stated their argument is the interpretation of the business as similar to an adult book store was incorrect based on the fact that the operational characteristics of the business would be more similar to other categories, such as dance hall. Chair Pinto stated that the operational characteristics are not all that similar

given that dance halls often allow minors and do not sell alcohol, and it seems to him that the operational characteristics are more closely related to adult type businesses, even an adult bookstore.

Mr. Turner asked about the grandfathering of the business for one year. Ms. Walsh stated that the information was reviewed in 2009 and a business license was issued for a sexually oriented business. It was only after the matter was asked to be reviewed again by the proprietors of Christie's Cabaret that Mr. Hails reopened the review and subsequently made the determination that the business was not legally established.

Mr. Hails stated that his letter that talked about an adult bookstore being the closest similar use indicates that the category is actually entitled "Adult Bookstore, Adult Motion Picture Theater, Adult Mini-Motion Picture Theater." He also noted that in the current ordinance and the one in place in 1990, sexually related uses are the most restrictive type of use. For those reasons he did not feel that a dance hall or other non-sexually oriented business fit as well with the type of use. He is not arguing that sexually oriented business went on at the location in 1990, but rather the use was not permitted in that zoning district, so the business was never legally established.

Chair Pinto asked if there was anyone present wishing to speak in favor of the interpretation. The speakers were sworn in.

Michael Murray, 55 Public Square, Cleveland, OH, stated it is important to discuss what is necessary to establish grandfather rights. He does not believe the evidence is sufficient to demonstrate that there had been sexually oriented business continuously over the last twenty years. However, the main issue on which the interpretation was based was the fact that it was never established as a legal use. They agree that the property was never zoned properly for that type of use in that district, but they do disagree with the finding that there was sexually oriented business of any substantial amount since 1990. The ordinance change in 1992 did not allow sexually oriented business in the HI district. It was not allowed in the HI district until 2005. Up until 2005, sexually oriented businesses were not a permitted use in the HI district. Adult bookstores and adult cabarets have been treated the same since as early as 1995, and currently adult bookstores and adult cabarets are permitted in the same zoning districts and have the same separation requirements. Mr. Murray presented a set of exhibits to the Board.

In the 1995 code, under Section 30-5-2.73.5, sexually oriented businesses are allowed in GB, HB, and CB districts, not in HI. The code was amended in 2005 to allow the businesses in HI. The uses of adult bookstore and adult cabaret have always been treated the same.

As far as grandfather rights, the burden of proof is on the appellant. Mr. Murray asked Ms. Walsh a series of questions about her business and operations at 4922 Mary St. In response to those questions Ms. Walsh stated that the business was opened in 1990. The business was for teaching dance and also leasing the building for events. She did not host any sexually oriented events, and was not present for the sexually oriented events. The building was rented out for a variety of reasons including reunions, cabarets, birthday parties, etc. She first rented the building for a sexually oriented event in the fall of 1990. She was not present for the event, and did not see to what level there was nudity at the event. She did not recall the exact hours of the event. She believes she charged the promoter $750 to lease the building for one night for an adult event. She does not have a copy of the lease at this time, and that is why she presented an affidavit from the promoter. She does not recall how many times she has rented the building to the promoter from 1990 to today. Over this period the adult oriented events were intermittent. She did seek a variance from the Board in 2003 for an awning. Mr. Murray then presented minutes from the 2003 Board of Adjustment meeting. Mr. Murray read a statement from Ms. Walsh's attorney at the hearing, Henry Isaacson, stating that the business was not what is normally know as a gentleman's club or topless type bar, rather dance lessons are taught in the afternoons and planned functions are held there from time to time. Ms. Walsh agreed that was what the minutes showed. Ms. Walsh stated that she did not testify at the Board hearing that there was sexually oriented business events going on at the property, and that her primary business is as a dance teacher. Mr. Murray then cited several annual reports for the state that list her type of business as a dance studio and event hall. Ms. Walsh stated that everything was not explained in the line under type of business because of the various uses that were held at the building.

Mr. Murray also stated that there is a motion to dismiss the appeal because the rules require that the notice of appeal has to be filed within 15 days of the adverse ruling. The adverse ruling was March 12th, 2010, and the notice of appeal was not filed until April 5th, 2010, and is therefore not timely. He also objected to the

introduction of the three affidavits. He does not believe it is competent evidence. The witnesses should have been brought in to allow cross examination. Two of the affidavits were signed today, so they were obviously available.

Michelle Sandrige, 4016 W. Wendover Ave., stated that she has been the manager of Christie's Cabaret since 2002. She stated that she was familiar with the 4922 Mary St. address, she was not familiar with any sexually oriented business events at that address, and she would be aware if they were happening as that is part of her job. She stated that she does not know of any common vendors with the Mary St. address, and she has not heard of any sexually oriented business events at the address by her patrons, employees, or dancers.

John Ligato, 125 S. Main St., Cleveland, OH, stated that he is a retired FBI agent who currently works as a private investigator. He stated that he interviewed several of the people that Ms. Walsh provided statements from. He stated that all of their statements were very general, and they used the same term "adult oriented business." He recorded conversations with Mr. Moula, Mr. Brown, and Ms. Jaimeson. Mr. Ligato stated that he specifically asked Mr. Moula if there was nudity at the events. He stated that Mr. Moula stated that there was no nudity. Mr. Murray then played the recorded phone interview for the Board. Mr. Ligato stated that Ms. Jaimeson stated that she attended one event that may have been adult oriented, a male review show. Mr. Ligato stated that Mr. Cheeks stated there were no events having nudity.

Mr. Murray stated that the burden of proof has not been met that there was consistent use of the property for sexually oriented business. The affidavits are vague and do not mention any events having nudity. Intermittent use is not sufficient. He supports the decision of the Planning Director that the property was never legally established because the use was not allowed in the zoning district, but he disagrees that sexually oriented business events have been going on consistently since 1990 or ever.

Chair Pinto gave those opposed to the interpretation a few minutes of rebuttal.

Mr. Shoppe stated that the ordinance quoted by Mr. Murray was a newer ordinance, and was not in use when the business was established in 1990. Also, in order to maintain a nonconforming use, sexually oriented events only needed to occur once per year. He also objected to the testimony of Ms. Sandrige based on hearsay from her patrons. Ms. Walsh carries the burden of proof on her own to say what goes on at the business. He also objects to testimony of Mr. Ligato, arguing that there may have been some intimidation to the interviewees based on Mr. Ligato's previous work as an FBI agent. He asked that the Board rely on the sworn affidavits.

Ms. Walsh stated that she felt this issue was resolved for a year. The verbiage used was the verbiage given to her by City staff through their interpretation. The dates of changes are based on information by staff. As far as the date of appeal, Mr. Hails' Office sent a letter giving here a timeframe to respond to the decision, and she met that timeframe.

Mr. Parmele asked what prompted Ms. Walsh to inquire about the sexually oriented use. Ms. Walsh stated that she had a promoter that wanted to use the property more frequently for this type of use, and she wanted to ensure that they could.

Ms. Huffman asked if Ms. Walsh could provide any proof of any sexually oriented events over the last twenty years. Ms. Walsh presented a copy of a flyer for one of these events. She estimated that the event was held in the mid-1990s.

Chair Pinto closed the public hearing.

Chair Pinto stated that the interpretation has two conclusions: 1) that the business was in operation as a sexually oriented business since 1990 and 2) the business was not legally established. He asked if the Board should consider 1, 2, or both. Mr. Strickland stated that if the Board found that the business was not legally

established the first conclusion did not matter. Chair Pinto agreed, and continued that the similar use of an adult bookstore is also more similar than the other possible categories.

After some discussion, Chair Pinto moved that in case BOA-10-13, the Board find that the interpretation as set forth by the Planning Director, as outlined in his March 12th, 2010 letter to Richard Green indicating that the sexually oriented business that was, or may have been, run at 4922 Mary Street was never legally established, and is therefore not eligible for legal nonconforming use status, incorporating by reference the findings of fact as outlined by the zoning enforcement officer at the beginning of this hearing, and all of the exhibits that have been introduced at this hearing by both the appellants and the opponents of the interpretation. It is the belief of the Board that in 1990 there was no definition of a sexually oriented business, but in the Industrial H zoning the zoning enforcement officer was instructed to look to the most similar business, and Mr. Hails' interpretation that an adult bookstore, which was not allowed in the zoning district, was in fact the most similar business. This Board finds that was a reasonable and proper conclusion. The Board also finds that the appellants have not come forward with clear and convincing evidence that the interpretation was improper. Therefore this Board affirms the interpretation of Mr. Hails as reflected in his March 12th, 2010, that the sexually oriented business use at 4922 Mary Street was not eligible legal nonconforming use status. Ms. Huffman seconded the motion. The Board voted 6-0 in favor of the motion. (Ayes: Pinto, Huffman, Strickland, Parmele, Turner, Brewington. Nays: None.) Mr. Brewington's vote was recorded in the affirmative due to an unexcused absence in accordance with state law.

NEW BUSINESS

1) **VARIANCE**

(a) **BOA-10-17 4922 MARY STREET** Terry Walsh requests a variance from the development standards concerning minimum property separation requirements.

Variance #1: No sexually oriented business is permitted to be located within 1,200 feet of any other sexually oriented business. This property is located 405 feet from an existing sexually oriented business; thus requesting a spacing variance for 795 feet. Section 30-5-2.73.5(B)(1)(2). **(DENIED)**

Variance #2: No sexually oriented business is permitted to locate within 1,000 feet of a church. This property is located 210 feet from a place of worship; thus requesting a spacing variance for 790 feet. Section 30-5-2.73.5(B)(1)(2). **(DENIED)**

Variance #3: No sexually oriented business is permitted to be located within 1,000 feet of a residentially zoned property. This property is located 580 feet from residentially zoned property; thus, requesting a spacing variance for 420 feet. Section 30-5-2.73.5(B)(1)(2). **(DENIED)**

Present Zoning – HI, BS-115, Cross Street – Edwardia Drive.

Rawls Howard stated that Terry Walsh requests a variance from the development standards concerning minimum property separation requirements. *Variance #1:* No sexually oriented business is permitted to locate within 1,200 feet of any other sexually oriented business. This property is located 405 feet from an existing sexually oriented business; thus, the applicant is requesting a spacing variance for 795 feet. *Variance #2:* No sexually oriented business is permitted to locate within 1,000 feet of a church. This property is located 210 feet from a place of worship; thus, the applicant is requesting a spacing variance for 790 feet. *Variance #3*: No sexually oriented business is permitted to be located within 1,000 feet of residentially zoned property. This property is located 580 feet from residentially zoned property; thus, the applicant is requesting a spacing variance for 420 feet. The property is located on the north side of Mary Street west of South Edwardia Drive on zoning map block sheet 115. Business records indicate that Greensboro Ballroom/Cabaret has been in existence at this location since 1990. City records reflect the property has operated as a bar/nightclub since opening in the early 1990's. A bar that is located in the HI (Heavy Industrial) zoning district is not required to meet minimum spacing requirements from residentially zoned property, churches, schools, and public parks.

Bars located in the HI zoning district are permitted by right. (Bars located on tracts less than 5 acres in the GB, HB, CB, and SC zoning districts are required to meet certain spacing requirements). In 1990, the City zoning map reflects the property was zoned Ind H (Industrial H). The permitted uses in the **1990** permitted use chart

did not reflect that sexually oriented businesses were permitted in the Ind H zoning district. When the City did a citywide rezoning, effective July 1, 1992, the property zoning name was changed to HI (Heavy Industrial). The current zoning ordinance permits sexually oriented business uses in the HI zoning district if compliance with development standards concerning minimum spacing requirements are met. **In summary,** based on the HI (Heavy Industrial) zoning district, the location can operate legally as a bar/nightclub, but would have to be granted variances from separation requirements to operate as a sexually oriented business. The HI, Heavy Industrial District is primarily intended to accommodate a wide range of assembling, fabricating, and manufacturing activities. The district is established for the purpose of providing appropriate locations and development regulations for uses which may have significant environmental impacts or require special measures to ensure compatibility with adjoining properties. The existing use is the Greensboro Cabaret, to the north, west, and east is HI, and to the south is LI. Attached in the packet is a map that shows the relative spacing requirements from the subject site to various places of worship, residential uses, and to another sexually oriented business.

Chair Pinto asked if there was anyone present wishing to speak in favor of this matter. The speakers were still under oath.

Richard Shoppe, 426 W. Friendly Ave., stated that Greensboro Cabaret was currently a legal use under the HI zoning. It does not meet spacing requirements as set out in the ordinance. However, the business has been in operation as a sexually oriented business since 1990. As far as the setbacks are concerned, the property is not nearly as close to the residential district as is Christie's Cabaret, only a few feet nearer to the church, the same distance to Christie's Cabaret as Christie's Cabaret is to it, and it was an established use before Christie's Cabaret. The argument is based on fairness in this situation. Ms. Walsh only wants to do is continue what she always done at this location. She can make some use of the building, but the variance will limit when and how she wants to use the business. She will not be able to make the reasonable use to lease it out for sexually oriented business. The hardship she faces is that she will not be able to continue the business as she has since the business opened in 1990. The variance is significant, but the impact and overall effect on the neighborhood is very minimal. The hardship is not the result of Ms. Walsh's own actions, but because of the new competition and changes in zoning. There is no harm to the public safety or neighborhood to granting this variance, except as a competitor to Christie's Cabaret. He asked for the variance for this business to carry on as it has in the past.

Chair Pinto stated that the argument that no reasonable use can be made is hard to agree with given that the business has been in operation since 1990 with many other uses than sexually oriented. He asked Mr. Shoppe to explain how no reasonable use could be made but for the granting of the ordinance. Mr. Shoppe stated that it comes down to what the Board believes is a reasonable use, and he asked that they consider that the particular use she has made in the past will no longer be available to her.

Chair Pinto asked if there was anyone wishing to speak in opposition to the variance. The speakers were still under oath.

Michael Murray, 56 Public Square, Cleveland, OH, asked Ms. Walsh a series of questions pertaining to the case. In response to the questions from Mr. Murray, Ms. Walsh stated that she did intend to allow the third party lessee to operate a topless bar during the approximate hours of late afternoon until early morning about five days a week. Mr. Murray stated that the changes will be significant based on those answers. The establishment will become a relatively permanent adult topless night club. The variance standards are difficult to overcome. A reasonable use of the property can be made and there are no uniques circumstance related to the property that would validate a variance.

Chair Pinto closed the public hearing.

The Board discussed the fact that some would like to find a means to allow Ms. Walsh to continue her business, but the standards needed to grant a variance have not been met. The Board was curious as to how the operation of this business was not known by the City. The church related to the matter was established

within the last two years, and the residential district was rezoned within the last 4 years. There is no direct connection between Mary St. and the residential neighborhood. The Board recognized the applicant's argument that this is a matter of fairness, and continued operation was not likely to have any more impact on the neighborhood than the operations of Christie's.

After some discussion Chair Pinto moved that in BOA-10-17 Variance #1 based on the stated findings of fact, and incorporating the findings of fact by the zoning enforcement officer, as well as the exhibits introduced, that the zoning enforcement officer be upheld and the variance denied. The Board finds as a fact that reasonable use can be made of the property because the property owner has been in operation at the location for 20 years as a dance studio and event center, and sexually oriented business has been a part of the business, but a reasonable small and sporadic par to the business over the years. Further, the variance requested is not minimal in nature, and there are not unique circumstance related to the property in question. Further, the general purpose of the ordinance for Variance #1 is to keep separation between sexually oriented businesses, for Variance #2 to keep separation between sexually oriented businesses and places of worship, for Variance #3 to keep separation between sexually oriented businesses and residential areas, and the variance would not be in harmony with those general purposes. There has been no evidence before the Board that either the granting of the variance or denial of the variance would have any effect on public safety. The Board determines that if the applicant complies with the provisions of this ordinance she can make reasonable use of the property. The hardship of which the applicant complains does not result from the unique circumstances of the property. The hardship does not result from the application of this ordinance to the property. The hardship is the result of the applicant's own actions. The variance is not in harmony with the general purpose and intent of the ordinance. The granting of the ordinance does not assure public safety and welfare, and does not do substantial justice. Ms. Huffman seconded the motion. The Board voted 5-1 in favor of the motion. (Ayes: Pinto, Huffman, Strickland, Parmele, Brewington. Nays: Turner.) Mr. Brewington's vote was recorded in the affirmative due to an unexcused absence in accordance with state law.

With regard to BOA-10-17, Variance #2, Chair Pinto incorporated by reference the entire motion for Variance #1, and moved to uphold the decision of the zoning enforcement officer and deny the variance, seconded by Ms. Huffman. The Board voted 5-1 in favor of the motion. (Ayes: Pinto, Huffman, Strickland, Parmele, Brewington. Nays: Turner.) Mr. Brewington's vote was recorded in the affirmative due to an unexcused absence in accordance with state law.

With regard to BOA-10-17, Variance #3, Chair Pinto incorporated by reference the entire motion for Variance #1, and moved to uphold the decision of the zoning enforcement officer and deny the variance, seconded by Ms. Huffman. The Board voted 5-1 in favor of the motion. (Ayes: Pinto, Huffman, Strickland, Parmele, Brewington. Nays: Turner.) Mr. Brewington's vote was recorded in the affirmative due to an unexcused absence in accordance with state law.

OTHER BUSINESS:

Mr. Howard stated that the new LDO has been adopted and will be effective July 1st. The Board will likely see some changes that will be outlined later.

ADJOURN:

There being no further business before the Board, the meeting adjourned at 10:31 PM.

Respectfully submitted,

Rick Pinto, Chair
Greensboro Board of Adjustment

RP/jd

MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
July 26th, 2010

A meeting of the Greensboro Board of Adjustment was held on Monday, July 26th, 2010 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Russ Parmele, Vice Chair, Clinton Turner, Brian Pearce, Bill Strickland, Scott Brewington, and Kelly Trexler. Staff present were: Rawls Howard, Zoning Administrator, Fred Boateng, Dick Hails, Planning Director, Mike Cusimano, Urban Forester, as well as Jim Clark, City Attorney's Office.

Vice Chair Parmele called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Mr. Brewington moved to approve the minutes of the June 28 , 2010 meeting, seconded by Mr. Turner. The Board voted 6-0 in favor of the motion. **(APPROVED)**

SWEARING IN OF STAFF

Rawls Howard, Fred Boateng, Mike Cusimano and Dick Hails were sworn in for their testimony related to matters listed on the agenda.

NEW BUSINESS

1) APPEAL OF ADVISORY COMMISSION ON TREES (UDO PROVISION)

Cases **10-19** and **10-20** arise out of a single set of facts; thus staff recommends that a single hearing be held on the two items with two votes.

(a) BOA-10-19: 8760 WEST MARKET STREET: Latto Holdings, LLC appeals a decision of the Advisory Commission on Trees in reference to a Notice of Violation and assessed Civil Penalties. Section 30-5-4.11(4), Present Zoning-CD-LI, BS-522, Cross Street-Pleasant Ridge Road. **(REMANDED TO THE ACT)**

Latto Holdings, LLC appeals the decision of the Advisory Commission on Trees, which was entered on June 2, 2010 affirming the Notice of Violation with civil penalties that were issued by the Urban Forester on February 9, 2010. The property is located on the north side of West Market Street on zoning map block sheet 522. On February 9, 2010, the applicant was issued a Notice of Violation and assessed with a civil penalty of $29,480.00 concerning tree disturbance and failure to protect a tree conservation area. The applicant appealed the Notice of Violation and Civil Penalties to the Advisory Commission on Trees. The Advisory Commission on Trees heard the case on June 2, 2010. The Commission upheld the Urban Forester's decision and penalties. Ordinance Section 30-9-6.4 allows for the decision of the Advisory Commission on Trees to be appealed to the Board of Adjustment. On June 17, 2010, the applicant filed an appeal to the Board of Adjustment. Each Board member has a verbatim transcript from the June 2, 2010 Advisory Commission on Trees meeting concerning this appeal. The LI, Light Industrial District is primarily intended to accommodate limited manufacturing, wholesaling, warehousing, research and development, and related commercial/service activities which in their normal operations, have little or no adverse effect upon adjoining properties.

(b) BOA-10-20: 8760 WEST MARKET STREET: Ted Martin appeals a decision of the Advisory Commission on Trees in reference to a Notice of Violation and assessed Civil Penalties. Section 30-5-4.11(4), Present Zoning-CD-LI, BS-522, Cross Street-Pleasant Ridge Road. **(REMANDED TO THE ACT)**

Ted Martin appeals the decision of the Advisory Commission on Trees, which was entered on June 2, 2010 affirming the Notice of Violation with civil penalties that were issued by the Urban Forester on February 9, 2010. The property is located on the north side of West Market Street on zoning map block sheet 522. On February 9, 2010, the applicant was issued a Notice of Violation and assessed with a civil penalty of $29,480.00 concerning tree disturbance and failure to protect a tree conservation area. The applicant appealed the Notice of Violation and Civil Penalties to the Advisory Commission on Trees. The Advisory Commission on Trees heard the case on June 2, 2010. The Commission upheld the Urban Forester's decision and penalties. Ordinance Section 30-9-6.4 allows for the decision of the Advisory Commission on Trees to be appealed to the Board of Adjustment. On June 17, 2010, the applicant filed an appeal to the Board of Adjustment. Each Board member has a verbatim transcript from the June 2, 2010 Advisory Commission on Trees meeting concerning this appeal. The LI, Light Industrial District is primarily intended to accommodate limited manufacturing, wholesaling, warehousing, research and development, and related commercial/service activities which in their normal operations, have little or no adverse effect upon adjoining properties.

Vice Chair Parmele swore in the speakers on both items.

Richard Greene, 3200 Northline Ave., representing Latto Holdings, asked the Board about the parameters of the case and if new evidence would be allowed. Vice Chair Parmele stated that the Board is to review the finding of facts that the Advisory Commission on Trees reviewed, and then determine if reasonable evidence was presented and that the ACT made a decision based on those facts. Jim Clark stated that the parameters will be to determine if there were any clear errors in any of the findings of fact. If the findings of fact appear to be reasonable, the Board will decide whether or not the application of the law to those facts was proper. This is an appeal in the nature of certiorari, and is solely on the record. The question arose whether or not there would be subpoenas issued in that case. This Board has the authority to issue subpoenas, but does not have a stated procedure within the ordinances on how those will be handled. Where there is no express rules, the North Carolina Rules of Civil Procedure are usually used, and these rules allow for the admission of new evidence under limited circumstances. The prior history of the Board has shown that it is not appropriate to allow new evidence, but to remand the item to the ACT to take this evidence into consideration and determine if they wish to allow the new evidence. Vice Chair Parmele stated that typically new evidence is not permitted, but the Board does have the right to remand the matter back to the ACT for their determination.

Wayland Cook, 1526 Trosper Rd., representing Ted Martin, stated that he has a series of affidavits bearing directly on this matter from people not in attendance at the ACT hearing. He stated that Mr. Martin is 71 years-old, and has had some serious medical issues since 2007. He has been in the logging business for over 25 years, and has never had a problem like this in all that time. It was his experience that the contractor would secure the permit. He relied, to his detriment, on Mr. Latto telling him the permits were in place. When he received notice of the violation he contacted Mr. Cusimano. Mr. Cusimano advised him that he could get a lawyer for the hearing, but if the Commission ruled against him he could appeal. It is obvious from the transcript of the ACT hearing that Mr. Martin was not competent for the hearing without legal counsel. There are many facts that were not brought out that could be extremely helpful to the ACT. He presented copies of the affidavits to the Board. He requested that this matter, BOA-10-20 be remanded back to the Advisory Commission on Trees. He has live testimony from those who gave the affidavits, and a letter from Mr. Martin's doctor indicating his health at the earlier proceeding.

Mr. Pearce asked what the grounds for remanding the matter were. Mr. Cook stated that there is evidence that was not brought out at the hearing that could exonerate Mr. Martin. Mr. Martin is now facing a $29,685 penalty, and he relied on Mr. Latto's claim that the permits were in place. Mr. Pearce asked if new evidence was grounds for remanding the case. Mr. Clark stated that new evidence that could not have been, with reasonable diligence, brought out at the previous proceeding can be grounds for remand. The Board does not need to determine if there is an actual basis for the ACT to hear new evidence, but if the Board feels there is good cause to believe that there could be evidence that through reasonable diligence could not have been obtained before the prior hearing, or if the Board believes that due to inadvertence, excusable neglect, the Board could remand the item for the ACT's consideration. This procedure is based on Rule 60 (B).

Mr. Greene stated that Latto Holdings would object to the introduction of new evidence, however they do not object to the remand of this matter back to the ACT.

Vice Chair Parmele stated at this time they would go through the procedure, hear the comments from both parties, and then make a determination if remand is necessary or make a ruling. Mr. Pearce asked if the remand should not be a preliminary procedure. Mr. Clark stated that would be up to the Board. Mr. Pearce asked for a copy of Rule 60 (B) for the Board. Vice Chair Parmele moved to other items while copies were being made.

2) SPECIAL EXCEPTION (LDO PROVISION)

(a) BOA-10-21: 200 EAST MCCULLOCH STREET: Porsha Stroud requests a Special Exception as authorized by Section 30-8-10.1(B) to allow family care home separation encroachments to the current development standards.

Special Exception Request #1: The proposed family care home will be 1,742 feet from one family care home (6 or less persons) to another family care home, located at 618 Broad Avenue, (6 or less persons) when 2,640 feet is required. **(GRANTED)**

Special Exception Request #2: The family care home will be 1,579 feet from one family care home (6 or less persons) to another family care home, located at 408 Andrew Street, (6 or less persons) when 2,640 feet is required. Present Zoning R-5, Block Sheet-6, Cross Street-Arlington Street **(GRANTED)**

Vice Chair Parmele swore in the speakers on the matter.

Mr. Howard stated the applicant is proposing to locate a family care home which is too close to two existing family care homes. *Special Exception Request #1*: The proposed family care home (6 or less persons) will be 1,742 feet from another family care home, located at 618 Broad Avenue, (6 or fewer people) when 2,640 feet is required. This proposed home will be 898 feet too close. *Special Exception Request #2:* The same proposed family care home will be 1,579 feet from another family care home, located at 408 Andrew Street, (6 or less persons) when 2,640 feet is required. It will be 1061 feet too close. The lot is located at the southeastern intersection of East McCulloch Street and Arlington Street on zoning map block sheet 6. It is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at 200 E. McCulloch Street. It is too close to two other existing family care homes which have been described in the requested action section. Privilege license records reflect that both of the existing family care homes are in operation and required renewals are in compliance.

The applicant began their process in November 2009. At that time, the location met the one-fourth mile spacing requirement under the minimum former separation requirements. On May 18, 2010, the spacing requirement was increased to one-half mile. The applicant received a second letter dated June 9, 2010, which informed the applicant that location no longer met the minimum standard. The applicant had begun her process, but as of May 18, 2010, had not taken occupancy. The increase in the spacing requirement from one-fourth mile to one-half mile was adopted by Council, and effective date was May 18, 2010. The applicant filed a Special Exception request on July 1, 2010. The R-5, Residential Single Family District is primarily intended to accommodate low density single family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Porsha Stroud, 1633 Glenside Dr., stated that she started the process in November of 2009. She rented the home from Mr. Fanchez in November 2009. The home was already a family care facility. She has gone through all of the requirements with the State. She has turned in the complete application, and has had inspections complete for the State. Everything was sent to the State on December 23rd, 2009. She received a letter from the State department of Health and Human Services saying they were going to send someone from construction to approve that portion of the application. That inspection was completed on February 11, 2010. She has a letter stating that she has no deficiencies or defaults. She is now awaiting approval of her Manual of Policies and Procedures. She has been waiting since February for that review. She has been assigned a reviewer, but has not been returning Ms. Stroud's attempts at contacting her. She has contacted her supervisor

about the delay, and the supervisor informed her that they were behind and would get to the review when they could. She has completed everything she needs to complete, but has been caught during the process by the change in separation requirements.

Vice Chair Parmele asked if her reviewer has given any indication as to a date when the review process would be completed. Ms. Stroud stated that the reviewer did not indicate any date of completion. In response to a question from Vice Chair Parmele, Ms. Stroud stated that Mr. Fanchez withdrew his license in October 2009, and she began the application process and remodeling in November 2009.

Vice Chair Parmele asked for her to describe the neighborhood and any significant boundaries between neighborhoods. Ms. Stroud stated before the ordinance change, this home was in compliance with the ¼ mile separation requirements. She was issued a privilege license by the Zoning staff. She does not know what the other two group homes do, but she plans on opening a group home for women who are recovering substance abusers. Mr. Pearce asked how far the driving distance is. Ms. Stroud stated she was unsure, but the homes would not be considered in the same neighborhood. She would have to drive several blocks to reach either facility.

Mr. Turner asked if either of the other facilities can be seen from her facility. Ms. Stroud stated that you could not, and there is no significant natural of man made boundary. Adrian Fanchez, 200 E. McCulloch St., stated that he never had any problem with the kids in his group home having any relationship with the kids from the other two group homes, and he believes they are even in different school districts.

Mr. Pearce asked if Ms. Stroud contacted staff in May due to the 6-month limit of the letter informing her she was in compliance with the separation requirements. Ms. Stroud stated that she redid the application and received a new privilege license in May, after receiving a letter from Zoning. Zoning staff is who approves the privilege license for family care facilities. She did not believe she needed to do anything further to be in compliance. She has stayed in contact with staff to inform them of the delays by the State. Mr. Howard stated that the letter stating her compliance did not expire because she received a phone call from staff.

Vice Chair Parmele asked if the State had approved the final request would she have met the ¼ mile separation requirements as they existed when she began the process. Ms. Stroud stated that she would. Vice Chair Parmele closed the public hearing.

Mr. Pearce stated that he believed the applicant did everything in her power to meet the requirements, but the ordinance change and the hold up at the state level has caught her in the process. He is willing to support the special exception. Mr. Brewington agreed. Vice Chair Parmele stated that he understands the dilemma the applicant is in, but the special exception would not fulfill the City Council's goal of avoiding clustering.

After some discussion, Mr. Pearce moved that *Special Exception Request #1* be granted based on the following findings of fact: The special exception is in harmony with the general purpose and intent of this ordinance, and preserves its spirit in that the process of opening this home was started well before the ordinance change to more restrictive standards. The special exception application was not submitted prior to the change of the ordinance due to no fault of the applicant's own action. It was due to extenuating circumstances. The granting of the special exception assures the public safety and welfare and does substantial justice based on the fact that although it does not meet with the current ordinance, it does meet with the ordinance requirements at the time that the special exception process was started. Ms. Trexler seconded the motion. The Board voted in favor of the motion 5-1. (Ayes: Pearce, Trexler, Turner, Brewington, Strickland. Nays: Parmele.)

Mr. Pearce moved that *Special Exception Request #2* be granted based on incorporating the findings of fact from *Special Exception Request #1*, seconded by Mr. Brewington. The Board voted in favor of the motion 5-1. (Ayes: Pearce, Trexler, Turner, Brewington, Strickland. Nays: Parmele.)

Mr. Brewington stated that the fact the application process was started and in compliance with the old ordinance was very important. Ms. Stroud stated that there are several family care homes in a similar situation, and it is likely the Board will see cases like this again.

(b) BOA-10-22: 2805 NORTH O. HENRY BOULEVARD: Latonya Tinnin requests a Special Exception as authorized by Section 30-8-10.1(B) to allow a separation of 1,452 feet from one family care home (6 or less persons) to another family care home (6 or less persons), when 2,640 feet is required. Present Zoning-R-5, Block Sheet-55, Cross Street-Longfellow Street **(GRANTED)**

Vice Chair Parmele swore in the speakers on the matter.

Mr. Howard stated the applicant is proposing to locate a family care home which is too close to an existing family care home. The proposed family care home (6 or less persons) will be 1,452 feet from another family care home, located at 2901 Holmes Road, (6 or less persons) when 2,640 feet is required. This proposed home will be 1,188 feet too close. The lot is located on the north side of North O. Henry Boulevard south of Emerson Road on zoning map block sheet 55. It is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at 2805 North O. Henry Boulevard. It is too close to an existing family care home which has been described in the requested action section. Privilege license records reflect that the existing family care home is in operation and required renewals are in compliance. The applicant began their process with the city in December 2009. At that time, the location met the one-fourth mile spacing requirement under the minimum former separation requirements. On May 18, 2010, the spacing requirement was increased to one-half mile. The applicant received a second letter dated June 9, 2010, which informed the applicant that location no longer met the minimum standard. The applicant had begun his process, but as of May 18, 2010, had not taken occupancy. The increase in the spacing requirement from one-fourth mile to one-half mile was adopted by Council, and effective date was May 18, 2010. The applicant filed a Special Exception request on July 2, 2010. The R-5, Residential Single Family District is primarily intended to accommodate low density single family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Latonya Tinnin, 2805 N. O'Henry Blvd. stated that their original plan was to start a substance abuse recovery home, and they received three support letters. The subsequently received a letter from Guilford County stating there were no more funds from the State. After that they purchased a map from zoning staff to make sure they would be in compliance with the ¼ mile separation requirements. Michael Blackwell, 2105 Ewing Dr., described the map they used to find appropriate locations for a family care home. Ms. Tinnin stated that training, inspections, applications, and all other materials are complete and submitted to the State. They are awaiting final approval from the State. She received a letter from the Zoning Department stated that the home was no longer in compliance, and after contacting staff found the special exception the only means of obtaining compliance.

Mr. Pearce asked when she contacted staff. Ms. Tinnin stated she called staff the day she received the letter, on June 9th. Her zoning approval expired on June 11th, and she was informed she would not be able to renew her letter. She had not heard of the distance change prior to receiving the letter.

Vice Chair Parmele asked if they had received approval from the State. Ms. Tinnin stated that all application materials and inspections have been completed, but they could not receive final approval from the State without this special exception. Vice Chair Parmele asked if there were any significant boundaries between the proposed family care home and the existing family care home. Mr. Blackwell stated that it is approximately 0.8 miles of driving distance, several residential blocks, and they cannot see the other home from the proposed home. The proposed home faces Highway 29 on a dead end street. So there is no direct route to the other home due to the one way street. The homes are in different neighborhoods, but there are no significant natural barriers. Vice Chair Parmele closed the public hearing.

Mr. Pearce stated that this case is the same as the last. The key factor that may distinguish this among others in the future is that the zoning letters were kept active.

Mr. Pearce moved to grant the Special Exception based on evidence presented by the applicant that the special exception is in harmony with the general purpose and intent of the ordinance, and also preserves its spirit in that the property was in compliance with the ordinance before the recent amendment. The zoning letter that had been issued to the applicant had not expired prior to the time they received notice of the change.

Therefore, they came to get this special exception as soon as possible. The granting of the special exception ensures the public safety and welfare, and does substantial justice based on the same findings.
Mr. Brewington seconded the motion. The Board voted in favor of the motion 5-1. (Ayes: Pearce, Trexler, Turner, Brewington, Strickland. Nays: Parmele.)

NEW BUSINESS

1) APPEAL OF ADVISORY COMMISSION ON TREES (CONTINUATION)

BOA-10-19 and BOA-10-20 (REMANDED TO THE ACT)

Mr. Pearce suggested that this be heard in two different parts: 1) basis of remand and 2) the appeal. Mr. Clark stated that the Board had three options for the hearing: 1) hear the appeal on record, (without new evidence), 2) hear the appeal with new evidence, and 3) hear the basis of remand. Hearing the basis of remand is not determined on Rule 60 (B). The Board is determining that there may or may not be good cause for a remand back to the ACT to hear the Rule 60 (B) motion at that level. The question in determining the remand would be if there is good cause to believe that there may be a basis for allowing additional evidence, not that the ACT should allow additional evidence. Vice Chair Parmele asked if the appeal would need to be heard to determine if a remand is appropriate. Mr. Clark stated that in this instance it is not necessary to hear the appeal. Vice Chair Parmele asked the appellant to explain the reason for the remand.

Wayland Cook, 1526 Trosper Rd., representing Mr. Martin in case BOA-10-20, stated that Mr. Martin is 71 years-old, and has had medical and mental problems since 2005. Donna Stedman, a nurse practitioner, has been treating him since that time. He presented a letter from her to the Board stating that on June 24th, 2010 "Mr. Martin came in complaining of lightheadedness and a 'crazy head' for about a month. His memory was not good, he forgot where he was putting things, and he forgot what he was doing when he was doing something. It is important to note that he is illiterate." Mr. Martin received written notice of this problem, and he is unable to read. He did call Mr. Cusimano and had the discussion alluded to earlier about the need of a lawyer. He came to the hearing without one. In reading the transcript of the hearing, it is obvious that there is evidence of confusion. Mr. Martin visited Mr. Cook last Monday for the first time about this matter where they met for about 1 hour and 45 minutes. He came in again on Wednesday for another 45 minutes. On Friday, Mr. Martin came in again, and did not know who to ask for at the office. He has some issues that affect his comprehension of what is going on. That is one reason that would lead to excusable neglect. Another reason would be that he had been in the logging business for 25 years, and in that time he had the contractor pull the permit for every job he did. Over those 25 years, he never had any issues with anything like this. He likely also had faith that Mr. Latto would tell the truth at the hearing, which did not happen.

Mr. Pearce asked if there was any other reason that this evidence could not have been presented before the ACT. Mr. Cook stated that Mr. Martin's retirement has given time for many of these people to scatter. He believes Mr. Martin received notice in March, and the hearing was in June, which is within the month that he was complaining of having a 'crazy head' and his memory was not very good. Mr. Cook also felt there was misrepresentation at the previous hearing. He cited the transcript where Mr. Latto never answers the question of whether Mr. Latto visited the job site. Mr. Cook has evidence that Mr. Latto did return to the job site, and told Mr. Martin that he could return the equipment back to the job site because he had the permits. That was never discussed with the ACT.

Vice Chair Parmele stated that is sounds like Mr. Cook is arguing that the ACT did not due its due diligence in unearthing this evidence. Mr. Cook stated that the argument is both excusable neglect and misrepresentation as discussed. Vice Chair Parmele asked if he was unable to present evidence at the prior hearing, why he will be able to present the evidence in the future. Mr. Cook stated he would be able to present that evidence now because he has counsel. He did not receive counsel before the hearing because of his health status, and he did not understand the nature of the proceedings. Vice Chair Parmele asked if there were any medical conditions that would require him to have competent legal counsel. Mr. Cook stated that Mr. Martin has depression, anxiety attacks, social anxiety disorder, and he is illiterate complicating all of those conditions. The ACT was not aware of any of those issues. He only asks for the opportunity for the ACT to hear his side of the issue.

Vice Chair Parmele stated that a remand sounds reasonable based on the evidence presented. Mr. Pearce stated that he is comfortable with that, but wanted to make it clear that the Board is not saying that they should hear new evidence, but rather they should consider if they want to hear new evidence.

Richard Greene, 3200 Northline Ave., representing Latto Holdings in case BOA-10-19, stated that he agreed that the fact situation is common to both cases. He is not opposed to a remand, but he is opposed to Mr. Cook's arguments on his client's integrity or truthfulness. He asked that it be stricken from the record. Mr. Pearce stated that only those issues related to the basis of remand are being considered by the Board.

Mr. Pearce asked if these two cases needed to be tied together for any future hearings. Mr. Clark stated that he has some concern that if the cases are not heard together there could be some future issues. Vice Chair Parmele closed the public hearing.

After some discussion, Mr. Pearce moved to remand the matter of case BOA-10-19 and case BOA-10-20 to the Greensboro Advisory Commission on Trees, and ask that they examine two issues: 1) whether they believe that it is proper for them to consider whether new evidence can be presented after they have made their findings based on a complete hearing, and 2) whether the appellants' presentations are sufficient in order to prove a case to hear new evidence. Mr. Turner seconded the motion. The Board voted unanimously, 6-0, in favor of the motion. Mr. Pearce stated that this motion in no way suggests what the ACT's determination on either account should be.

OTHER BUSINESS

(A) ELECTION OF OFFICERS AND LDO PRESENTATION

The Board agreed to put the matters off until the replacement of Board members is complete. Mr. Howard stated that he did know that the City Council has made one appointment to the Board, but he was not sure when that would take place. He will remain in contact with the City Clerk to find out when the replacements will be in place. The Board agreed to have the election of officers at the end of the August meeting.

ABSENCES:

The absence of Cheryl Huffman and Rick Pinto was acknowledged.

ADJOURN:

There being no further business before the Board, the meeting adjourned at 7:13 PM.

Respectfully submitted,

Russ Parmele, Vice Chair
Greensboro Board of Adjustment

RP/jd

MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
August 23rd, 2010

A meeting of the Greensboro Board of Adjustment was held on Monday, August 23rd, 2010 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Scott Brewington, Acting Chair, Clinton Turner, Brian Pearce, Bill Strickland, and Isabella Adkins. Staff present were: Rawls Howard, Zoning Administrator, Loray Averett, Zoning Services Coordinator, as well as Jim Clark, City Attorney's Office.

SELECTION OF ACTING CHAIR

Mr. Strickland moved for Mr. Brewington to be Acting Chair until Board elections, seconded by Mr. Turner. The Board voted 5-0 in favor of the motion.

Acting Chair Brewington called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Mr. Strickland moved to approve the minutes of the July 26th, 2010 meeting, seconded by Mr. Pearce. The Board voted 5-0 in favor of the motion. **(APPROVED)**

SWEARING IN OF STAFF

Rawls Howard and Loray Averett were sworn in for their testimony related to matters listed on the agenda.

NEW BUSINESS

1) **SPECIAL EXCEPTION (LDO PROVISION)**

(a) BOA-10-23: 2110 WILLOW ROAD: Dianne Nowlin requests a Special Exception as authorized by Section 30-8-10.1(B) to allow family care home separation encroachments from the current development standards.

Special Exception Request #1: The proposed family care home will be 1,676 feet from one family care home (6 or less persons) to another family care home, located at 2014 Willow Road, (6 or less persons) when 2,640 feet is required.

Special Exception Request #2: The family care home will be 1,776 feet from one family care home (6 or less persons) to another family care home, located at 1030 Alamance Court, (6 or less persons) when 2,640 feet is required.

Special Exception Request #3: The family care home will be 2,526 feet from one family care home (6 or less persons) to another family care home, located at 2824 Liberty Road (6 or less persons) when 2,640 feet is required.

Present Zoning R-5, Block Sheet-67, Cross Street-Alamance Church Road

In response to a question from Mr. Howard, Mr. Clark stated that only one vote would be necessary for the matter.

Mr. Howard stated the applicant is proposing to locate a family care home which is too close to three existing family care homes. *Special Exception Request #1*: The proposed family care home will be 1,676 feet from one family care home (6 or less persons) to another family care home, located at 2014 Willow Road, (6 or less persons) when 2,640 feet is required. This proposed home will be 964 feet too close. *Special Exception Request #2:* The family care home will be 1,776 feet from one family care home (6 or less persons) to another family care home, located at 1030 Alamance Court, (6 or less persons) when 2,640 feet is required. It will be 864 feet too close. *Special Exception Request #3:* The family care home will be 2,526 feet from one family care home (6 or less persons) to another family care home, located at 2824 Liberty Road (6 or less persons) when 2,640 feet is required. It will be 114 feet too close. The lot is located at the northeastern intersection of Willow Rd. and Alamance Church Rd. on zoning map Block Sheet 67. It is currently zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at 2110 Willow Road. It is too close to three other existing family care homes which have been described in the requested action section. Privilege license records reflect that all three of the existing family care homes are in operation and required renewals are in compliance.

The applicant began their process in September 2009. At that time, the location met the one-fourth mile spacing requirement under the minimum former separation requirements. On May 18, 2010, the spacing requirement was increased to one-half mile. The applicant had begun her process, but as of May 18, 2010, had not taken occupancy. The increase in the spacing requirement from one-fourth mile to one-half mile was adopted by Council, and effective date was May 18, 2010. The applicant filed a Special Exception request on July 30, 2010. The R-5, Residential Single Family District is primarily intended to accommodate low density single family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Acting Chair Brewington swore in the speakers on the matter.

Dianne Nowlin, 2703 Ponderosa Dr., stated that they were looking to open an adult family care home for adults with disabilities. The site would have 24 hour supervision. They have been waiting on approval from the State. They are still waiting on final inspections from the State. They were supposed to do the inspection on July 27th, but the inspection was not completed. She has had potential clients, but has not been able to occupy the home due to the delay in State certification.

Mr. Pearce asked if Ms. Nowlin contacted City staff in March before the expiration of the zoning letter stating she meet the spacing requirement. Ms. Nowlin stated that she did speak with Mr. Taylor.

Mr. Pearce also asked if she anticipated that the state would certify the site for this use. Ms. Nowlin stated that she was confident they would approve. She stated she has been filling under Quality Life Services, who operates several homes in the area, and they took care of the applications and paperwork.

Acting Chair Brewington asked if the houses were in the same neighborhood, or if there were barriers to the other family care homes. Ms. Nowlin stated that there are no barriers, but the homes are all several residential blocks from the proposed home.

Ms. Adkins asked if a new letter was issued to the applicant. Mr. Howard stated that a new letter was not issued, but staff does not dispute that Ms. Nowlin has been in contact since March. Ms. Nowlin stated that she was informed that she needed to keep in contact with staff to let them know where she was in the certification process. She was then told that she would need to seek a special exception.

Mr. Turner asked if the applicant operated any other family care homes. Ms. Nowlin stated that she also operates a level 3 group home.

No one spoke in opposition, and the public hearing was closed.

Mr. Pearce stated that the main issue for him is if the letter ever expired. It seems in this case that the applicant was following the instructions of staff, and doing what she should have done. Staff agrees with this, so it is not responsible to cut the applicant off midstream. Mr. Pearce asked how many cases similar to this there still were. Mr. Howard stated that there were more than a dozen. Mr. Howard stated that Mr. Taylor would be here for any similar cases in the future.

Mr. Turner stated that he had some concerns about the amount of family care homes in this area, especially with out any significant barriers.

After some discussion, Mr. Pearce moved in regard to *Special Exception 1, 2, and 3*, that the Board grant the special exception based on the evidence presented by the applicant, that the special exception is in harmony with the general purpose and intent of the ordinance and also preserves its spirit, and that the property was in compliance with the ordinance before the recent amendment. He pointed out that this is based on the fact the evidence the applicant received a zoning letter September 24th, 2009, and made contact with the city in March of 2010 and followed their instructions. Seconded by Mr. Strickland. The Board voted 4-1 in favor of the motion. (Ayes: Pearce, Strickland, Adkins, Brewington. Nays: Turner.)

ELECTION OF OFFICERS

After some discussion, Mr. Turner moved to elect Mr. Pearce as Chair, seconded by Mr. Strickland. The Board voted 5-0 in favor of the motion. Mr. Pearce moved to elect Mr. Brewington as Vice Chair, seconded by Mr. Strickland. The Board voted 5-0 in favor of the motion.

Acting Chair Brewington gave a recess at approximately 6:12 PM. The Board reconvened at 6:20 PM.

ABSENCES:

The absence of Ms. Huffman was acknowledged.

OTHER BUSINESS

(A) LAND DEVELOPMENT ORDINANCE PRESENTATION

Mr. Howard stated that the new LDO was adopted on July 1st, 2010. It is currently in effect along with the UDO until July 1st, 2011. Either can be used as an option for any one with a development proposal. Mr. Howard proceeded to present an in-depth presentation explaining the LDO standards. He focused on the articles that most affected the Board. The purpose of the LDO is to make the document easier to use, improve process efficiency, reduce the text and districts, and to make the document more flexible. These changes help bring the ordinance in compliance with the adopted Comprehensive Plan.

ADJOURN:

There being no further business before the Board, the meeting adjourned at 7:05 PM.

Respectfully submitted,

Brian Pearce, Chair
Greensboro Board of Adjustment

RP/jd

MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
SEPTEMBER 27, 2010

A meeting of the Greensboro Board of Adjustment was held on Monday, September 27, 2010 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair Brian Pearce, Scott Brewington, Clinton Turner, Bill Strickland, Cheryl Huffman, and Isabella Adkins. Staff present were Loray Averett, Zoning Services Coordinator, as well as Jim Clark, City Attorney's Office and David Jones, Chief Building Inspector.

Chair Pearce called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES

Mr. Brewington moved to approve the minutes of the August 23, 2010 meeting, seconded by Mr. Strickland. The Board voted 6-0 in favor of the motion. **(APPROVED)**

SWEARING IN OF STAFF

Loray Averett and David Jones were sworn in for their testimony related to matters listed on the agenda.

NEW BUSINESS

VARIANCE

(a) BOA-10-24: 1103 JULIAN STREET Shirley Jordan requests a variance from a side setback requirement. *Variance:* A portion of a recently built attached deck to an existing single family dwelling encroaches 2 feet into a minimum 5-foot side setback. Table 30-7-3.2(B), Present Zoning-R-5, Cross Street-Logan Street (GRANTED)

Loray Averett stated that the applicant is requesting a variance for a portion of a recently constructed deck/landing, which attaches to an ADA ramp, to encroach two feet into a 5-foot side setback. The property is located on the north side of Julian Street west of Logan Street. The lot is rectangular shaped and the house is constructed almost center of the lot. The lot is 52 feet wide by 156 feet deep. The applicant has recently constructed a handicap ramp with a deck/landing attached to the rear of the house. The ramp is allowed to encroach into the setback; however, the deck/landing portion is not permitted to encroach. The drawing reflects the deck portion is approximately 14 feet by 5 feet which is 70 square feet. Out of the 70 square feet, the encroachment portion is 10 square feet. The deck was constructed without a building permit. The applicant made mention that Housing Greensboro, Inc. used volunteer students to assist with the construction, and through the planning process failed to obtain the building permit. The R-5, Residential Single-Family District is primarily intended to accommodate low-density single-family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Chair Pearce asked if there was anyone wishing to speak in favor of this request.

Paul Swenson, 403 S. Elam Avenue, representing Housing Greensboro, was sworn in and explained that he is the major home repair construction manager for Housing Greensboro which is a nonprofit where they have a home repair program for low income homeowners to make necessary repairs for substandard housing. This case involved a ramp that was built with the efforts of volunteer laborers. There are approximately 80 students to work with the project and last year they built about 6 ramps and this year the number was increased to 10 ramps. Some were repairs to existing ramps and some were new construction, all for disabled and handicapped persons. He feels that he used the same criteria for the application that is required by the Board.

In response to questions, Mr. Swenson stated that in viewing the existing property, it was determined that using the front door as an entryway for the ramp was not a feasible location as the porch is supported by 2 columns and is very narrow. Using that location would have resulted in a lot of tearing out of the door to widen it, extending the front porch to allow someone in a wheelchair to be able to access the door for coming out or going into the house. Using the rear entrance was a much more feasible plan for this particular house and the location. He did not realize that there would be an encroachment into the setback required. He has talked with the next-door neighbor and she has no objection to the ramp/deck structure.

David Jones, Chief Building Inspector, stated that he has inspected the deck/ramp structure and feels that it is very well built and shows no indication of causing problems to the neighborhood as a whole. He has no objections to the project.

There was no one speaking in opposition to the request

COMMENTS/DISCUSSION BY THE BOARD MEMBERS

It was the consensus of the Board members that this project is a good idea as it does not have a detrimental impact on surrounding properties and will provide a needed access to the house structure. Mr. Swenson was reminded that a building permit is required for the project.

Mr. Brewington moved that in BOA-10-24, 1103 Julian Street, the findings of fact as presented by staff be incorporated into the findings be incorporated by reference and the Zoning Enforcement Officer be overruled and the variance be granted, as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance because if the applicant complies with the ordinance he can make no reasonable use of the property because the renovations that would be needed to accommodate the ramp on the front side of the house would present difficulties and be incompliant with the setbacks there as well as creating structural issues that would make it difficult from the standpoint of putting the ramp in the front, and as presented, the accommodations of putting the ramp in the back is the solution that works best in this particular case. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because, as presented in the applicant's testimony, this is a narrow area with which to work and there were difficulties with in accommodating the length of the deck because of accounting for structural limitations. The hardship results from the application of this ordinance to the property because the ramp is compliant and requires a certain amount of space due to ADA regulations. The hardship is not the result of the applicant's own actions. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because by placing the ramp in the back of the house it does preserve the aesthetics of the neighborhood

and does not present any changes in the architecture of the neighborhood that would take away from it. The granting of the variance assures the public safety and welfare and does substantial justice because there has been no evidence presented that shows that the ramp creates any safety hazard, seconded by Mr. Turner. The Board voted 6-0 n favor of the motion. (Ayes: Pearce, Brewington, Strickland, Turner, Huffman, Adkins. Nays: None.)

OTHER BUSINESS

None

ADJOURN

There being no further business before the Board, the meeting adjourned at 6:04 p.m.

Respectfully submitted,

Brian Pearce, Chair
Greensboto Board of Adjustment

BP/jd