

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
JANUARY 24, 2011**

A meeting of the Greensboro Board of Adjustment was held on Monday, January 24, 2011 at 5:34 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Brian Pearce, Chair, Clinton Turner, Kelley Trexler, Scott Brewington, Isabella Adkins and Cheryl Huffman. Staff present was: Loray Averett, Zoning Services Coordinator and Jeff McClintock, Inspector from the Planning & Community Development Department, as well as Jim Clark, City Attorney's Office.

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 twenty (20) minutes to present evidence.

APPROVAL OF MINUTES

Mr. Turner moved approval of the December 20, 2010 minutes, as submitted, seconded by Ms. Huffman. The Board voted unanimously, 6-0, in favor of the motion.

SWEARING IN OF STAFF

Loray Averett was sworn in for her testimony related to matters listed on the agenda.

CONTINUANCES/WITHDRAWALS

Jim Clark, Counsel for the Board, stated that in regard to Items 1A and 1B, he has been asked to state a joint request to continue this matter for sixty (60) days. There have been very recent discussions between the parties concerning a resolution to this matter, that may fully resolve all the issues and it is believed that there is a resolution at hand and it will be withdrawn, as necessary.

Mr. Brewington moved approval of a continuance of these matters to the March 28, 2011 meeting, seconded by Ms. Huffman. The Board voted unanimously, 6-0, in favor of the motion.

OLD BUSINESS

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. These cases were remanded back to ACT by the BOA on July 26, 2010 and have now been remanded back to BOA.

- (a) BOA-10-19: **8760 WEST MARKET STREET** Lato 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. **(CONTINUED TO MARCH 28, 2011 MEETING)**
- (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. **(CONTINUED TO MARCH 28, 2011 MEETING)**

NEW BUSINESS

VARIANCE

- (a) BOA-11-01: **3406 MARKHAM ROAD** Shirlene Rash requests a variance from the minimum side street setback. Variance: An existing detached carport encroaches 15 feet into a 15-foot side street setback adjacent to Owens Street. Section 30-7-3..2 (B), Present Zoning-R-5, Cross Street-Owens Street. **(DENIED)**

Loray Averett stated that the applicant is requesting a variance for a detached carport which encroaches 15 feet into a 15-foot side street setback. The property is located at the southeastern intersection of Markham Road and Owens Street and is zoned R-5, (Residential Single Family, 5 units or less per acre). The lot is described as Lot 11, Phase 3, of Bryson Ridge Subdivision. Guilford County tax records indicate the house was built in 1993. The applicant has located a detached accessory carport on the lot. Building Inspections Department has no record of a building permit for this structure. On or around November 12, 2010, the zoning enforcement officer was in this neighborhood and noticed the carport that it was encroaching and was too close to the street. A Notice of Violation was issued on November 12, 2010. Records indicate the applicant received the N.O.V. a few days later and based on having a 15 day process to appeal or file for a variance, on November 30, 2010 the applicant filed for a variance request. Based on the filing of the request, the GDOT Engineer looked at the intersection for sight visibility and determined that sight obstruction was not an issue; however he noted that the carport appeared to be encroaching into the right-of-way of Owens Street. The applicant submitted a survey that shows approximately 5 feet of the carport is encroaching into the right-of-way. The Board cannot grant variances to structures located in the right-of-way. With that being said, the applicant is proposing to remove a five-foot section from the carport, reducing the length of the carport from 24.7 feet to 19.7 feet. By reducing the length of the carport, the carport will be located zero lot line. The lot is a corner lot and also contains a detached 10 ft. x12 ft. storage building. There is also a 10-foot easement located on the rear of the applicant's property. The R-5, Residential Single-Family District is primarily intended to accommodate low-density single-family detached residential developments. 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 on this matter.

Shirlene and Phil Rash, the applicants, were sworn in and stated that they wish to obtain a variance for a carport that is on their property. The rear yard is such that there is no room to place the carport in that area because of a 10 foot utility line in the rear. There are several other properties in the neighborhood that have existing carports in place and they feel it would not be an eyesore to anyone. They have talked with several of the neighbors and no one is in opposition to this request. There is also no sight obstruction with the placement of the proposed carport. Mr. Rash presented photographs which indicated the true visuals of the site. With this being a corner lot their options are very limited as far as space requirements. They want the carport installed to help protect their investments in vehicles and their property. In response to questions, they stated that they have lived at this property for fifteen years and there is no homeowners association in this neighborhood. They would like to leave the carport in place and reduce the size of it by 1/5 so they would still have some type of protection and this would get it out of the right-of-way. Mr. Turner stated that in regard to the driveway, the first ten feet belongs to the City, so there is a fifteen foot problem on this property. Mr. Brewington stated that he does not see how they can put any kind of structure in this location as it would still be an encroachment. The applicants returned to the podium and Ms. Trexler asked if there is any way they can move it further back on the property. The applicants stated that if it is moved back, then they are in violation of the five foot from the nearest structure and that would be the house. They are very limited in their options because of the storage building, a hill at the back of the property and the placement of the house. Ms. Huffman stated that she does not feel this is a necessity as the owners have been on this property for fifteen years and she is not sure the Board wants to set this as a precedent. Mr. Brewington stated that he feels there are some unique circumstances surrounding this lot with the utility easement and the topography of the lot behind the house, but he still has a difficult time with the no reasonable use of the property without the variance. Ms. Adkins stated that her concern is the precedent being set because it is such a big encroachment. She also feels that they can make reasonable use of the property without the variance.

There was no one speaking in opposition to the request.

The Public Hearing for this matter was closed.

Board Comments:

Mr. Brewington stated that what is at issue is the applicant will remove five feet and that will satisfy the encroachment onto the street but the primary issue is that they are fifteen feet into a fifteen foot setback. He stated that it is rare for the Board to allow something to go all the way to the lot line. He was concerned about what would justify such an encroachment in that particular point and it does not sound like there is an issue of safety as the sight lines seem to be fine.

Mr. Brewington stated that in regard to BOA-11-01, 3406 Markham Road, based upon the stated findings of fact, he moved that the Zoning Enforcement Officer be upheld and the variance denied based upon the following: if the applicant complies with the provisions of this ordinance they can make reasonable use of their property as it has been shown through the testimony of the applicants that the property existed without the structure previously. It is not something that has been shown to be essential to the property and that in this particular case, does allow them to continue to use the property as it is. The hardship does not result from the application of this ordinance to this property because the home existed prior to and that there are other properties within the neighborhood that do not have like structures. The hardship is the result of the applicant's own actions because there is a carport that encroaches fifteen feet into a setback and it was placed there by the applicants. The variance is not in harmony with the general purpose and intent of this ordinance and does not preserve its spirit because the applicant has placed a

structure up to a zero lot line, which is clearly to the most extreme of the ordinance. The granting of the variance does not assure public safety and welfare and does not do substantial justice because there has been no evidence that this adds to the welfare and the public safety and is not essential for the neighborhood or for their home, seconded by Ms. Huffman. The Board voted unanimously, 6-0, in favor of the motion.

OTHER BUSINESS

Jim Clark introduced Sue Schwartz as the Interim Director for Planning & Community Development Department. There have been several changes and combinations in the department.

Ms. Schwartz thanked the Board members for their service. She stated that if she can be of assistance to the Board members, for them to please contact her.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Mr. Strickland was acknowledged.

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ADJOURNMENT:

There being no further business before the Board, the meeting adjourned at 6:11 p.m.

Respectfully submitted,

Brian Pearce, Chair
Greensboro Board of Adjustment

BP/jd

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
FEBRUARY 28, 2011**

A meeting of the Greensboro Board of Adjustment was held on Monday, February 28, 2011 at 5:32 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Brian Pearce, Chair, Clinton Turner, Scott Brewington, Bill Strickland and Cheryl Huffman. Staff present was: Loray Averett, Zoning Services Coordinator, Fred Boateng, Planning and Community Development Department, and Jeff McClintock, Inspector from the Planning & Community Development Department, as well as Jim Clark, City Attorney's Office. Also present was Julius Register with the Inspections Department.

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 twenty (20) minutes to present evidence.

APPROVAL OF MINUTES

Ms. Huffman moved approval of the January 24, 2011 minutes, as submitted, seconded by Mr. Turner. The Board voted unanimously, 5-0, in favor of the motion.

SWEARING IN OF STAFF

Loray Averett, Jeff McClintock and Julius Register were sworn in for their testimony related to matters listed on the agenda.

CONTINUANCES/WITHDRAWALS

None

OLD BUSINESS

APPEAL OF A NOTICE OF VIOLATION

- (a) BOA-10-29: **905 WESTRIDGE ROAD** James and Ann Westergaard appeal a Notice of Violation in reference to parking a vehicle on the grass in the front yard which is expressly prohibited. Section 30-11-11.2, Present Zoning-R-3, Cross Street-Bearhollow Road. This case was continued from the December 20, 2010 meeting. **(DENIED)**

Loray Averett stated that the applicants have filed an appeal of a Notice of Violation in reference to parking a vehicle on the grass in the front yard which is expressly prohibited.

City of Greensboro **LDO** (Land Development Ordinance) Section 30-11-11.2: Parking spaces and drives in front yards (i.e., the portion of the lot located between the side lot lines from the front building line of the principal building to the front lot line) must be clearly delineated, constructed

and adequately maintained with a hard all-weather surface such as asphalt, concrete, brick, CABC (gravel), pervious paving or other approved material. **Grass and bare earth areas are expressly prohibited.** These requirements also apply to areas used for parking and drives within the street side yard (between the principal structure and the side street right-of-way) that are unscreened and visible from a public street. The edge of all parking and drive areas within front and street side yards must be clearly delineated, with a physical edge that is maintained.

City of Greensboro **UDO** (Unified Development Ordinance): *Parking Facilities for Single-Family and Two-Family Dwellings*: All parking for single-family and two-family dwellings shall be provided so as to maintain a primarily residential appearance in front yards and to protect the quality and character of residential neighborhoods. Accordingly, areas used for parking and drives shall be designed, located, and constructed to meet the following standards: (1) Parking spaces and drives in front yards shall be clearly delineated, constructed and adequately maintained with a hard all-weather surface such as asphalt, concrete, brick, CABC (gravel), pervious paving or other approved material. **Grass and bare earth areas shall not be acceptable.**

On or around November 5, 2010, the zoning office received a complaint that a vehicle was parked in the front yard on the grass. The zoning officer made a site inspection and followed up with a Notice of Violation. The Notice of Violation was issued on November 5, 2010. The owner was informed of the correction remedy to not park the vehicle on grass or bare earth in the front yard area. On November 15, 2010 the zoning office received an appeal concerning the decision of the Notice of Violation. This property is located in the NCO (Westridge Neighborhood Conservation Overlay Zoning District). This zoning overlay has no impact concerning the violation and the appeal. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached development. The overall gross density in R-3 will typically be 3 units per acre or less.

Chair Pearce asked if there was anyone wishing to speak in favor of the appeal.

Ann Westergaard, 905 Westridge Road, was sworn in and stated that she and her husband have lived at this address for the past 26 years. She was shocked to receive the citation about a vehicle being parked in the front yard. They are unaware of whose vehicle it was, they have not been told what date and time the vehicle was there and there are a lot of unanswered questions. She has talked to several people with the City trying to get this straightened out, but no one seems to be able to answer their questions. She feels that there is the possibility that her address was given in error because there are a lot of other residences on Westridge Road, where there are vehicles being parked on the grass. She reiterated that they have never had cars parked in the front portion of their property for more than a few hours, at the most, for family gatherings or study groups. She feels that they are being accused unjustly in this matter. She submitted photographs of her property and explained them for the Board members. She also pointed out that they own the lot next door that does not have a house on it and they could use that for parking, if they needed to. She stated that they are not disturbing anyone in their area.

James Westergaard, 905 Westridge Road, was sworn in and stated that he has spent a lot of money through the years keeping his yard in excellent condition and he would not want someone parking in the front yard of his property. He feels that this violation is in error and the wrong address was submitted. They were told that the Enforcement Officer was to take a photograph of the property with the vehicle on the property, as a means of identifying that this ordinance was violated. They were told several times that this photograph would be forthcoming and, to date, they have not seen it as it has disappeared. They have been accused of violating the law, but in their minds, they have not violated anything and there is no photographic evidence proving that they did violate the law. He pointed out that there are a couple of paved parking spaces to the right of the driveway that people can park in and there would be no reason for someone to park in front of the house.

Jeff McClintock, Zoning Enforcement Inspector, was previously sworn in and stated that, in answer to questions previously posed, the date of the violation was November 4, 2010, and he went out to the property about 10:30 a.m. There was a small white pick-up truck parked in the front of the house. He stated that the vehicle came into the driveway and turned to the left, right in front of the house.

Ms. Westergaard stated that they were in Virginia on that date and there was no one home during that time. She also pointed out that there is a small white pick-up truck at the property two (2) doors down.

Mr. McClintock stated that on that same day there were several violations on Westridge Road and he wrote up several other violations. He stated that a photograph was taken with a digital camera, just like he does with any other violation, and this particular photograph is missing and the city's IT person was unable to download the picture as it was corrupted. He can only state the facts of what he saw when he visited the property. Ms. Westergaard stated that she would like to continue this matter until it is heard at City Council for their decision.

Chair Pearce pointed out that the City Council would be addressing this ordinance at their meeting on Tuesday and if the Westergaard's wished to address it, that would be their best avenue.

Thad Loftin, 907 Westridge Road, was sworn in and stated that he is a violator of the ordinance and he has rectified that situation and he has spoken with Mr. McClintock. In regard to the Westergaard's property, they are exemplary neighbors to have and they have spent a fortune on their property to keep it nice. The vehicles that he sees on their property, most often, are folks from New Garden Landscaping and he does not see any vehicles parked in their front yard. He thinks the white pick-up must have been there to fix something on their house. He also stated that they have plenty of parking as it moves to the rear of their property, so he does not know why anyone would need to park in the front yard. He has never seen a car parked in their front yard. He cannot remember whether he was at home on November 5th, 2010 or not or even if he looked at their yard on that date.

Sandra Carroll, 904 Westridge Road, was sworn in and stated that she has lived across the street from the Westergaard's for about 25 years. She hopes that they can use their property as they wish and that she can use her property as she wishes. In response to a question by Chair Pearce, Ms. Carroll stated that she has seen cars parked in their front yard on the occasion of a family celebration, a holiday party and an event of that sort, of which she was probably a participant. She has no recollection whether she was at home on November 5th, 2010 or not.

Loray Averett stated that in Ms. Westergaard's appeal letter, she stated that "they have lived at this address since 1985 and often have visitors. When they have run out of parking spaces, we have allowed their friends to park on their lawn."

There was no one speaking in opposition to the request.

Mr. Brewington stated that he thought Ann Westergaard had asked for a continuance to this matter to have an opportunity for City Council to address this issue. She stated that she definitely wants to be found innocent of this charge.

Mr. Brewington stated that there are two things that can be decided today, one is whether she is in violation of the ordinance on that date in November, 2010. He pointed out that tomorrow, the City Council will hear a text amendment to the ordinance, which she would have a chance to address and address her support for that, and that will address anything going forward. It would not address a violation that happened in November, 2010.

Mr. Pearce moved to deny the request for continuance, seconded by Ms. Huffmann. The Board voted unanimously in favor of the motion to deny the continuance.

In response to a question by Chair Pearce, Counsel Clark stated that the ordinance defines parking spaces as, "Parking spaces and drives in front yards shall be clearly delineated, constructed and adequately maintained with a hard all-weather surface such as asphalt, concrete, brick, CAVC (gravel)," so in answer to Chair Pearce's question, there is no definition of a parking space the you would find within the definitions, but the explanation of what is considered parking space, is definitive and is very clear as to the definition within itself.

After a short discussion, Mr. Brewington moved that in regard to BOA-10-29, 905 Westridge Road, and based on the stated findings of fact, that the Zoning Enforcement Officer be upheld and appeal of Notice of Violation be denied. The facts of this case being incorporated from the presentation shows that on or about November 5, 2010, the Enforcement Officer received and then verified a complaint of a Notice of Violation and as the Zoning Enforcement Officer testified, a white pick-up truck with a tool kit was parked on the grass in front of the applicant's residence, seconded by Ms. Huffman. The Board voted 3-2 and the appeal was denied. (Ayes: Brewington, Huffmann, Strickland. Nays: Pearce and Turner.)

NEW BUSINESS

VARIANCE

- (a) BOA-11-02: **605 ELMWOOD DRIVE** Kim and Brad Hayes request a variance from a minimum side setback. Variance: A proposed enclosed screened porch will encroach 3.8 feet into a 10 foot side setback requirement. Table 30-4-6-1 and Section 30-9-6.10 (5), Present Zoning-R-3, Cross Street-Elmwood Terrace. (UDO) **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed screened attached porch that will encroach 3.8 feet into a 10-foot side setback. City of Greensboro UDO Table 30-4-6-1, Single Family Districts Dimensional Requirements and Section 30-9-6.10(5) which states: A

variance may be granted where a building permit has been issued and, due to unintentional error of the Enforcement Officer in determining the location of the structure on the property, there is a minimal violation of the dimensional requirements in Article 4, provided that such relief may be granted without substantially impairing the purpose and intent of this Ordinance. The property is located on the western side of Elmwood Drive north of Elmwood Terrace. The property is currently zoned R-3 (Residential Single Family, 3 units per acre or less). The applicant is proposing to construct an attached screen porch to the side of the existing home. The porch is proposed to be 16 feet wide by 33 feet long. There is an existing patio enclosed with retaining walls currently in the location where the screened porch will be constructed. The side setback is 10 feet and the porch will be 6.2 feet from the side lot line. On January 20, 2011, the applicant applied for a building permit for the addition. The permit was processed through staff review and was approved. On January 25, 2011, the applicant picked up their permit. The following day a staff member realized the permit was issued in error and the applicant was contacted concerning the setback issue. On January 28, 2011, the building inspections division made a site visit and had a discussion with the owner concerning the encroachment area. There was some discussion that construction concerning a footing was already in process. On February 3, 2011 the owner, Kim Hayes, came into the office to discuss her options. It was determined that this permit was approved and issued due to unintentional error of the Enforcement Officer. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less. She stated that the Building Inspector who witnessed the property, was present for questions.

Chair Pearce asked if there was anyone wishing to speak in favor of the variance.

Kim Hayes, 605 Elmwood Drive, the property owner, was sworn in and stated that they were building a screened in porch in the existing area off the patio that was in place. They are adding a screened area to a wall that is already there. They did not know they were making any mistakes and were given a building permit to do the work. They moved forward, based on that building permit and then were notified the next day that they were not within the 10 feet setback of the property line. They have stopped all building on this project and would like to receive a variance so the work can be completed. She has talked with her neighbor on that side and there is no objection to their project. She presented a letter from that neighbor.

Steve Walkman, 114 Victoria Lane, Gibsonville, NC, was sworn in and stated that he is a landscaper and has been working on this project. They excavated the back patio and put in the new patio and footings have been poured for the screened in porch to be installed. They thought they were within the letter of the law for this project, especially after the building permit was issued. All the materials have been special ordered at a large sum of money and cannot be returned because they were ordered to the specs of this particular project.

Ken Dannon, 314 Jeffers Cross Road, Burlington, NC, was sworn in and stated that the materials were ordered several weeks ago.

There was no one speaking in opposition to the request.

Chair Pearce moved that in regard to BOA-11-02, 905 Elmwood Drive, the findings of fact be incorporated as stated and the Zoning Enforcement Officer be overruled and the variance be granted as the building permit department made an error and a permit was issued. Materials were ordered and paid for the same day the permit was issued, which was prior to the applicant being notified that an error had been made. The variance can be granted without substantially impairing the purpose and intent of this ordinance, seconded by Mr. Brewington. The Board voted unanimously, 5-0, in favor of granting the request for a variance.

- (b) BOA-11-03: **3610 CLIFTON ROAD** BVP Spring Place, LLC requests a variance from the maximum sign height requirement. *Variance:* A proposed freestanding identification sign will exceed the maximum height (which is 6 feet) by 14 feet, for a total height of 20 feet. Table 14-2, Present Zoning-CD-RM-18, Cross Street-Spring Garden Street. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed sign to be 20 feet tall, exceeding the allowable height of 6 feet by 14 feet. City of Greensboro Land Development Ordinance Section 30-14-14 states: The Board of Adjustment is authorized to grant a variance to the sign height and setback provisions of this article, and Table 14-2 which are the development standards for freestanding signs. The property is located on the south side of Spring Garden Street between Merritt Drive and Gay Terrace. The applicant is proposing to erect a freestanding identification sign adjacent to Spring Garden Street which will be 20 feet tall instead of 6 feet which is the maximum height permitted for this zoning district. The property is currently zoned CD-RM-18 (Residential Multi-family) and contains multifamily apartments which are named Spring Place. This zoning district permits a pair of development entrance signs not to exceed 6 feet in height. Approximately 78 feet of the property adjacent to Spring Garden Street is also located in the Railroad right-of-way easement. The applicant is proposing to locate the sign in the railroad easement and thus is required to have approval from the railroad to place the sign in their easement area. Exhibit C is the encroachment approval from the railroad, along with a requirement that the bottom of the sign is to be 15 feet above the rail. The RM-18, Residential Multi-family District is primarily intended to accommodate multi-family and similar residential uses at a density of 18.0 units per acre or less.

Chair Pearce asked if there was anyone wishing to speak in favor of the request for a variance.

Jeff Gibbons, 3445 Peachtree Road, Atlanta, GA, stated that he is with BVP Spring Place, the owner and operator of the Spring Place Apartments. He presented some slides to use as a brief presentation. The proposed sign location was shown as well as the property line and surrounding properties and the railroad right-of-way. The proposed sign would be within their property and also within Norfolk-Southern Railway right-of-way. The sign is being placed where it most logically should be placed and is the only location for a sign to make the property visible from Spring Garden Street. This property has operated for about 18 months and it is difficult to see from Spring Garden Street. They are trying to stay within the requirements of the railroad and the city ordinance.

There was no one speaking in opposition to the request.

Ms. Huffman moved that in regard to BOA-11-03, 3610 Clifton Road, the findings of fact to be incorporated, the Zoning Enforcement Officer be overruled and the request for a sign height

variance be granted as there are particular difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance, that if the applicant complies with the provisions of the ordinance, they can make no reasonable use of the property because the sign is necessary to advertise the location of the property, the hardship which the applicant complains results from unique circumstances related to the applicant's property because of the railroad requirements for their height close to the railroad area. The hardship results from the application of this ordinance to the property because of the railroad being located so close to the property. The hardship is not the result of the applicant's own actions as they are on a cul-de-sac and the availability of any other location for the erection of the sign would not be available. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the uniqueness of the property is not covered within other ordinances and the applicant has taken the necessary steps to ensure compliance with the railroad and the city. The granting of the variance assures the public safety and welfare and does substantial justice because it is in compliance with the railroad requirements and the city requirements, seconded by Mr. Turner. The Board voted unanimously, 5-0, in favor of granting the variance.

OTHER BUSINESS

Jim Clark stated that staff will be planning a training session for Board members. The Zoning Commission has recently had a training session for its members and staff is working on the same thing for Board of Adjustment members. Further information will be made available in the near future.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Adkins and Ms. Trexler was acknowledged.

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ADJOURNMENT:

There being no further business before the Board, the meeting adjourned at 7:12 p.m.

Respectfully submitted,

Brian Pearce, Chair
Greensboro Board of Adjustment

BP/jd

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
MARCH 28, 2011**

A meeting of the Greensboro Board of Adjustment was held on Monday, March 28, 2011 at 5:36 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Brian Pearce, Chair, Clinton Turner, Scott Brewington, Cheryl Huffman and Frankie T. Jones, Jr. Staff present were: Loray Averett, Zoning Services Coordinator, Jeff McClintock, Inspector from the Planning & Community Development Department, as well as Jim Clark, City Attorney's Office.

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 twenty (20) minutes to present evidence.

APPROVAL OF MINUTES

Ms. Huffman moved approval of the February 28, 2011 minutes, as submitted, seconded by Mr. Brewington. The Board voted unanimously, 5-0, in favor of the motion.

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

Counsel Clark stated that there has been a request that Item BOA-11-09, 4106-18 West Wendover Avenue, be continued to the April meeting. The City is requesting the continuance in this matter in regard to an interpretation. The Zoning Administrator and legal have had conversations with the appellant and they consent to the continuance. It is hoped that there will be a resolution which may involve the case being dismissed.

Richard Greene, attorney representing the appellant, stated that they do agree to the continuance.

Mr. Turner moved to continue this matter to the April 25, 2011 meeting, seconded by Ms. Huffman. The Board voted unanimously, 5-0, in favor of the motion.

OLD BUSINESS

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. These cases were remanded back to ACT by the BOA on July 26, 2010 and have now been remanded back to BOA. These cases were placed on the January 2011 agenda and were continued to the March 28, 2011 meeting.

Richard Green, attorney, stated that even though he is listed as legal representative for one of the applicants, Latto Holdings, LLC., in the two cases, he is no longer the attorney of record for that applicant.

Loray Averett stated that one of the applicants, Frank Latto has asked for a continuance of the matter because of health reasons. He sent an e-mail requesting that it be shared with the Board and the e-mail does not really give any evidence of what the health problems consist of. A copy of the e-mail was presented to the Board members for their review and consideration. Staff takes no position on the matter of the request for a continuance.

Counsel Jim Clark stated that these two matters arise out of a common set of facts and that may not affect the Board's decision with regard to the case, but it may affect the course of the argument and the appeal that is presented to the Board. It is within the Board's discretion to hear the cases individually but it may also hear them together. The Board will hear the evidence that is presented in the appeal arguments and coming from one single record.

Mike Cusimano, Greensboro Urban Forester, stated that he did discuss this matter with Mr. Latto late this afternoon and he was informed that he was on some fairly heavy medications for a ruptured disc in his lower back and the medicine(s) make him light-headed, disoriented and not able to pay attention to things, and Mr. Cusimano informed him that he should explain his medical condition to the security agents at the door when entering for the meeting. He did, in fact, encourage Mr. Latto to attend the meeting and his legal representative should also attend tonight's meeting.

Counsel Clark also stated that the appellants would present from a previous record and are not entitled to present additional evidence. Their job is to argue to the Board that the decision that was made by the Advisory Commission on Trees is somehow wrong or deficient, and they are to do that from the record. There is a possibility based on the basis that there is a single record, the Board may decide that if it is binding to one case, it would be binding to both cases. It is the choice of this Board as to whether that affects the decision if it were appealed. There is no guarantee that it would not be considered having some effect on it.

Mr. Brewington moved to deny the request for a continuance on this matter, seconded by Mr. Jones. The Board voted unanimously, 5-0, in favor of the motion. Therefore, the case(s) will be heard and presented with the same facts for both cases.

- (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. **(APPEAL AFFIRMED)**
- (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. **(APPEAL AFFIRMED)**

Loray Averett stated that 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. City of Greensboro Development Ordinance, Section 30-9-6.4(A)(9), The Board of Adjustment shall have the following powers and duties: To review appeals from the proceedings of the Advisory Commission on Trees with regard to alternate methods of compliance, limited to certiorari. This case was heard at the July 26, 2010 BOA meeting and remanded back to the ACT for consideration to reopen to the case to admit new evidence and testimony. On Sept 1, 2010 the ACT heard the argument for new evidence. Based on evidence and voting process, the motion for a new hearing failed by a vote of 5-2; thus, the case was back before the Board of Adjustment. On January 24, 2011 staff and the applicant joined in a request for a continuance with belief that a resolution would be reached. The continuance was granted to the March 28, 2011 meeting. 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, along with the September 1, 2010 short minutes from the Advisory Commission on Trees meeting. 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.

Mr. Brewington moved that in the cases BOA-10-19 and BOA-10-20, be heard as one (1), seconded by Ms. Huffman. The Board voted unanimously, 5-0 in favor of the motion and the cases are consolidated for informational purposes.

Loray Averett stated that 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. City of Greensboro Development Ordinance, Section 30-9-6.4(A)(9), The Board of Adjustment shall have the following powers and duties: To review appeals from the proceedings of the Advisory Commission on Trees with regard to alternate methods of compliance, limited to certiorari. This case was heard at the July 26, 2010 BOA meeting and remanded back to the ACT for consideration to reopen to the case to admit new evidence and testimony. On Sept 1, 2010 the ACT heard the argument for new evidence. Based on evidence and voting process, the motion for a new hearing failed by a vote of 5-2; thus, the case was back before the Board of Adjustment. On January 24, 2011 staff and the applicant joined in a request for a continuance with belief that a resolution would be reached. The continuance was granted to the March 28, 2011 meeting. 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, along with the September 1, 2010 short minutes from the Advisory Commission on Trees meeting. 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.

There was no one present wishing to speak on behalf of Mr. Latto, related to BOA-10-19.

Waylon Cooke, 1526 Trosper Road, attorney representing Ted Martin, was sworn in and stated that the record is going to show that Ted Martin had been in the logging business for many years and was contacted by Mr. Latto about the property involved and that the owners agreed that he should clear the property. He then cited several passages of the verbatim transcript of the June 2, 2010 Advisory Commission on Trees meeting held on that date. In summary, Mr. Cooke pointed out that Mr. Ted Martin was not represented by legal counsel at the meeting; Mr. Ted Martin relied on information provided by Mr. Frank Latto that the property was to be cleared of the timber; Mr. Ted Martin stated that Mr. Frank Latto represented that he was under contract to purchase the property; Mr. Ted Martin stated that he has worked for many contractors through the years and the contractor always obtain the proper permits and that he, Mr. Ted Martin, had never actually obtained permits himself. Mr. Greens stated that he feels that it is a reflection of Mr. Latto's credibility and it shows in the verbatim record that Mr. Latto was not completely honest in his dealings with Mr. Ted Martin and with others. The record reflects that he stated that he was a general and grading contractor, but yet, on further questioning, he finally stated that he does not hold a general contractors license. He also stated that he is not required to have a grading contractors license, so he does not have one. Mr. Cooke asked that the Board reverse the decision of the ACT as there is ample evidence in the record to show what happened between Mr. Latto and Mr. Martin.

In response to questions concerning whether there was an error in law related to this case, Mr. Cooke stated that there is insufficient evidence to support any findings of fact that Mr. Martin knowingly violated this statute. He pointed out that Mr. Martin was duped in this matter, defrauded and misled that the permits were obtained by Mr. Latto. Mr. Cooke further stated that he feels that the statute, 30-8-5.1 actually says “. . . .may be held responsible for the violation and subject to the civil penalties” It is his contention that they may be held responsible, not must be. He also feels that the ACT was in error when they found that Mr. Martin violated this ordinance, because he feels that the evidence in the record clearly shows that Mr. Latto violated the ordinance and used Mr. Martin, basically, as an instrument to do so.

Mr. Brewington stated that when he reads the transcript, he feels that the ACT acknowledged that Mr. Latto did a bad thing, but also Mr. Martin had a responsibility of that.

Mr. Cooke responded that he does not feel that Mr. Martin made a presentation to the ACT in a way which was convincing to them that he did not know or that he was duped by Mr. Latto.

Mr. Cusimano objected to the entire line of discussion. Mr. Martin was informed that he could have an attorney present to represent him and he chose not to. There is absolutely no evidence in the record that would indicate that Mr. Martin was not able to represent himself.

Mr. Cooke also stated that his and Mr. Martin's appearance at today's meeting in no way means that they do not feel they have settled this with the City.

Mr. Cusimano stated that he does not represent the City as their legal counsel in this matter. He is the Enforcement Officer and is serving in that capacity to help answer any questions the Board may have. He thinks the Board has had sufficient time to review the transcript of this case and although Mr. Latto is not at the meeting and no one is representing him, he thinks the Board's review of the transcript will show that there is a lot of conflicting testimony from all the parties involved. He pointed out that although Mr. Martin claimed that he was relying on Mr. Latto to have the permits and Mr. Latto had told him that he had the permits, there was also testimony from Mr. Latto that countered that. Without having any written evidence of any kind to support one story or the other, it cancels each other out. In the record is the evidence that was submitted to the ACT, the exhibits that were submitted. There is no question, based on that evidence, that the ordinance was violated. The sections of the ordinance that were cited, were correct and due process was followed and he specifically wanted to refer to Exhibit K, which was previously read into the record. This ordinance does not specify who is responsible to obtain a permit prior to cutting trees down. It simply states that the requirement is to obtain the permit prior to cutting the trees is preeminent. He also stated that there is no provision in the ordinance to excuse not knowing whether or not a permit was secured or not knowing that you even had to have a permit. Ignorance of the law is not an excuse and it is in the official record that both gentlemen participated in the violation.

Chair Pearce stated that Mr. Cooke had 3 minutes of rebuttal.

Counsel Cooke stated that Mr. Martin did cut the trees, not thinking that he did not have to get a permit, but thinking that the permit was obtained by Mr. Latto.

Board Discussion:

Chair Pearce stated that he was certainly sympathetic to Mr. Martin's position and he thinks this is a discretionary standard. He does not feel that it is the Board's position to use their discretion, he just thinks the Board needs to make sure there is no abusive discretion.

Mr. Brewington stated that he agrees as it relates to Exhibit K and the responsible parties. He thinks that the ACT felt that there should be shared responsibility in this matter. Mr. Jones also stated that he agrees as he thinks that the ACT had an opportunity to hear the testimony first-hand and the opportunity to make their determinations. He also does not feel that there was any abusive discretion.

Chair Pearce stated, that in regard to BOA-10-19, Latto Holdings, LLC, moved that the Board affirm the Greensboro Advisory Commission on Trees' with respect to the penalty issued to Mr. Latto. The motion was seconded by Mr. Jones. The Board voted unanimously, 5-0 in favor of the motion and the penalty to Mr. Latto was affirmed.

Chair Pearce stated that in regard to BOA-10-20, Ted Martin, moved that the Greensboro Advisory on Trees' be affirmed in their decision in regard to the penalty, seconded by Mr. Brewington. The Board voted 4-1 and the penalty to Mr. Ted Martin was affirmed. (Ayes: Pearce, Brewington, Jones, Huffman. Nays: Turner.)

Chair Pearce notified the parties present for the above cases, that their rights of appeal is within thirty days.

Thereupon, a break was taken from 6:45 until 6:56 p.m.

NEW BUSINESS

VARIANCES

- (a) BOA-11-04: **200 COUNTRY CLUB DRIVE** Freeman Randolph Jackson, Jr. request variances from the minimum side and rear setback requirements. The applicant is proposing to add a proposed laundry room addition which will be attached between the existing house and the existing detached garage. This addition will attach the accessory building to the principal dwelling creating principal use setbacks. As the previous detached building will now be considered part of the principal structure, it is required to meet the same setbacks as the principal structure.
Variance #1: The principal structure will encroach 16 feet into a 20-foot rear setback. Section 30-7-.2 , Table 7-2. *Variance #2:* The structure will also encroach 1-foot into a 5-foot side setback. Section 30-7-3.2, Table 7-2 , Present Zoning-R-5, Cross Street-Elmwood Drive. **(GRANTED)**

Loray Averett stated that the applicant request variances from the minimum side and rear setback requirements. A proposed laundry room addition will be attached between the existing house and the existing detached garage. This addition will attach the accessory building to the principal dwelling creating principal use setbacks. As the previous detached building will now be considered part of the principal structure, it is required to meet the same setbacks as the principal structure. Variance #1: The principal structure will encroach 16 feet into a 20-foot rear setback. Variance #2: The structure will also encroach 1-foot into a 5-foot side setback. The property is located on the north side of Country Club Drive south of Elmwood Drive. This lot is oddly shaped. The front, rear and side lot lines were established based on the location of the existing house. The drawing reflects the laundry/storage addition will attach the principal house and the detached garage. Even though the existing footprints are not changing, the attachment changes the setbacks for the garage from accessory setback to principal setback requirements. 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 on this matter.

Freeman R. Jackson, Jr., the property owner, was sworn in and stated that he wished to offer photos of the property, but there was no one available to operate the overhead machine. He stated that he has letters from the 3 neighbors that would be most impacted by the addition and although they are not notarized, he can verify that all the parties did sign them in his presence. The letters indicate that these neighbors are not opposed to the proposed addition in the proposed placement on his property.

Counsel Clark stated that the Board could view the letters but could not receive them as evidence unless they are notarized.

Mr. Jackson then presented the letters and stated that the proposed addition is for inside storage of shoes and coats, brining in groceries and some garden tools and that kind of thing. He would also like to put in a dormer on the garage. There have also been flooding problems in the basement along with evidence of asbestos that is a significant detriment to his family.

There was no one present wishing to speak in opposition to the request.

Board Discussion:

Chair Pearce stated that he does not feel there is a problem with this request as there is a garage on the property line on the other side of his property. Ms. Huffman stated that she feels to put it somewhere else on the property would be more intrusive to the neighbors. Mr. Turner stated that because of the age of the house, being built in 1925, it definitely needs to be updated and that has a bearing on the situation.

Mr. Turner moved that in BOA-11-04, 200 Country Club Drive, that the facts be incorporated into the record by reference and that the Zoning Enforcement Officer be overruled and the variance be granted because 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 his property because the principal dwelling was already constructed. The hardship of which the applicant complains results from unique circumstances related to the property because the proposed laundry room would be placed between two existing structures already on the property. The hardship results from applicant of the ordinance to the property because the home and garage area cannot be moved. The hardship is not the result of the applicant's own actions because the house was originally constructed in 1925 within then-existing building codes and zoning regulations. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because this addition will not impact the neighborhood in a negative manner. The granting of the variance assures the public safety and welfare and does substantial justice because the home will continue to have curb appeal as well as increased value, seconded by Mr. Jones. The Board vote unanimously, 5-0, in favor of the motion and the variance was granted.

- (b) BOA-11-05: **5905 CARDINAL LAKE DRIVE** Michael McMillan requests a variance from the requirement that utilities to detached accessory buildings be provided by branching service from the principal building. *Variance:* The applicant is proposing to have a separate electrical meter for an existing detached accessory building. Section 30-8-11.1(G), Present Zoning-R-3, Cross Street-Fleming Road.
(GRANTED)

Loray Averett stated that the applicant is requesting a variance from the requirement that utilities to detached accessory buildings be provided by branching services from the principal building. The applicant is proposing to locate a separate electrical meter on his detached accessory garage. Land Development Ordinance, Section 30-8-11(G)(1) states: Utilities: Accessory structures to single-family, twin homes, duplexes, and traditional houses must take utility services such as water, sewer, and electrical by branching service from the principal dwelling. The property is located on the western side of Cardinal Lake Drive south of Fleming Road and is zoned R-3 (Residential Single Family). The lot is approximately 2.94 acres. The R-3 district allows for 3 dwelling units per acre. The property contains a dwelling and a detached accessory garage. The garage is 149 feet from the dwelling. There is a power pole and transformer located to the rear of the property which is much closer to the building than the distance to the house. The aerial and GIS photos shows the lot is developed with existing detailed hardscapes, infrastructure, and landscaping. There are significant trees located between the house and building. By allowing a detached meter connection to the rear of the property, the critical root zone of these trees will not be subject to any damage. There appears to be an in-ground pool which would have a pool pump and electrical equipment located adjacent to the eastern side of the house. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Pearce asked if there was anyone present wishing to speak on this matter.

Michael McMillan, the property owner, was sworn in and stated that he purchased this house in February of 2011 and the previous occupant had started some renovations, but had not completed them. He would like to have separate electrical service to the out-building because it would be less intrusive to the property than to have to run the electrical from a power pole that is approximately 180 feet away. The property was recently annexed into the City and was previously a horse farm. The barn is approximately 40 years old and the house was built in 1978. He feels it would also be safer to have a separate electrical box on the existing barn for lighting that area of the property. He has two small sons and the family has seen 4 coyotes on the property in the recent few weeks. There would also be a safety issue for fire hazard if connected to the existing electrical service. He has no intention of putting a small business in the barn area. He is a general contractor and his office is in Kernersville and he does not store his business materials or machines on this site. He has the usual tractor and bobcat for use on the property.

There was no one speaking in opposition to the request for a variance.

Mr. Brewington stated that in regard to BOA-11-05, 5905 Cardinal Lake Drive, he moved that the findings of fact be incorporated and that 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. If the applicant complies with the provisions of the ordinance he could make no reasonable use of the property because currently by extending the electrical to the existing building covers a long and a significant portion of the land and this could create safety hazards. If granted, the variance would allow Duke Power to tap into service that is only 20 feet away. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property as has been shown, this is a rather large tract of property zoned for a much more dense use and as a result, by trying to comply with the provisions of the ordinance it would require over 1,200 feet to be covered. The hardship results from the application of this ordinance to the property because citing what has been submitted by the applicant as well as reiterating the distance between the home and the accessory structure. The hardship is not the result of the applicant's own actions as the applicant purchased the home in February 2011, and it was constructed in 1978 and he was not involved in the design of placement of structures on the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit as the proposed variance minimized damages to the existing trees. The granting of the variance assures the public safety and welfare and does substantial justice because a portion of 20 feet is being impacted instead of a much larger span and this provides a much safer use, seconded by Mr. Turner. The Board voted 4-1 in favor of the motion to grant the variance. (Ayes: Pearce, Brewington, Turner, Jones. Nays: Huffman.)

- (c) BOA 11-06: **6908 DOWNWIND ROAD** Benjamin Cone, Jr. requests a variance from the minimum number of required off-street parking spaces. *Variance:* A change in use from a vacant warehouse building to a physical fitness facility requires seventy-five (75) spaces when only thirty-six (36) spaces can be provided; therefore, a reduction of thirty-nine (39) spaces is requested. Section 30-11-5 and Table 11-1, Present Zoning-LI, Cross Street-West Friendly Avenue. **(CONDITIONALLY GRANTED)**

Loray Averett stated that the applicant requests a variance from the minimum number of required parking spaces. The applicant is proposing to change the use from a warehouse to a physical fitness facility. The proposed use will require 75 spaces and the applicant is requesting a variance to be allowed to provide 36 parking spaces. The variance request is for 39 spaces. City of Greensboro Land Development Ordinance, Section 30-11-5: Indoor Recreation is required to provide one space per 300 square feet of building area. The property is located north of West Friendly Avenue on the western side of Downwind Road. The property contains a 22,700 square foot building that was last used as a warehouse. It is now vacant and the applicant is proposing to open a physical fitness center. It will become an extension of the existing Tumblebees facility which is located adjacent to the east of the proposed new facility. The change in use from a warehouse operation to a physical fitness center increases the minimum number of parking spaces. The building is approximately 22,700 square feet and the previous warehouse use required 11 spaces. The new use will require 75 spaces. The applicant has made mention that the operations in both buildings are similar and they are willing to provide pedestrian access between both lots. The existing paved parking spaces are located in front of the building adjacent to Downwind Road, The existing Tumblebees location does provide their required paved parking spaces, but does not have overflow to serve the proposed adjacent site. 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.

Ms. Averett also stated that she had received a FedEx letter from the owners of a building across the street who wished to express their opposition to the variance request. They are concerned about devaluation of their property and parking issues that would impact their property. For the record, copies of this letter were submitted to each Board member.

Chair Pearce asked if there was anyone wishing to speak on this matter.

Marc Isaacson, attorney representing the applicant, was sworn in and presented handouts for the Board members' review. He gave a history of the facility and a floor plan was submitted for review. In summary, the organization has now outgrown their present facility and needs to expand. To do so, they wish to occupy the building next door. This particular building does not have enough parking spaces to comply with the current ordinance requirements and that is the reason they need a variance. He also pointed out that there are some topography issues that would limit parking on the property. Also presented were two letters from surrounding neighbors who are in support of the facility and the granting of the variance.

Sally Newton, founder of Tumblebees, was sworn in and stated that because of the size of the proposed new facility in the warehouse and the ceiling height, it would work very well for their

athletic and tumbling organization. They are now in the process of training young people for participation in the Olympics as Power Tumbling. Using the new facility for this expanded service will help the organization grow and offer opportunities to other young people with an interest in this kind of activity.

Jackson Tyson, was sworn in and stated that he is a Junior League Level Power Tumbler which is the 2nd highest level in USA gymnastics. This event demands intense power and speed and a clear path with no obstacles. Some of his fellow athletes are in training for upcoming Olympic activities and the current facility is not long enough for the athletes to practice their moves without going outside to start their run. He would appreciate the Board granting the variance so that he and the other athletes can have a good facility in which to practice.

Bob Dischinger, Evans Engineering, was sworn in and stated that because of the topography of the subject property they would be unable to pave that area between the two buildings. Also, the proposed building will be leased and not purchased at this time. The drainage between the buildings would also cause a problem for a wrap-around driveway on the property.

There was no one wishing to speak in opposition to the request.

The Board members all felt that they would be comfortable with granting the variance request.

Ms. Huffman stated that in regard to BOA-11-06, 6908 Downwind Road, the findings of fact as presented are to be incorporated and moved that the Zoning Enforcement Officer be overruled and the variance 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 she can make no reasonable use of this property because it was originally zoned as warehouse and she is intending to use it for a much broader purpose than that. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because it is a rectangular property and it would be difficult to utilize the parking pavement area that is in the back. The hardship results from the application of this ordinance to the property because of the shape. The hardship is not the result of the applicant's own actions because the property was built prior to her owning it and it is nothing that she would have control over. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it promotes business within Greensboro and the difference between the warehouse use and the other use would be still within the harmony. The granting of the variance assures the public safety and welfare and does substantial justice because it promotes business within Greensboro and it is not a safety or a danger to any residence within the area, or other buildings in the area.

Chair Pearce asked if the granting of the variance should be conditioned or limited to this purpose only. Counsel Clark stated that the Board could condition it to a gymnastics use, but the variance would actually run with the property. Chair Pearce asked for a friendly amendment that the use be limited to gymnastic use for the property.

Seconded by Mr. Turner. The Board voted unanimously, 5-0, in favor of the motion to grant the variance with the condition that the building be used as a gymnastics facility.

SPECIAL EXCEPTIONS

- (a) BOA-11-07: **3406 FERN PLACE** Yvette Hurdle requests a Special Exception as authorized by Section 30-8-10.1(B) to allow a separation of 1,597 feet from one family care home (6 or less persons) to another family care home (6 or less person) when 2,640 feet is required. Present Zoning-R-3, Cross Street-Overton Drive. **(DENIED)**

Loray Averett stated that the applicant is proposing to locate a family care home which is too close to an existing family care home. A proposed family care home (6 or less persons) will be 1,742 feet from another family care home, located at 2203 Wanda Drive (6 or less persons) when 2,640 feet is required. This proposed home will be 1,043 feet too close. The lot is located on the eastern side of Fern place south of Lawndale Drive and is zoned R-3. The applicant is proposing to locate a family care home (6 or less persons) at 3406 Fern Place. It is too close to a family care home located at 2203 Wanda Drive. Privilege license records reflect that the location at Wanda Drive is in operation and required renewals are in compliance. The applicant began her process in 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 February 25, 2011. The R-3, Residential Single Family District is primarily intended to accommodate low density single family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

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

Yvette Hurdle, 4224 Edith Lane, Apartment C, was sworn in and stated that she obtained this rental property in January 2009 and purchased the property and started the process of obtaining her license and zoning, sanitation and fire inspections to open the proposed group home and obtain her license through the State of North Carolina. She obtained her first set of license in January 2010 and continued with the training that was needed to obtain her endorsement and her endorsement was denied in August 2010. The denial was due to a new training class that her six staff members and she needed to obtain. Once you are denied, you have to wait exactly six months before you can reapply. She had kept up with all her inspections, renewed her license that was obtained in December 2010. As of January 2011, there have been a lot of changes in the policy in how to obtain an endorsement. The other location of a group home is owned by her sister and brother-in-law and their home is ½ mile away. She has done everything that she is supposed to do and that is necessary to be within the laws and regulations to open a group care home. She was unaware that the regulations were going to change from ¼ mile to ½ mile distance between homes. She hopes the Board will allow her to open her home as she has spent a lot of time, money and preparation in trying to get her group home opened.

Mr. Turner asked if there were any natural barriers between the currently existing facility and the proposed facility on Fern Place such as a large grouping of trees, a major thoroughfare or highway.

Ms. Hurdle stated that both the homes are in a neighborhood and there are houses between them but no major highway or anything like that.

Chair Pearce asked why Ms. Hurdle waited until the end of May to make any progress on the house. Ms. Hurdle stated that she kept the house up, she does not have any clients in the house at the time, but she has continued with her process of trying to get licensed and endorsed for the family care home. There is nothing she could have done to speed up the process.

Chair Pearce asked if there was anyone wishing to speak in opposition to the request.

Carol Williams, 3405 Fern Place, was sworn in and stated that she bought her home in 2001, and it is her understanding that the house at 3406 Fern Place was not a group home at that time. She thought this was a very quiet neighborhood until the group homes started popping up and now she is worried about her safety. This neighborhood has become a place for young people with very young children and some very elderly people who hope to live out their days there. She has concerns about the safety of the community residents with this particular group home as many of the women residents walk the streets at all hours, they have knocked on doors and asked for money, there is a lot of foul language and profanity on the porch and she has heard this herself while sitting on her own porch. There are about 6 women living in the group home and the residents change quite frequently. There are police cars and ambulances being called out to the group home on a frequent basis. She has very deep concerns about having another group home in this residential community.

Sharon Byerly, 3407 Fern Place, was sworn in and stated that she lives almost directly across from the group home and she reiterated what was said by the previous speaker. There is a lot of excessive noise, especially in the mornings, with their pick up vans blowing the horns, there are arguments between the residents, they do come over to her house and ask for money or cigarettes. She is also worried about the residents of the group home approaching the young children in the neighborhood and asking them to come and play basketball. She also submitted a letter from an elderly couple that live in the nearby area who are not comfortable with the group home.

Skip Byerly, 3407 Fern Place, was sworn in and stated that he is not in favor of another group care home in this area and hopes the Board will deny the request. He thinks it is too close and too much access between the existing house and the proposed group home.

Board discussion:

Mr. Turner stated that since there is no type of natural barrier or thoroughfare between the existing home and the proposed new home, he does not feel this is a good idea and they would be too close together. He is also conscious of the concerns raised by the neighbors in the neighborhood. Ms. Huffman stated that she agrees with Mr. Turner, but after learning that the applicant's sister owns the existing home, she feels there would be just that much more interaction between the homes. Mr. Pearce stated that the applicant has had plenty of time to get her paperwork, permits, licenses and such together before the ½ mile restriction was imposed. Mr. Jones stated that he is in favor of the request, as there was a licensed in place before the ordinance was changed. Mr. Brewington stated that he is also opposed to the Special Exception.

Ms. Huffman stated that in regard to BOA-11-07, 3406 Fern Street, that the findings be incorporated and the Special Exception be denied, because the request does not meet the minimum requirements for the proposed family care home, seconded by Mr. Brewington. The Board voted 4-1 and the Special Exception was denied. (Ayes: Pearce, Huffman, Turner and Brewington. Nays: Jones.)

(b) BOA-11-08: **816 WAUGH STREET** Donna Williams requests a Special Exception as authorized by Section 30-8-10.1(B) to allow family care home separation encroachments from the current one-half mile development spacing standard. Special Exception Request #1: The proposed family care home will be 160 feet from one family care home (6 or less persons) to another family care home, located at 822 Holt Avenue, (6 or less persons) when 2,640 feet is required. Present Zoning - R-5. Special Exception Request #2: The family care home will also be 2,556 feet from one family care home (6 or less persons) to another family care home, located at 1310 Elwell Avenue, (6 or less persons) when 2,640 feet is required. Present Zoning - R-5. Special Exception Request #3: The family care home will also be 1,971 feet from one family care home (6 or less persons) to another family care home, located at 1000 Elwell Avenue, (6 or less persons) when 2,640 feet is required. Present Zoning – R-5.

Special Exception Request #4: The family care home will also be 1,253 feet from one family care home (6 or less persons) to another family care home, located at 2703 East Bessemer Avenue, (9 or less persons) when 2,640 feet is required. Present Zoning RM-18. Special Exception Request #5: The family care home will also be 2,158 feet from one family care home (6 or less persons) to another family care home, located at 3101 East Bessemer Avenue, (9 or less persons) when 2,640 feet is required. Present Zoning RM-18 **(DENIED)**

Loray Averett stated that the applicant is proposing to locate a family care home at 816 Waugh Street which is too close to five existing family care homes. Special Exception Request #1: The proposed family care home will be 160 feet from one family care home (6 or less persons) to another family care home, located at 822 Holt Avenue, (6 or less persons) when 2,640 feet is required. Present Zoning - R-5. Special Exception Request #2: The family care home will also be 2,556 feet from one family care home (6 or less persons) to another family care home, located at 1310 Elwell Avenue, (6 or less persons) when 2,640 feet is required. Present Zoning - R-5. Special Exception Request #3: The family care home will also be 1,971 feet from one family care home (6 or less persons) to another family care home, located at 1000 Elwell Avenue, (6 or less persons) when 2,640 feet is required. Present Zoning - R-5. Special Exception Request #4: The family care home will also be 1,253 feet from one family care home (6 or less persons) to another family care home, located at 2703 East Bessemer Avenue, (9 or less persons) when 2,640 feet is required. Present Zoning RM-18. Special Exception Request #5: The family care home will also be 2,158 feet from one family care home (6 or less persons) to another family care home, located at 3101 East Bessemer Avenue, (9 or less persons) when 2,640 feet is required. Present Zoning RM-18. The lot is located north of East Wendover Avenue on the eastern side of Waugh Street and is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at 816 Waugh Street. It is too close to five other existing family care homes which have been described in the requested action section. Privilege license records reflect all five of the existing family care homes are in operation and required renewals are in compliance. The applicant filed a Special Exception request on March 4, 2011. 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 the request.

Rex Harrison, 816 Waugh Street, and Donna Williams, 807 Rugby Street, were sworn in and he stated that he is the applicant for the Special Exception because his home has previously been taking care of clients at this home. He has been taking care of people for the past 10 years. His last client passed away in 2009 and he has started taking care of family members. Now he wants to get another client and he has two rooms that are available. He is not trying to do a group home or a half-way house, but this is his residence and he wants to help people who need his care. He has spoken with a few of his neighbors and they did not seem to have an objection to the proposal.

Reverend Ron Galloway, 401 Hidden Valley Drive, Reidsville, NC, was sworn in and stated that he is the pastor of Mr. Harrison and Ms. Williams' church and he wished to speak on their behalf for this request and their intentions of what they are looking to do. He pointed out that what they are trying to do will benefit others. He knows that they have met with other people who run these types of facilities to learn all the rules and regulations for a prosperous home.

Chair Pearce asked if there was anyone speaking in opposition to the request.

Carmella Saunder, 817 Waugh Street, was sworn in and stated that the neighbors are completely opposed to having a family care home in this neighborhood. There is a retired police officer living nearby stated that he got verification of the number of times that the police have visited the residence and that was 59 times and because of this, the neighbors feel that there should not be a family care home there. There is constant traffic, the police are there at all hours of the night, there are 4 pit bulls that get loose in the neighborhood and they have had to call the police for that. Most of the residents are retired individuals and they do not want this undue hardship on them. It would have a negative impact on them and the place is drug infested. Those individuals walk the street on a regular basis, they have stolen her tires and other items from other neighbors up the street. She is tired of having to put up with it. She stated that there is another family care home very close to this one. She has talked to a lot of the neighbors up and down the street and they do not want a family care facility in this neighborhood.

Ms. Williams spoke in rebuttal and stated that the comments by the last speaker are very untrue and there is no traffic to the house and no police visits to the house.

Board discussion:

Mr. Turner, Mr. Pearce and Mr. Jones stated that they feel the proposed family care home is entirely too close to an already existing home to the rear.

Mr. Turner moved that in regard to BOA-11-08, 816 Waugh Street, that the findings be incorporated and the Special Exception be denied because the distance was in violation of the minimum ½ mile spacing requirements, because the house could be used for other purposes, in regard to the second request, the same reason would be applied because the house could be used for other purposes; there is a clustering of family care homes in this area; the ordinance was changed before the applicant actually applied; and the applicant did not consider the new distance requirements that have been set up by the City after May 2010, seconded by Ms. Huffman. The Board voted 5-0 in favor of the motion and the Special Exception was denied.

APPEAL OF ZONING ADMINISTRATIVE DECISION

- (a) BOA-11-09: **4016-18 WEST WENDOVER AVENUE** Greensboro Retail 50, L.L.C., d/b/a Lions Den Adult Boutique, and 4016-4018 West Wendover L.L.C. (collectively “the Appellants”), by and through their undersigned counsel appeal the interpretation of the Office of the Planning Director that Appellant cannot lawfully sell sexually oriented devices in the portion of the building located at 4016-4018 West Wendover Avenue. Section 30-4-27 Present Zoning-CM, BS-115, Cross Street-Carnegie Place. **(CONTINUED TO APRIL 25, 2011 MEETING)**

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Trexler and Ms. Adkins was acknowledged.

* * * * *

ADJOURNMENT:

There being no further business before the Board, the meeting adjourned at 9:07 p.m.

Respectfully submitted,

Brian Pearce, Chair
Greensboro Board of Adjustment

BP/jd



**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
APRIL 25, 2011
(DRAFT)**

A regular meeting of the Greensboro Board of Adjustment was held on Monday, April 25, 2011 at 5:30 PM in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Brian Pearce, Chair, Clinton Turner, Kelly Trexler, Bill Strickland, Scott Brewington, Frankie T. Jones, Jr. Staff present were: Loray Averett, Zoning Services Coordinator, Jeff McClintock, Zoning Enforcement Officer, as well as Jim Clark, City Attorney's Office. Also present was Wanda Hovander, Building Inspections Department, Carolyn Reavis, from the Privilege License Office.

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 March 28, 2011 meeting as written, seconded by Mr. Jones. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Loray Averett, Jeff McClintock and Wanda Hovander were sworn in for their testimony related to matters listed on the agenda.

There was no Old Business before the Board.

CONTINUANCES/WITHDRAWALS

None.

APPEAL OF A NOTICE OF VIOLATION

- (a) **BOA-11-10: 808 SPRING GARDEN STREET Stone Gregory Hillman appeals a Notice of Violation in reference to use of a property for a sales/rental office in a single family zoning district which is not a permitted use. Table 30-8-1, Present Zoning R-7, Cross Street - Fulton Street. (APPEAL DENIED)**

Loray Averett stated that the applicant for BOA 11-10, 808 Spring Garden Street was not present to speak on this matter and asked the Board if they wished to move forward with the case or continue it.

After a short discussion, the Board members determined that they wished to move forward with the hearing of this matter.

Loray Averett gave the findings of fact for this matter and explained the details of the violation. The applicant has filed an appeal of a Notice of Violation in reference to the use of the property for a rental/leasing/sales office for other property off-site, which is not a permitted use in the R-7 zoning district. The Zoning office received a complaint on February 11, 2011 that this single family dwelling was operating as a rental/leasing/sales office for properties located across the street. The properties across the street were recently approved for multi-family development and are under construction. The zoning enforcement officer completed a site inspection and on February 14, 2011 a Notice of Violation was issued to the owner of the property. The Notice was to cease use of this property as a rental/sales/leasing office because it is not a permitted use in the R-7 zoning district. The correction remedy was to return the property to a single family use.

On March 11, 2011, the owner filed an appeal of the Notice of Violation. In his appeal letter, the applicant mentions his appeal is based on information he received from the City Privilege License Division. There is no mention that the applicant contacted anyone in zoning or building inspections for occupancy approvals. Building Inspections records reflect there have been no requests for permits or occupancy approvals for this location. The property contains a single family dwelling which is currently operating as a rental/sales/leasing office for other off-site properties. The R-7, Residential Single Family District, is primarily intended to accommodate low to moderate density single family detached residential developments. The overall gross density in R-7 will typically be 7.0 units per acre.

Chair Pearce asked if the applicant or anyone wishing to speak in favor of the matter was present and no one came forward.

Speaking in opposition:

Ronald Walters, 610 Morehead Avenue, was sworn in and stated that he is the College Hill Neighborhood Association president and he wished to let the Board know that the Neighborhood Association is not in favor of this appeal. He stated that there are also three (3) ladies in the audience who are part of the neighborhood and it is felt that this is just another instance of cookie-eating. In other words, to take a neighborhood and nibble on it from the edges and slowly destroy it.

Chair Pearce asked if anyone from staff was going to testify in this matter. Counsel Clark stated that staff has provided the Board with a statement for the record. They have offered an opportunity, if there are any questions by the Board and if the Board wants testimony from Mr. McClintock or Ms. Reavis they are available.

Chair Pearce stated that Ms. Averett has provided some information, but he is not sure whether she has first-hand knowledge of anything. Counsel Clark pointed out that the person who would have first-hand information would be Mr. McClintock.

At this time, Chair Pearce asked that Mr. McClintock tell about what his experiences were during his inspection of the property.

Jeff McClintock, Zoning Enforcement Officer, stated that when he arrived at the property, based on the complaint, the first thing he noticed, and are shown in the photographs submitted, was the signs for parking for potential residents. He spoke with some of the employees at the site and they allowed him to come inside and see the property and he took photographs while inside on that day. At that time, he asked them what type of operation was going on and described to him that they would bring folks in, socialize in there and go over the different leasing options and sales options that are available across the street. He then asked if anyone lived there and he was told that no one lived on the property. There was no one on-site completing a leasing application, however, the photographs show that there are four (4) posters on the wall and on the desk are leasing information beside the picture. He responded to some

questions by stating that in this situation, the fifteen (15) days starts when there is proof of service, whether registered mail or posted or hand-delivered and they met that requirement. The Notice was written on the 14th, but he was unable to hand-deliver it until a date later because he was sick.

Chair Pearce asked if a leasing office or welcome center was defined in the ordinance. Counsel Clark stated he would check on that. Essentially, Mr. Pearce and Mr. Strickland are right as when you're doing an appeal, a Zoning official has made a decision and taken an action on the basis of their interpretation and their obligation is to take that very same ordinance and the definitional aspects of it that are being forced and determine whether or not that meets the strict operation of what is contained within the ordinance. Mr. Strickland pointed out that Exhibit 4 that was included in the packet but was not a complete table as there are several pages missing from that. Ms. Averett stated that she was basically showing that the office use is not permitted in the R-7 zoning district.

Mr. Jones stated that the findings of fact shall be incorporated in regard to BOA-11-10, 808 Spring Garden Street, and moved that the Zoning Enforcement Officer decision be affirmed and the Notice of Violation be upheld based upon the following: 1) The applicant owns the property located at 808 Spring Garden Street in Greensboro, NC, which is a location where violation of the Greensboro Development Ordinance allegedly occurred; 2) the applicant is named as the violator in a Notice of Violation issued by the Code Enforcement Officer for the City of Greensboro; 3) the applicant was served with a copy of the Notice of Violation by posting on the property on February 25th, 2011; 4) the section of the Greensboro Development Ordinance that the applicant is charged with violating is Section 30-8-1; 5) On February 14th, 2011, Code Enforcement Officer, Jeff McClintock traveled to the property and observed the operation of a welcome center and a retail leasing office at the property; 6) the testimony evidence received, tends to show that a violation of Section 30-8-1 did occur; 7) by letter of March 10th, 2011, Exhibits 6 and 7, and the Notice of Violation, all intending to show that the applicant caused or participated in causing the violation. Based upon the evidence, the Board finds and concludes that the applicant did violate Section 30-8-1, by operating a leasing office and welcome center in violation of the Greensboro Development Ordinance. A civil penalty requiring the applicant to cease operations of the leasing office immediately was leveled. On this basis, he moved that the opinion of the Zoning Enforcement Officer be upheld, seconded by Mr. Turner.

Chair Pearce asked that he be allowed to make a friendly amendment, that there was no one here to speak on behalf of the applicant.

Mr. Jones stated that he accepted the amendment and stated that there was no one present to speak on behalf of the applicant, seconded by Mr. Turner. The Board voted 6-0 in favor of the motion. (Ayes: Pearce, Turner, Jones, Strickland, Brewington and Trexler. Nays: None.)

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

OTHER BUSINESS

Chair Pearce stated that he is uncomfortable with the way the City is handling this matter. He feels that Mr. Strickland acted as attorney for the City, for the most part, in making a case, in his mind, and he does not feel it is the Board of Adjustment's job to do that. He feels that someone should be presenting evidence on behalf of the City. He feels this issue should be addressed.

Counsel Clark stated that in regard to the internal aspect, there is a theory and an ethical ruling or an ethics opinion that does actually permit attorneys for municipalities. He pointed out that there are seven (7) attorneys that handle all the Boards and Commissions and they also work with the various departments and while there is an ethics opinion that says they can both work on and advise City staff

with regard to a particular case, and continue to sit and advise the Board. That has been something the Legal department has been repeatedly challenged on at the State Bar level and it is something that every attorney that he has met with, regardless of whether the ethics opinion permits that, has had some qualms as to whether that would be appropriate. For this City Attorney's office, they tend to take that view that is, there is a choice to make as to who it is they advise. He advises the Planning Department on day-to-day matters, he does not choose to advise the Planning Department on quasi-judicial matters including the previous matter that came before this Board about ACT violations. He did not advise, but he trained the ACT staff with regard to presentation and evidence in a quasi-judicial matter and he also trained the ACT Board. From a staffing perspective it would require several more attorney, which there simply is not the capacity for in the present budget. The second component of that is that if you take a look at how this Board operates, the vast majority of people that actually sit on Boards and Commissions, particularly the Board of Adjustment, are not attorneys and they are not used to dealing with quasi-judicial matters. The attorneys are here to advise and help folks go through the process.

Chair Pearce stated that he does not find the information provided by Ms. Averett as competent evidence because she is not the one who is going out and issuing the Notice of Violation and he does not feel it is adequate that the City has people here to be available for questions. It is not the Board members' job to make the case for the City.

ACKNOWLEDGEMENT OF ABSENCES:

The absence of Ms. Adkins and Ms. Huffman was acknowledged.

* * * * *

ADJOURN:

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

Respectfully submitted,

Brian Pearce, Chair
Greensboro Board of Adjustment

BP/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
MAY 23, 2011**

A regular meeting of the Greensboro Board of Adjustment was held on Monday, May 23, 2011 at 5:30 PM in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Brian Pearce, Chair, Scott Brewington, Clinton Turner, Bill Strickland, and Frankie Jones. Staff present were: Loray Averett, Zoning Services Coordinator, as well as Jim Clark, City Attorney's Office.

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 approval of the April 25, 2011 minutes, seconded by Mr. Turner. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Ms. Averett was sworn in for her testimony for this meeting.

CONTINUANCES/WITHDRAWALS

None

NEW BUSINESS

VARIANCE

- (a) **BOA-11-11: 813 HERTFORD STREET** Janet Elaine Lutz request variances from the minimum side and rear setback requirements. The applicant is proposing to rebuild a storage building which will be attached to a detached carport. *Variance #1:* A detached storage building will encroach 1-foot into a 3-foot rear setback. Section 30-8-11(C)2) *Variance #2:* The structure will also encroach 1-foot into a 3-foot side setback. Section 30-8-11(C)2) Present Zoning-R-5, Cross Street-Gregory Street. **(GRANTED)**

Ms. Averett stated that the applicant request variances from the minimum side and rear setback requirements to rebuild a 10 foot x 20 foot storage building. The building is proposed to be attached to a detached carport. The property is located on the south side of Hertford Street east of Gregory Street and is zoned R-5. The lot is rectangular in shape. The survey reflects the lot is approximately 50 feet wide by approximately 124 feet long and the lot area is approximately 6,200 square feet. The lot is a legal nonconforming lot. In reference to the Land Development Ordinance, the lot is required to have a minimum of 7,000 square feet. This was a platted lot prior to the adoption of the Land Development Ordinance. The lot contains a single family dwelling and a detached accessory carport. The 1999 survey, 2007 pictometry photos, and the 2008 GIS aerial photo all reflect that a storage building was attached to the detached carport. In her application, the applicant has made mention that a car ran into the portion of the storage building, thus creating the need to rebuild the storage portion area. The applicant is proposing to build the storage section on the same footprint as what previously existed. The drawing reflects the carport section is 10 feet x 20 feet and the proposed rebuild of the storage area is also 10 feet x 20 feet. The total detached accessory structure will contain 400 square feet. Section 30-8-11(C)2) states: Residential Districts: "Accessory structures must be set back at least 3 feet from side and rear lot lines. In the R-districts, this setback must be increased to 10 feet for accessory structures over 15 feet tall". The applicant will demonstrate the building does not exceed 15 feet in height when application for the building permit is made, if a variance is granted for the encroachment requests. 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 issue.

Janet Lutz, the owner, 813 Hertford Street, was sworn in and presented copies of the Police report and pictures related to the accident that took down her storage unit. A vehicle lost control and went through the storage building, tearing it down. She stated that she hopes to replace the storage unit in the same footprint as the original. There is a tree eleven feet from where the original structure was located and she does not wish to disturb that tree. The original storage was located on the property when she purchased her home. The house was originally built in 1948 and she is the second owner of the house.

There was no one speaking in opposition.

Board Comments:

The Board members felt that this was a reasonable request, especially since the applicant was not intending to extend the footprint of the original building.

Mr. Jones stated that in regard to BOA-11-11, 813 Hertford Street, the findings of fact be incorporated and the Enforcement Officer 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 this ordinance. If the applicant complies with the provisions of the ordinance she can make no reasonable use of her property because she will have no place to store her lawn equipment. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because a motor vehicle crashed into her shed through no fault of her own. This is also a pre-existing nonconforming lot. The hardship results from the application of this ordinance to the property because the ordinance requires a 3 foot setback when this pre-existing nonconforming structure only has a 2-foot setback on both the rear and the side. The hardship is not the result of the applicant's own actions because the building pre-existed the development ordinance and a motor vehicle crashed into the storage shed. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the ordinance allows pre-existing nonconforming structures to continue in existence. The granting of the variance assures the public safety and welfare and does substantial justice because this accident was not the fault of the property owner.

Counsel Clark stated that before a second is made to this motion he would point out that there are some matters the Board should consider. With regard to no reasonable use, that would be a better place to incorporate land use as there is no other place to locate the structure due to the impact that it would have on the existing tree.

Mr. Jones amended his motion to state that if the applicant complies with provisions of the ordinance she can make no reasonable use of her property because there is no other place to locate the shed that would not infringe upon the side requirements, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Pearce, Brewington, Strickland, Turner and Jones. Nays: None.)

SPECIAL EXCEPTION

- (a) **BOA-11-12: 2304 SUMMIT AVENUE** Jenifer Kirk for Bell House Incorporated requests a Special Exception as authorized by Section 30-8-10.1(B) to allow family care home separation encroachments from the current one-half mile development spacing standard. Special Exception Request #1: The proposed family care home will be 1, 772 feet from one family care home (6 or less persons) to another family care home, located at 2805 North O'Henry Boulevard, (6 or less persons) when 2,640 feet is required. Special Exception Request #2: The family care home will also be 1,956 feet from one family care home (6 or less persons) to another family care home, located at 1806 Eleventh Street, (6 or less persons) when 2,640 feet is required. Present Zoning-O, Cross Street-Gregory Street. **(GRANTED)**

Ms. Averett stated that Bell house, Incorporated, 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 1,772 feet from another family care home, located at 2805 North O'Henry Boulevard, (6 or less persons) when 2,640 feet is required. This proposed home will be 868 feet too close. *Special Exception Request #2:* The same proposed family care home will be 1,956 feet from another family care home, located at 1806 Eleventh Street, (6 or less persons) when 2,640 feet is required. It will be 684 feet too close. The lot is located on the eastern side of Summit Avenue south of Sixteenth Street and is zoned O (Office). The applicant is proposing to locate a family care home (6 or less persons) at 2304 Summit Avenue. 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, along with required renewals and Special Exceptions are in compliance. This proposed family care home will be a part of the Bell House operations. For clarity purposes, the Office zoning district will permit 9 or less persons to occupy a family care home; however, the request was advertised as six or less. Staff had a discussion with the applicant and out of that discussion came the fact they would not keep more than six occupants in this structure. Based on these facts, if the Board rules favorably on this request, staff would request the property be conditioned to not exceed more than six persons at this location. The existing family care home located at 2805 North O'Henry Boulevard is accessed from North O'Henry Boulevard. This portion of North O'Henry Boulevard is similar to a service road and is classified as a collector street. It is adjacent to U S Highway 29 South, which is classified as a major thoroughfare. Adjacent to this portion of North O'Henry Boulevard is a guard rail and chain link fencing which separates this road from US Highway 29 South. The proposed family care home and this existing family care home are separated by Sixteenth Street, (which is classified as a minor thoroughfare), along with other collector streets, multifamily units and commercial properties. The proposed family care home and the existing family care home located at 1806 Eleventh Street are separated by US Highway 29 South, which is classified as a major thoroughfare. The O, Office District, is primarily intended to accommodate moderate-to-high intensity office and institutional uses and supporting service and retail uses.

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

Jenifer Kirk, representing Bell House, 5192 Lakeshire Road, was sworn in and stated that Bell House has been existence since 1979 serving a very distinct population of individuals that have severe physical disabilities that require that they use wheelchairs as their only means of transportation. They have served a broad range of clients through the Medicaid program including a group that get a special pool of funding called CAP funds. About 3 years ago it was decided that it was inappropriate for individuals receiving these funds to live in a facility as large as Bell House, with 22 residents. Because this program is so distinct, there is a population on the waiting list that require their care. Bell House is the only facility in the country that provides this kind of care so there are applicants from throughout the country. It is hoped that the variance can be obtained so that these people can get the kinds of service that they desire from Bell House. She presented documentation that validates their care and they plan to only house 3 residents in the facility and it will be staffed 24 hours a day. The facility is nationally accredited and licensed as an assisted living facility.

Chair Pearce asked if there were natural barriers between this facility and other like facilities in the neighborhood.

Ms. Kirk stated that one of the other facilities is located across 16th Street which is a major thoroughfare in order to get to the O'Henry location. The second facility is located all the way down to Phillips Avenue, turn left on Phillips Avenue cross Highway 29 and go down to White Street and make a left on 11th Street and then circle around to get to that location. So both locations are separated by major thoroughfares.

In response to a question by Mr. Turner, Ms. Kirk stated that there are no plans to increase the number from 3 residents in the future at this location.

There was no one speaking in opposition.

After a short discussion, Mr. Strickland stated that in regard to BOA-11-12, 2304 Summit Avenue, the findings of fact be incorporated and the Enforcement Officer overruled and the Special Exception be granted as the Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit by allowing Bell House to continue offering said services, the CAP services to this population of individuals that need it and are funded by Medicaid. The granting of the Special Exception assures the public safety and welfare and does substantial justice as there is no particular concern of public safety or access relative to the other two homes that are already in operation due to the significant barriers and distance between the three locations, such as the Highway 29 and major thoroughfares and there is significant obstruction between the three locations. The Special Exception will be conditioned to limit the number of residents to six (6), seconded by Brewington.

Chair Pearce stated that in BOA -11-12 with respect to Special Exception request #1, motion has been made by Mr. Strickland, seconded by Mr. Brewington. The Board voted unanimously in favor of the request. (Ayes: Pearce, Brewington, Strickland, Turner and Jones. Nays: None.)

In regard to Special Exception request #2, Mr. Strickland moved to grant the Special Exception with the same findings of fact as in Special Exception request #1, seconded by Mr. Jones. The Board voted unanimously in favor of the request. (Ayes: Pearce, Brewington, Strickland, Turner and Jones. Nays: None.)

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Trexler and Ms. Huffman was acknowledged.

Ms. Averett stated that Bill Strickland's term will expire June 15th. Council has not made any nominations for replacement members. Mr. Strickland has agreed to serve beyond his term until a new appointment is in place.

* * * * *

ADJOURN:

There being no further business before the Board, the meeting adjourned at 6:15 PM.

Respectfully submitted,

Brian Pearce, Chair

Greensboro Board of Adjustment

BP/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

JUNE 27, 2011

The regular meeting of the Greensboro Board of Adjustment was held on Monday, June 27, 2011 at 5:30 p.m. in the Plaza Level Conference Room, Melvin Municipal Office Building. Board members present were: Brian Pearce, Chairman, Scott Brewington, Clinton Turner, Bill Strickland, Frankie T. Jones and Cheryl Huffman. Staff present were: Loray Averett, Zoning Services Coordinator, as well as Jim Clark, City Attorney's Office.

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 approval of the May 23, 2011 minutes, seconded by Mr. Jones. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Ms. Averett was sworn in for her testimony for this meeting.

CONTINUANCES/WITHDRAWALS

None

NEW BUSINESS

VARIANCE:

- a) **BOA-11-13: 1701 SUNRISE VALLEY DRIVE** Ricardo Loayza requests a variance from the maximum fence height requirement. **Variance:** A proposed privacy fence will exceed the maximum height of 4 feet by 2 feet within 15-feet of the Northland Drive right-of-way. Section 30-9-4.6(A), Present Zoning – RM-18, Cross Street Summit Avenue. **(DENIED)**

Ms. Averett stated that that the applicant is requesting a variance from the maximum fence height requirement. A portion of a proposed fence will exceed the maximum height of 4 feet by 2 feet within 15-feet of the Northland Drive right-of-way. The lot is located at the northeast corner of Sunrise Valley Drive and Northland Drive. Tax records reflect the house was built in 2010. The lot contains a two-story single family dwelling. The applicant is requesting a variance to install a privacy fence approximately five feet from the side property line adjacent to Northland Drive. The fence will be six feet tall. The fence is proposed to be located along a portion of the side street and will not connect past the front of the existing house. The proposed location is high-lighted in yellow

on EXHIBIT B in your packet. The fence location does not impact sight obstruction or driveway requirements at the intersection of Lamroc Road and Northland Drive. The lot is a corner lot and the applicant has made mention that he needs the fence to be six feet tall for privacy for his family and to eliminate pedestrians crossing across the back of his yard. The other sections of the fence are planned to be in compliance at six feet tall along the interior lot lines. Rm-18 Residential Multi-Family District is primarily intended to accommodate multi-family and similar residential uses at a density of 18.0 units per acre or less.

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

Ricardo Loayza, the property owner, stated that he needs the fence for the privacy and safety of his family. There are pedestrians that walk at the rear of his property and he feels it is unsafe without a fence at that location. Mr. Loayza answered questions posed by the Board members in regard to the placement of the fence and the height he is proposing to construct. Currently, there is no fence on the property. The extra 2 feet is needed because his back yard is on a flat surface, but the property behind him is on a hill and they can see into his yard. He feels that 4 feet is just not tall enough to provide the required privacy and safety. He only wants the 6 foot portion of the variance on the Northland Drive side of the property. The entire back yard will be fenced.

Ms. Averett pointed out that on Exhibit B, it shows the line that needs the variance. The rest of the fence would be in compliance. Part of the intent of limiting the fence height to 4 feet along the side street when you get near the intersection, is to help with safety issues so that a sight visibility obstruction is not created around driveways and corners. His driveway is on the front at the other street on his property and since he is only coming up to the rear of the house and not anywhere near that intersecting street, at Sunrise Valley Drive, he is not creating any type of safety obstruction. In regard to the neighbor's driveway, the one located directly behind him, there has been discussion with the GDOT Engineer and he is at the meeting to speak on that.

In response to members' questions, David Ortega, GDOT, was sworn in and stated that in regard to the property owner's neighbor, they have looked at that and in regard to single family residential driveways, they do not anticipate a lot of vehicles going in and out so the sight obstruction is not an issue and is more relaxed as opposed to a commercial type of development. He suggested that maybe the applicant could angle the fence on the corner to eliminate any sight safety issues.

There was no one speaking in opposition to this request and the public hearing was closed.

Board Comments:

Chair Pearce stated that the purpose of the height limit is for safety reasons and it is clear that this is an exception to the usual and he feels that is what the Board of Adjustment is for, is to give relief in these types of matters. This is a corner lot and the sight triangle is cleared, and the GDOT Department does not have a problem with it. Mr. Brewington stated that he agrees with that. Ms. Huffman stated that if the fence were angled somewhat, it would address the sight easement visibility concern. Chair Pearce stated that the variance could be conditioned that the fence would be angled or curved to create the 150 foot sight triangle. Mr. Brewington stated that he has seen countless examples of fences that are constructed along a street that may or may not be 4 or 6

feet and he keeps coming back to the intent and short of building that fence all the way into the front yard, any reasonable person who puts it from the back of their house to the back yard, essentially get this variance. He is curious about why this particular ordinance is in place, as he does not feel that it creates a sight line issue in the front.

Mr. Jones stated that there are 5 homes on this map that could also apply for this same variance, but at the same time, this is where people come to get help with variances. He feels that Mr. Ortega's testimony helps him reach a decision that this variance should be granted. Ms. Huffman stated that this is an undeveloped area and this is currently a dead-end street and she foresees that to be a major thoroughfare and her concern is for the resident, right next to them, because when there is future development there may also be future problems with a fence that is 6 foot high on this property. She would support a motion if there is a condition to fulfill the 6 foot triangular requirement by GDOT.

Mr. Loayza was asked to return to the podium and was asked if he would be willing to agree to angle the fence

Ms. Huffman stated that in regard to BOA-11-13, 1701 Sunrise Valley Drive, that the findings of fact be incorporated and the Enforcement Officer be overruled and the variance granted based upon the following conditions: 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 this property because he wants security on his property and that would be at the corner. The hardship of which the applicant complains results from the unique circumstances related to the property because the majority of the residences on that street are facing the street and his property faces sideways. The hardship is not the result of the applicant's own actions because of the way the developer placed the home. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it would allow the applicant to make use of his land. The granting of the variance assures the public safety and welfare and does substantial justice because of the odd shape of the applicant's property and the placement of their house on the property. The condition of this Board of Adjustment will be to comply with the recommendations of the design engineer of the GDOT, wherein a triangular placement of the fence must meet the 150 foot requirement to allow visibility to the other residents.

Chair Pearce asked to make a friendly amendment. In regard to the variance being in harmony with the general purpose and intent of the ordinance and preserves its spirit, he asked to add, because this is a corner lot and the purpose of this ordinance provision is to protect the safety and the uncontradicted evidence is that the fence, if built per the condition stated, would not create any safety issue. He then asked Mr. Ortega to return to the podium and asked if he felt that it was necessary to place a condition on this variance. Mr. Ortega stated that he does not feel it is necessary to place a condition on this, based on the fact that it is a low-lying property.

Ms. Huffman accepted the friendly amendment and Mr. Turner seconded the motion.

Counsel Clark stated that conditions may be imposed on a variance provided they are reasonably related and it also indicates that the applicant should accept the conditions placed on the variance.

That eliminates any contestability with regard to either this applicant or any future applicant because that condition would go with the property.

Chair Pearce asked the applicant to return to the podium and asked if he would agree to the condition placed on the variance so that it creates the 150 degree sight triangle. Mr. Loayza stated that he would not like to agree to that condition because he does not feel it is necessary.

At this time Ms. Huffman withdrew her motion.

Mr. Brewington stated that in regard to BOA-11-13, 1701 Sunrise Valley Drive, that the findings of fact be incorporated and the Enforcement Officer be overruled and the variance be granted. He added that the previous motion and Ms. Huffman's findings also be incorporated with the exception of any condition.

Chair Pearce asked that a friendly amendment be that includes any reference to any condition.

Mr. Brewington accepted the friendly amendment and the motion was seconded by Mr. Jones. The Board voted 4-2 and the variance was denied. (Ayes: Pearce, Brewington, Jones, and Strickland. Nays: Turner and Huffman.)

- b) **1207-1209 LEXINGTON AVENUE** Partnership Homes, Inc., requests a variance from the minimum number of required off-street parking spaces. **Variance:** A proposed multi-family building requires eleven (11) spaces when only three (3) spaces can be provided; therefore, a reduction for eight (8) spaces is requested. Section 30-11-13.11 and Table 11-1, Present Zoning – CD-RM-26, Cross Street – Oak Street. **(CONDITIONALLY GRANTED)**

Ms. Averett stated that Partnership Homes, Inc. requests a variance from the minimum number of required off-street parking spaces. A proposed multi-family building requires eleven (11) spaces when only three (3) spaces can be provided; therefore, a reduction for eight (8) spaces is requested. The property is located east of Glenwood Avenue on the eastern side of Lexington Avenue. The property contains an existing dwelling, which is proposed to be demolished. The applicant is proposing to construct a two-story multifamily building which will contain nine units. The preliminary site plan indicates two lots and that these two lots will be combined. The building will be built on Lot #4 along with the southern wall crossing over onto lot #5. Lot #5, which is the southern lot is also planned to be used in a combination of other ways which allows the applicant to achieve compliance with lot coverage and building setback requirements. There is a 34 foot sanitary sewer /stormwater easement located across this lot for most of the width and depth of the lot. Structures cannot be built in easement areas. Parking spaces are permitted in easement areas. Staff also had some discussion with the applicant about the possibility of legally encumbering spaces from the church. Staff was informed this was not an option for the applicant. There are additional standards in the Land Development Ordinance to help reduce required parking if the applicant meets certain criteria. The applicant was allowed to use the 15% transit reduction standard which reduced his parking requirement from eleven spaces to nine spaces. Provisions were made to provide one ADA space on the property. On-street parking spaces in

front of the property could count if those spaces meet certain design criteria. The GDOT Engineer could not count their on-street spaces as part of the minimum parking space requirements, due to existing driveway locations. The existing driveway locations, in conjunction with on-street vehicles create encroachments into minimum sight easement visibility requirements.

Chair Pearce asked if there was anyone wishing to speak in favor of this issue and they were sworn in.

Scott Reitingger, 156 Lafayette Street, Wilmington, NC, stated that he is serving as the consultant for Partnership Homes and the Servant Center and the development of Glenwood II for 9 one-bedroom apartment units for persons with disabilities. Handouts were presented to the Board members for their review. Included in the handout was a site plan, supporting documentation, a petition and photographs showing the parking at the Servant Center's facility and adjoining streets. The requirement for the 8 additional parking spaces and a turn-around would significantly change the appearance of the Glenwood neighborhood.

Shanna Reece, representing the Servant Center, stated that they are building 9 one-bedroom apartments for low income and disabled folks and they have worked very closely with the neighborhood association to make sure that the property has the residential feel since it is embedded in the Glenwood neighborhood. Putting in the required additional parking would take away from that residential feel and is something that is important to the neighborhood association.

Rebecca Cates, 1118 Lexington Avenue, stated that she is the Secretary for the Glenwood Neighborhood Association and they have been involved in the whole process since 2008, and in July 2011, they voted to support the project. One of the reasons they are supporting the request is because they have done such a good job on the adjoining property and keeping similar to the characteristic of the other residences in the area.

Phil Shue, Civil Engineer for the project, stated that the site is very small and putting the additional impervious surface, there will be an increase in run-off to other properties. It is a very difficult site to develop but the current plan addresses the problems in a positive manner.

Doug George, Weaver-Cook Construction, stated that because of the configuration of the site, the additional parking would use more paving and additional fill dirt would have to be brought in because of the topography of the site which would require an approximate additional \$25,000 costs to the project because of the configuration and the slope.

Shanna Reece also stated that they have met with the architect and City staff and discussed the parking issues. She has received a letter from the church which states their ability to offer parking spaces in their parking lot. There is also street parking and they intend to install bike racks for the residents' use. They also operate a facility next door that is very similar to the proposed new facility. There has never been more than 2 residents at one time that actually drove a vehicle and needed parking spaces. Because of the types of disabilities of the residents there is no need for a vehicle. They are willing to place a condition on the granting of a variance for this request.

Scott Reitingger stated that there is a local property owner than has 10 parking spaces that have been offered for the use of the facility as well as the Glenwood Presbyterian Church's offer for parking spaces for use by the staff of the facility.

Michael Blair, Planning & Community Development, Grants Planner, was sworn in and stated that he wished to confirm the restrictions that were put on the property for the next 20 years because of the fund sources that the City has used through the HOME Program, which is for affordable housing development and to go along with it is a declaration of restrictions that goes onto the land. This will be for low income individuals at 50% of adjusted area median income or less and also further restricted use of permanent supportive housing for the disabled. The state has a 30 year period on it and they will also guarantee that for 30 years.

There was no one speaking in opposition and the public portion of the hearing was closed.

In response to a question, Shanna Reece stated that the parking spaces on the street are not used very frequently. There is only one resident with a vehicle and staff parks on other property up the street at another location.

Counsel Clark stated that he had prepared a proposed condition and it was presented to the Board members for their review. The biggest concern of the City is that the property is zoned very dense residential multifamily and if a condition with regard to parking is requested, the following wording is suggested: a limitation can be imposed on a category of owner who is engaged in a particular use.

Board Comments:

Chair Pearce stated that he was comfortable with Counsel Clark's suggested condition, plus the 2 deed restrictions from the City and the State. Mr. Strickland stated that since the ordinance allows for the 15% transit reduction from 11% down to 9%, he asked if the variance is actually for 6 instead of 8 parking spaces.

Loray Averett stated that they were required to provide 11 spaces through transit reduction and through providing 1 handicapped space, they are now required to provide 8 spaces.

Mr. Brewington stated that, in concept, he supports this request as he believes there is a reasonable accommodation for a facility for people with disabilities and these are not tenants that will be utilizing parking and the application of the ordinance is clearly for something intended other than what this request is for. Counsel has provided a very good alternative the Board to protect the City in the event that this facility is not operating as it is currently envisioned and intended. He feels that the neighborhood is protected by some future multifamily housing use, and the fact that the neighborhood association supports it.

Mr. Jones stated that in regard to BOA-11-14, 12-07 – 1209 Lexington Avenue, that the findings of fact be incorporated and the 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 this ordinance. If the applicant complies with provisions of the ordinance she can

make no reasonable use of the property because they would not be allowed to operate a housing facility for disable veterans on the property. The hardship of which the applicant complains results from unique circumstances related to the property because the topography of the property makes it impractical to locate the required number of parking spaces on the property. The hardship results from the application of the ordinance to the property because the ordinance required 1.25 parking spaces per resident on the property. The hardship is not the result of the applicant's own actions because the building is currently standing and the property is shaped in an odd fashion. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it provides for the appropriate number of parking spaces based upon the dynamics and the demographics of the population that will be living on the property. The granting of this variance assures the public safety and welfare and does substantial justice because the nature of the persons living on the property are disabled and homeless and do not require the normal number of parking spaces that are required under the ordinance. This variance is subject to the condition that the variance shall automatically expire and terminate when the property ceases to be operated by a corporation qualified as a non-profit corporation, pursuant to Section 501(C)3 of Internal Revenue Code and engaged in business at the property for the purpose of providing low and moderate income housing to elderly persons or person with disabilities as specified in the Fair Housing Act or Fair Housing Amendments Act. Upon expiration of this variance, the owner shall construct such additional parking spaces as required to comply with existing laws, regulations and City of Greensboro Ordinances. Further, the current owner shall pay the costs of recording an instrument which contains the text of the variance with the Guilford County Register of Deeds, which shall restrict the use of the property and run with the land and the instrument shall contain the legal description of the property, subject to the variance and hereafter, be a restriction described in subsequent deeds or other instruments of conveyance, such language to be reviewed by the City of Greensboro Legal Department before recordation, seconded by Mr. Turner.

The applicant was asked if she agreed to the proposed condition. Ms. Reece stated that she did agree.

The Board voted unanimously, 6-0, in favor of the motion. (Ayes: Pearce, Brewington, Turner, Strickland, Jones and Huffman. Nays: None.)

SPECIAL EXCEPTION:

- a) **BOA-11-15 2804 LAMROC ROAD** Majestic Solutions, LLC requests a Special Exception as authorized by Section 30-8-10.1(B) to allow family care home separation encroachments from the current one-half mile development spacing standard. **Special Exception Request #1:** The proposed family care home will be 778 feet from one family care home (6 or less persons) to another family care home, located at 3104 Darden Road (6 or less persons) when 2,640 feet is required. **Special Exception #2:** The family care home will also be 2,181 feet from one family care home (6 or less persons) to another family care home, located at 3311 Ryderwood Drive (6 or less persons) when 2,640 feet is required. Present Zoning – R-3, Cross Street – South Holden Road. **(CONTINUED TO JULY MEETING)**

Ms. Averett stated that 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 778 feet from another family care home, located at 3104 Darden Road, (6 or less persons) when 2,640 feet is required. This proposed home will be 1,862 feet too close. *Special Exception Request #2:* The same proposed family care home will be 2,181 feet from another family care home, located at 3311 Ryderwood Drive, (6 or less persons) when 2,640 feet is required. It will be 459 feet too close. The lot is located on the western side of Lamroc Road east of South Holden Road. The applicant is proposing to locate a family care home (6 or less persons) at 2804 Lamroc Road. 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, along with required renewals and a previously granted Special Exception concerning 3311 Ryderwood Drive is in compliance. The proposed family care home and the existing family care homes are separated by South Holden Road which is classified as a thoroughfare. R-3 District: The R-3, Residential Single Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

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

Guy Land, PO Box 2535, Greensboro, was sworn in and stated that he feels that there will be no clustering of these types of homes between Majestic Solutions and the other established group homes as it is on the opposite side of S. Holden Road. He presented several exhibits for the Board members' review. He stated that Majestic Solutions is licensed by the State of North Carolina Department of Human Services for service to young men aged 11 to 17 who are emotionally troubled and children with behavior problems and their families. This could include children in need or protective service, and juvenile delinquents. Majestic Solutions will not accept clients who are considered to be extremely aggressive in their behavior or are currently suicidal. Services include making a home life environment with 24 hour support and supervision, daily skill building groups, addressing and making clients aware of medications, sexually, sex abuse, social skills, problem solving and management. Individual skill-building and counseling, family meetings will be held while at Majestic Solutions and/or at the client's home, public school, including middle and high school learning centers, home tutoring, summer school, and after-care plans in the service. Majestic Solutions is a group home providing a nurturing environment. Community out-reach programs will also be used. The ultimate goal is to reunite clients with their families whenever possible or facilitate the transition to foster care home and independent living.

He explained that Holden Road is a 6-lane thoroughfare that separates 2804 Lamroc from 3104 Darden Road and 3311 Ryderwood Drive. It is unlikely that the clients will be close to the other facilities due to levels in care that each facility provides. The other facilities house more severely emotionally troubled clients. He feels that since Holden Road is such a very busy thoroughfare, it is unlikely that the clients of either of the homes would try to interact with each other. There is also a large apartment complex that would serve as a buffer between the other 2 facilities. None of their clients are ever unsupervised and if a client leaves the facility on their own, for any reason, he is considered a run-away and staff is obligated to contact the authorities. Staff also helps the clients get jobs in the nearby area. They have been very successful in this effort.

In response to questions by the Board members, Mr. Land explained that there are 2-3 clients at one time in the home. The Darden Road facility is for females and his proposed facility is for males.

Chair Pearce asked if there was anyone wishing to speak in opposition to this issue.

Patrick Imori, 2006 Darden Road, was sworn in and stated that he lives in a quiet neighborhood and there is the concern by himself and his neighbors that if the facility is allowed in this area there will be an increase in break-ins in the surrounding area. This neighborhood is close to Smith High School, which also increases the crime rate to the area. He feels that the proposed facility is too close to other, already established group homes and afraid it would change the atmosphere of the existing neighborhood. He is opposed to allowing another group home so close to the other group homes. The proposed new location would be directly behind his house and he feels that is too close.

Cynthia McAdoo, 3006 Darden Road, was sworn in and stated that she lives next door to Mr. Imori and has lived there for almost 30 years. There are a lot of walkers and pedestrians in this neighborhood. She does not feel that Holden Road or any other thoroughfare would keep these facilities separate, especially teenagers from crossing that road. There are a lot of elderly people in this neighborhood and she is concerned about their safety and break-ins. She also pointed out that the organization Mr. Land explained is a dissolved entity. She went on-line and found out a lot of information. She asked Mr. Land if he was the owner of the property for the proposed group home and Mr. Land responded that he was not the owner. She asked why the owner of the property or the owner of the group home was not at the meeting to answer questions. She pointed out that the LLC is making the application for the Special Exception, but the LLC is no longer in existence and has been administratively dissolved as of May 25, 2010 and Mr. Land was listed as the registered agent. Crystal Nesbitt is not a part of Majestic Solutions, LLC.

Mr. Land stated that he also has a State License as evidence.

Mr. Pearce asked Mr. Clark if an entity that has been resolved can ask for a Special Exception or a variance. Mr. Clark stated that he cannot speak as to whether or this is going to be considered evidence or what weight would be considered by the Board. He stated that the documents submitted by Ms. McAdoo constitute a form of hearsay evidence, but he would suggest that the Board consider postponing this case to allow him to gather more information.

Ms. McAdoo stated that she checked the website as of about 1:00 p.m. today and they have not been re-instated and have been dissolved since May of 2010. She has also checked the Code and in that, it states that the property owner should be the one to file for a Special Exception. Therefore, she does not understand the role that Majestic Solutions, LLC is playing in this request. She also pointed out that the property owners and the property should be in harmony with the rest of the neighborhood and she does not feel that is the case for this property. She has also contacted the City about a large amount of debris that is in the back yard and has been tossed over the fence of that property. She stated that nuisance letters have been sent to the property owner, who is Crystal Nesbitt, not Majestic Solutions, LLC. Because the rear yard slopes

downward, it is an area that may be a city right-of-way and a storm drain that is completely covered and Mr. Leo Cheek with the Environment Department of the City visited the property.

Mr. Imori stated that there have been on-going problems with this house and he has talked to the people at the City on several occasions. Now there is the concern about the residents of a group home in the neighborhood just making things worse and an increase in crime for this neighborhood.

Ms. McAdoo stated that the property owner has not cleared up the debris and she is very concerned about that.

There being no other speakers the public hearing was closed.

Chair Pearce asked Mr. Land to return to the podium for questions. He asked Mr. Land if he had any evidence that the company is currently in good standing with the NC Secretary of State. Mr. Land presented a copy of their license which was issued to them in January from the State of North Carolina Department of Health and Human Services. He does not have anything from the NC Secretary of State. He is unaware of the organization being dissolved.

Board Comments:

Mr. Pearce moved that this matter be continued to the July meeting for clarification of documents through the legal department, seconded by Ms. Huffman. The Board voted unanimously, 6-0, in favor of the motion. (Ayes: Pearce, Brewington, Turner, Strickland, Jones and Huffman. Nays: None.)

OTHER BUSINESS:

ELECTIONS

Mr. Brewington nominated Mr. Pearce to continue to serve as Chair of the Board of Adjustment, seconded by Mr. Jones. The Board voted unanimously, 6-0, in favor of the motion. (Ayes: Pearce, Brewington, Turner, Strickland, Jones and Huffman. Nays: None.)

Mr. Brewington nominated Mr. Jones to serve as Vice Chair of the Board of Adjustment, seconded by Mr. Pearce. The Board voted unanimously, 6-0, in favor of the motion. (Ayes: Pearce, Brewington, Turner, Strickland, Jones and Huffman. Nays: None.)

ABSENCES:

The absence of Ms. Trexler was acknowledged.

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ADJOURN:

There being no further business before the Board, the meeting adjourned at 7:56 p.m.

Respectfully submitted,

Brian Pearce, Chair

Greensboro Board of Adjustment

BP/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

JULY 25, 2011

The regular meeting of the Greensboro Board of Adjustment was held on Monday, July 25, 2011 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Brian Pearce, Chairman, Scott Brewington, Clinton Turner, Bill Strickland, Frankie T. Jones, Jr. and Cheryl Huffman. Staff present were: Loray Averett, Zoning Services Coordinator, as well as Jim Clark, City Attorney's Office.

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

Ms. Huffman stated that some corrections had been submitted to staff and moved approval of the June 27, 2011 minutes as revised, seconded by Mr. Turner. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Ms. Averett was sworn in for her testimony for this meeting.

CONTINUANCES/WITHDRAWALS

None

OLD BUSINESS:

SPECIAL EXCEPTION:

- a) **BOA-11-15 2804 LAMROC ROAD** Majestic Solutions, LLC requests a Special Exception as authorized by Section 30-8-10.1(B) to allow family care home separation encroachments from the current one-half mile development spacing standard. **Special Exception Request #1:** The proposed family care home will be 778 feet from one family care home (6 or less persons) to another family care home, located at 3104 Darden Road (6 or less persons) when 2,640 feet is required. **Special Exception #2:** The family care home will also be 2,181 feet from one family care home (6 or less persons) to another family care home, located at 3311 Ryderwood Drive (6 or less persons) when 2,640 feet is required. Present Zoning – R-3, Cross Street – South Holden Road. **(DENIED)**

Counsel Clark stated that he has checked into the matter of the Administrative dissolution, the LLC was dissolved, but has since been re-instated which is allowable through Chapter 57(c) concerning LLC's disposition for re-instatement. If re-instated, that re-instatement relates back to date of the

original dissolution as if it had never been dissolved. Therefore, this entity is in good standing as an LLC for the purposes of this matter before the Board today.

Chair Pearce stated that since this matter was before the Board at the June meeting, he urged the speakers in opposition to bring forward new or additional evidence and not to go over the same information that has already been heard by the Board. He suggested that both sides be limited to 10 minutes of speaking time, no matter the number of speakers.

Mr. Jones moved that the Public Hearing on this matter be reopened and that there be a limit of 10 minutes of speaking time for each side, seconded by Ms. Huffman. The Board voted unanimously in favor of the motion.

Mr. Brewington cautioned the speakers in opposition to bring new evidence and to not go over things they previously stated at the June meeting. Although he is open to hearing from the opposition, he does not want to hear a repeat of that previous testimony and asked that speakers bring new or additional evidence.

Loray Averett stated that the staff report that was continued from last month's meeting, there was a change in the requested action, a continuance was granted to allow staff and the applicant time to determine the status of the requirements governing Majestic Solutions, LLC. On page 2 of the staff report, Exhibit 9 was added, with some research notes from the City Legal Division pertaining to the re-instatement of the applicability laws concerning the LLC which Counsel Clark covered for the Board's information. Exhibit 10 was added to this report and is a grouping of state and public record documents that were submitted by citizen opposition at the hearing on June 27, 2011. Those were the only changes to the staff report.

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

Guy Land, representing the applicant, was previously sworn in and stated that at the June meeting of the Board of Adjustment, Majestic Solutions LLC was provided documentation that the LLC was in good standing through the North Carolina Secretary of State's Office, as presented by Counsel Clark. He stated that the solution had no adverse impact on the distance or the nature of the business, however, since that time, since he is a City employee, had some bearings on the decision to be allowed to participate in the first meeting. Majestic Solutions, LLC has no ties whatsoever with the City of Greensboro. The sole request is to ask for the Special Exception. In rebuttal to some of the comments at the June meeting, he stated that he applauds their efforts to express their concerns as it pertains to the neighborhood and environment, but none of the problems that were mentioned at that meeting, stem from any of the family care facilities/group homes in the neighborhood. He feels the proposed family care home would help minimize some of the problems in the subject property area and is a growing issue throughout the city. The teens that were referred to are not in a structured environment, but are teens that live outside this neighborhood, and not in a group home facility. He reiterated that it is difficult to arrest the on-going problems with teens in this city and it only makes sense to invest in a structured program that builds and rehabilitates these young people, and not a program that recycles teens and puts them back out on the street to start all over again. He has looked at this property front and back and it is now well-maintained and the debris has been removed. He urged the Board to allow the Special Exception to allow them to assist with some of the ongoing problems in the city. In response to a question by Chair Pearce, Mr. Land stated that he does not occupy the property.

Chair Pearce asked if there was anyone wishing to speak in opposition to this issue.

Cynthia McAdoo, 3006 Darden Road, was previously sworn in and presented handouts for the Board members' review. She stated that the reports submitted show a 4.6% increase in crime within this particular neighborhood. She pointed out that there were approximately 100 crime reports since January 1, 2011 in this particular area of the City. She does not feel that this particular area is the place to put 11 to 17 year old teens. There is still concern by the area residents about the ongoing unsightly maintenance of this property.

Chair Pearce and Mr. Brewington pointed out that the applicant has not been in this property and should not be held accountable for the condition of the former residents. The fact that the applicant wishes to use the property for a family care home has nothing to do with what the previous residents did while on the property. They also pointed out that it is possible that the proposed use may be good for the property and the kids would be responsible for keeping the property cleaned up.

Mr. Brewington also pointed out that all this information was presented at the last meeting. He asked Ms. McAdoo if she had any new evidence to present. He stated that the key issue is that there are two group homes that are within the required distance of each other and those require a Special Exception. He is sympathetic to the concerns about crime in this neighborhood, but he pointed out that there is crime in a lot of neighborhoods throughout the City. He asked if Ms. McAdoo can point to any evidence that these crimes were committed to any of the residents of the group homes in this neighborhood. He also pointed out that there is no bearing on what might happen in this area in the future if an additional group home is allowed in the neighborhood.

Ms. McAdoo stated that this property has never been kept up to code and the area residents have continuously complained about the conditions of the property, without any positive results. She stated that in May 2010, the City Council approved an ordinance that these types of homes should be 2,640 feet apart and this one would only be 778 feet from another home if it is allowed. Since her property and her neighbor's property backs up to the proposed group home, they are concerned about the additional crime and additional debris in their rear yards.

In response to an additional question by Mr. Brewington concerning natural barriers between the group homes, Ms. McAdoo stated that there really are no natural barriers as there is only a 4 foot chain link fence that is stopping those kids from being in their back yards. There are no measures that would help the residents be safe if one of the kids should escape and be loose in the neighborhood.

In response to a question by Chair Pearce concerning whether Ms. McAdoo had any evidence that the crimes in the report were committed by teens from either of the existing group homes, Ms. McAdoo stated that her information is more general than that and does not point out who the responsible parties were or what their address is.

Mr. Jones asked if there is any evidence that the residents of the two current group homes interact with each other and Ms. McAdoo stated that she does not have that information and does not know who she could ask about that.

Chair Pearce pointed out that since there have been a lot of questions by the Board members, he would allow an additional 5 minutes of testimony from those in opposition.

Counsel Clark cautioned the Board to only view the note from the concerned citizen in a limited context as it has not been notarized.

In response to a question concerning who took the photographs that were submitted, Patrick Imori, 3006-A Darden Road, was previously sworn and stated that he took the pictures because he lives in the house that is directly behind the proposed property. He presented a handout for the Board members' review. He stated that the Southern Division of the city is where the proposed house is located. This area is such that the teenagers all revolve around the mall and Smith High School and they are out there roaming around in the neighborhoods. He has seen them walking in his neighborhood and he has challenged them many times, coming in behind his townhouse and the Lamroc property because it is overgrown with trees so anybody could come in there and do whatever they want. Even if Police were looking for them, they would not be able to find them. He pointed that in his search of crime reports from July 1st through the 15th, there were 81 incidents in this area. He stated that their main concern is having additional crimes in this neighborhood and feels that this area is overburdened with group homes.

Arthur Wallace, 2011 Darden Road, was sworn in and stated that he has lived in this area since 1983 and heads up the Community Watch group. He is also a local realtor in the Triad area and he has seen the value of his home go down steadily, especially within the last 10-15 years. As part of the Community Watch group they try to maintain certain standards within the neighborhood and it has been very difficult with more and more absentee landlords. The community feels that another group home so close to two others in this immediate area has a very detrimental value to the neighborhood and the values of the houses within that neighborhood. He has driven by the other two houses and they are not in good condition at all. He does not feel that this would be a good thing for the neighborhood. He urged the Board to deny the request for this Special Exception.

As the limited time had run out, Chair Pearce asked that the public hearing be closed. The Board determined unanimously to close the public hearing.

Board Comments:

Mr. Brewington stated that through his time on the Board he has heard a lot of testimony concerning group homes for this type of Special Exception and he feels that Mr. Land really has a true passion for helping today's youth. He feels it is unfortunate that the property is too close to other group homes and feels that Mr. Land's plans for the proposed home may help in reducing crime in this area. However, City Council has passed an ordinance that states that one group home cannot be within certain perimeters to another. There is opposition from the neighborhood and it is clear that there is already a concentration of group homes in this area. Despite his feelings on this matter, he does not feel he can support this request.

Mr. Turner stated that he feels there is a saturation of these types of group homes throughout the City and the change in regulations are rules that are set out by City Council. He is concerned about further saturation of group homes in this neighborhood and there are no natural barriers to help separate them. He is also not inclined to grant the Special Exception for this particular request, even though he commends the applicant's intentions.

Chair Pearce stated that he concurs with Mr. Brewington and Mr. Turner that Mr. Land did an impressive job of presenting this case, however, he does not feel that he can support the request.

Mr. Brewington moved that in regard to BOA-11-15 2804 Lamroc Road, the findings of fact be incorporated and that the Zoning Enforcement Officer be upheld and the request for a Special Exception for Violation #1, be denied based on the following: the Special Exception is not in harmony with the general purpose and intent of this ordinance and does not preserve its spirit because as has

been presented, it presents a concentration of family group homes and testimony has been presented that the existing group homes have had a detrimental effect of the property values in this area; the granting of the Special Exception is not assurance of the public safety and welfare and does not do substantial justice as it has been presented through testimony that there is significant crime in this neighborhood and as a result of providing this home in the neighborhood it would not provide for additional safety within the neighborhood, seconded by Mr. Turner. The Board voted unanimously, 6-0, in favor of the motion. (Ayes: Pearce, Brewington, Turner, Strickland, Jones and Huffman. Nays: None.)

Mr. Brewington moved that in regard to BOA-11-15 2804 Lamroc Road, the findings of fact be incorporated and the reasons from the previous motion be incorporated and that the request for a Special Exception for Violation #2, be denied based on the same reasons as previously stated, seconded by Mr. Huffman. The Board voted unanimously, 6-0, in favor of the motion. (Ayes: Pearce, Brewington, Turner, Strickland, Jones and Huffman. Nays: None.)

OTHER BUSINESS:

Counsel Clark stated that he would like to conduct some training with the Board members with regard to legal aspects of the Board's operations and decision-making. He would conform to whatever schedule is convenient with the Board members. E-mail notices will be sent to the Board members to coordinate that effort in the near future.

ABSENCES:

The absence of Ms. Trexler was acknowledged.

* * * * *

ADJOURN:

There being nor further business before the Board, the meeting adjourned at 6:17 p.m.

Respectfully submitted,

Brian Pearce, Chair
Greensboro Board of Adjustment

BP/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
AUGUST 22, 2011**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, August 22, 2011 at 5:30 p.m. in the Council Chamber, Melvin Municipal Office Building. Board members present were: Brian Pearce, Chairman, Scott Brewington, Bill Strickland, Frankie T. Jones and Cheryl Huffman. Staff present were: Loray Averett, Zoning Services Coordinator, Mike Cusimano, City Urban Forester, as well as Jim Clark, City Attorney's Office.

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 approval of the July 25, 2011 minutes, as submitted, seconded by Mr. Jones. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Ms. Averett and Mr. Cusimano was sworn in for their testimony for this meeting.

CONTINUANCES/WITHDRAWALS

None

NEW BUSINESS

VARIANCES

- (a) BOA-11-16: **2009 HAWTHORNE STREET** Ryan Zell requests a variance from a minimum side setback requirement. *Variance:* A proposed detached garage will encroach 7 feet into a minimum 10-foot side setback. Section 30-8-11(1)C.2, Present Zoning-R-5, Cross Street-West Cornwallis Drive.
(CONDITIONALLY GRANTED)

Ms. Averett stated that the property is located on the western side of Hawthorne Street south of West Cornwallis Drive and is zoned R-5 (Residential Single Family). The applicant is proposing to construct a detached one-story garage at the end of an existing driveway. The garage dimensions are proposed to be approximately 22 feet by 22 feet and will contain 484 square feet. The lot is rectangular shaped and the existing house is centered on the lot. The applicant has made mention of trying to save a significant tree. Exhibit 3 contains an inspections report conducted by the City Urban Forester, Mike Cusimano. Mr. Cusimano plans to be present at the meeting for any technical questions the Board may have. *R-5, Residential Single-Family District* is primarily intended to accommodate low-density density single-family detached residential developments. 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 matter.

Ryan Zell, 2009 Hawthorne Street, was sworn in and stated he wishes to construct a detached garage and it is difficult to place the proposed garage anywhere on the property other than the proposed location because of the topography and restrictions on the lot. They wish to have the availability of added storage space and sheltered parking for their vehicles. There have been no complaints from his neighbors for this proposed construction. Due to the narrow width of the lot is it also difficult to comply with the restrictions. Previously there was a garage in this same footprint of the proposed new garage. There is a fairly large pin oak tree near where the new construction would take place and he wishes to be able to save this tree.

There was no one speaking in opposition to the request.

Mr. Brewington stated that in regard to BOA-11-16, 2009 Hawthorne Street, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the variance granted based on the fact that there are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of the ordinance. If the applicant complies with provisions of the ordinance he can make no reasonable use of the property given the age of the neighborhood and the fact that a previous garage existed on the same footprint, it is reasonable for the applicant to be able to reconstruct there and the property would conform with the general neighborhood. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property. As stated in his presentation, the lot is very narrow and opens to the back and this narrow lot presents a unique challenge for putting a structure in the rear yard on the original footprint that would be tall enough to be practical but would also be useable. The topography of the lot also presents a challenge. The hardship results from the application of this ordinance to the property because this is an older neighborhood where there are very narrow lots which restrict the use of the property. The hardship is not the result of the applicant's own actions, as previously stated. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit as the applicant is rebuilding a garage on the original footprint and this would be in keeping with the original look of the structure and the granting of the variance assures the public safety and welfare and does substantial justice as the structure, as presented, does not present a safety hazard and would conform with the look of the neighborhood. A condition is to be added that the applicant follow the advice of the urban forester in regard to the root pruning as recommended for the pin oak tree located near the new construction, seconded by Ms. Huffman. The Board voted unanimously in favor of the motion.

- (b) BOA-11-17: **27 ELM RIDGE LANE** Philip and Gail Haney request a variance from the requirement that utilities to detached accessory buildings be provided by branching service from the principal building. *Variance:* The applicant is proposing to have a separate electrical meter for a proposed detached garage. Section 30-8-11.1(G), Present Zoning-R-3, Cross Street-North Elm Street. **(GRANTED)**

Ms. Averett stated that the applicant is requesting a variance from the requirement that utilities to detached accessory buildings be provided by branching services from the principal building. The applicant is proposing to locate a separate electrical meter on a proposed detached accessory garage. The property is located on the eastern side of North Elm Street at the northern cul-de-sac of Elm Ridge Lane and is zoned R-3 (Residential Single Family). The lot is approximately 0.67 acreage containing approximately 29,000 square feet. The R-3 district allows for 3 dwelling units per acre. The property contains a dwelling and the applicant is proposing to construct a detached accessory garage. The garage is proposed to be located approximately 42 feet from the western side of the house. The applicant has made mention the power supply for the house is on the eastern side of the house which is approximately 150 feet from the proposed garage location. There is a power pole and transformer located approximately 40 feet from the rear of the proposed garage, which is much closer to the building than the distance to the other side of the house. The aerial and GIS photos shows the lot is developed with existing detailed hardscapes, infrastructure, and landscaping. The applicant has made mention there are trees located between the house and building. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

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

Gail Haney, 27 Elm Ridge Lane, was sworn in and stated that she is the property owner and will let her contractor speak for her.

Harley Easter, 9033 W. Market Street, was sworn in and stated that he works for the company that will be building the garage. He presented photos of the site and the proposed garage and a letter from the North Elm Association for the Board members' review. He stated that they have already obtained a permit for the garage and they have started construction on it. There is an existing transformer which is 35 feet from the transformer to the rear of the garage. It is approximately 150 feet from the rear of the garage through the back yard through the trees. They feel that because of the distance from the transformer and the 150 feet from the main house, there is a need for the branching service. The garage will not be lived in and is a true detached garage and for no other purpose. He explained that the existing shrubbery, the house and concrete was already there. He hopes to place the meter on the back of the garage and it would not be seen from that location.

Chair Pearce stated that the letter submitted is not notarized.

There was no one speaking in opposition to the request.

Mr. Strickland stated that in regard to BOA-11-17, 27 Elm Ridge Lane, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the variance granted based on the fact that there are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of the ordinance. If the applicant complies with provisions of the ordinance he/she can make no reasonable use of the property because it would be disruptive to the existing landscaping, hardscaping that is already in place and it is more reasonable to run the power from a destination that is 35 feet versus 150 feet. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because there is a transformer that is located much closer to the intended proposed structure than having to go to the opposite side of the house. The hardship results from the application of the ordinance to the property because it would require a lot of damage to existing landscaping which otherwise would not have to be disturbed. The hardship is not the result of the applicant's own actions because the house and transformer were previously located where they are currently located and it is more reasonable to run the power from the transformer rather than the opposite side of the house. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because of the proximity of the transformer. The granting of the variance assures the public safety and welfare and does substantial justice because it will require less effort on the part of the contractor, therefore, will yield more reasonable costs to the applicant and will be less destructive to the existing landscaping that is currently in place, seconded by Mr. Jones. The Board voted 4-1 in favor of the motion. (Ayes: Pearce, Brewington, Strickland, and Jones. Nays: Huffman.)

- (c) BOA 11-18: **3009 KENTWOOD STREET** Mattie McCandless requests a variance from a minimum side street setback. *Variance:* A portion of a handicap landing will encroach 4 feet into a 15 foot side setback adjacent to Jolson Street. Section 30-7-1(C) and Section 30-7-3(G), Present Zoning-RM-18, Cross Street-Jolson Street. **(GRANTED)**

Ms. Averett stated that the applicant is requesting a variance for a proposed deck/landing, which attaches to an ADA ramp. A portion of the deck/landing will encroach 4 feet into a 15-foot side street setback. The property is located at the northwest intersection of Kentwood Street and Jolson Street. The lot is rectangular shaped and the house is constructed almost center of the lot. The driveway for the property is located off Jolson Street. There is a rear entrance from the house facing the Jolson Street side. The applicant is proposing to construct a handicap ramp with a deck/landing attached to the rear of the house. Based on Section 30-7-1, the ramp is allowed to encroach into the setback; however, the deck/landing portion is not permitted to encroach. The drawing reflects the landing portion will be constructed approximately 9 feet by 5 feet which is 45 square feet. Out of the 45 square feet, the encroachment portion will be 36 square feet. The applicant made mention that Housing Greensboro, Inc. uses volunteer students and resources to assist with ADA projects that may otherwise never be built. The RM-18 Residential Multi-Family District is primarily intended to accommodate multi-family and similar residential uses at a density of 18.0 units per acre or less.

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

Paul Swinson, 403 S. Elam Avenue, was sworn in and presented drawings and photos. He explained the photos and drawings. He stated that he came before the Board last year with the same type of request. The issue is the landing being across the setback and with the way the

house is situated on the lot and they way lot line goes away from the house, causes a problem and is fairly limited in the way the ramp can be built efficiently and effectively to not be in the way of the driveway. He indicated these problems on the photos and drawings. Building permits have already been applied for and is now waiting for a variance approval from the Board. He has tried to design the ramp so it does not go beyond the existing footprint of the house. For several years the City has been involved in the Ramp-A-Thon to help persons with disabilities. Housing Greensboro and others have been very involved in providing handicap ramps for these people. Volunteers help with the construction of these ramps with donations from area organizations. In response to a question by Ms. Averett, Mr. Swinson stated that the ramp has already been built. He has talked with staff and it is felt that it may be a good idea to have a text amendment to the ordinance to alleviate these types of problems in the future.

There was no one speaking in opposition to the request.

Ms. Huffman stated that in regard to BOA-11-18, 3009 Kentwood Street, the findings of fact are to be incorporated as stated. She moved that the Enforcement Officer be overruled and the variance granted based on the fact that there are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of the ordinance. If the applicant complies with provisions of the ordinance he can make no reasonable use of the property because the property owner will be unable to enter or exit the home. The hardships of which the applicant complains result from unique circumstances related to the applicant's property because of the rectangular shape and sloping of the land. The hardship results from the application of the ordinance to the property because the landing is a necessity for the handicap ramp portion of the ramp. The hardship is not the result of the applicant's own actions because of the lay of the land. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because handicap ramps and landings are a necessity. The granting of the variance assures the public safety and welfare and does substantial justice because no harm can come from granting the variance and substantial justice will be served, seconded by Mr. Jones. The Board voted 5-0 in favor of the request. (Ayes: Pearce, Brewington, Huffman, Jones and Strickland. Nays: None.)

- (d) BOA 11-19: **4200-32 MAYBROOK DRIVE** Gentlean Tilley requests a variance from a minimum separation standard for a manufactured dwelling. *Variance:* A handicap landing will encroach 12 feet into a 30-foot separation requirement for any proposed addition between the dwelling stands. Section 30-8-10(12), Present Zoning-RM-12, Cross Street-Burlington Road.
(GRANTED)

Ms. Averett stated that the applicant is requesting a variance for a proposed deck/landing, which attaches to an ADA ramp. The deck/landing portion will encroach 12 feet into a 30-foot separation requirement between stands for manufactured homes. The property is located on the north side of Maywood Street south of East Wendover Avenue and contains a Mobile Home Park known as Maywood Village. The applicant is proposing to construct a handicap ramp with a deck/landing attached to the side of the manufactured dwelling. The ramp is allowed to encroach into the setback; however, the deck/landing portion is not permitted to encroach. Section 30-8-10 (12) states: Prefabricated structures specifically designed by the manufacturer as extensions and any other additions meeting the NC Building Code may be added to any manufactured dwelling, provided that the setback within the space and the 30 foot separation between stands can be

met and a building permit is obtained from the city. The existing manufactured home is nonconforming in relation to separation setback requirements. The space between this existing manufactured home and the adjacent home is approximately 26 feet. The homes are required to be 30 feet apart. Section 30-2-4.1 (2) states: Any enlargement of a nonconforming structure must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance in accordance with variance procedures. The drawing reflects the landing portion will be approximately 8 feet by 5 feet which is 40 square feet. The applicant made mention that Housing Greensboro, Inc. uses volunteer students and resources to assist with ADA projects that may otherwise never be built. The RM-12 Residential Multi-Family District is primarily intended to accommodate multi-family and similar residential uses at a density of 12.0 units per acre or less.

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

Paul Swinson, 403 S. Elam Avenue, was sworn in and stated that the circumstances in this case are very similar to the previous case. He presented photos and drawings for the Board members' review. He stated that this is a manufactured house and the structure is already noncompliant. He has brought the ramp down from the left of the front of the home and the landing would be within the 20 foot setback from the street, whether he went to the left or to the right. He has applied for the building permit, and again, it was held up until after today's meeting before he could get approval.

There was no one speaking in opposition to the request.

Mr. Pearce stated that in regard to BOA-11-19, 4200-32 Maybrook Drive, the findings of fact are to be incorporated as stated in BOA-11-18. He moved that the Enforcement Officer be overruled and the variance granted based on the same type of facts in the previous case. There are practical difficulties or unnecessary hardships that result from the carrying out of the strict letter of the ordinance. If the applicant complies with provisions of the ordinance he can make no reasonable use of the property for the reasons stated in the previous case. This is a similar situation to the extent that differences would not have different impacts with respect to the finding. The hardship of which the applicant complains results from the unique circumstances related to the property, again, the same finding as in the previous case. The hardship results from the application of this ordinance to the property as previously stated. The hardship is not the result of the applicant's own actions and the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit as the ordinance is intended to make properties that are useable by all citizens. The granting of the variance assures the public safety and welfare and does substantial justice, seconded by Mr. Strickland. The Board voted 5-0 in favor of the request. (Ayes: Pearce, Brewington, Huffman, Jones and Strickland. Nays: None.)

OTHER BUSINESS

Loray Averett stated that members now have a new ordinance book. There will be other text amendments coming and members will receive those updates as they are created.

Mr. Strickland stated that he would like to ask staff to investigate the possibility of a text amendment concerning landings and ramps, as discussed in the last two variance requests.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Trexler and Mr. Turner were acknowledged.

ADJOURN:

There being no further business before the Board, the meeting adjourned at 6:36 p.m.

Respectfully submitted,

Brian Pearce, Chair

Greensboro Board of Adjustment

BP/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

SEPTEMBER 26, 2011

The regular meeting of the Greensboro Board of Adjustment was held on Monday, September 26, 2011 at 5:30 p.m. in the Council Chamber, Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Vice Chairman, Scott Brewington, Bill Strickland, Kelly Trexler and Clinton Turner. Staff present were: Loray Averett, Zoning Services Coordinator, as well as Jim Clark, City Attorney's Office.

Vice Chair Jones 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 moved approval of the minutes from the August 22, 2011 meeting, as submitted, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion (Ayes: Vice Chair Jones, Kelly Trexler, Scott Brewington, Clinton Turner and Bill Strickland. Nays: None)

SWEARING IN OF STAFF

Loray Averett was sworn in for her testimony for this meeting.

CONTINUANCES/WITHDRAWALS

Loray Averett stated that there has been a request that BOA-11-22, 2828-E Battleground Avenue, be continued to the October meeting.

Vice Chair Jones asked if the applicant wished to be heard.

Jeff Southerland, Counsel representing the applicant, stated that they would like for this item to be continued to the October meeting.

Mr. Strickland moved to continue this matter to the October 24, 2011 meeting, seconded by Ms. Trexler. The Board voted unanimously in favor of the motion. (Ayes: Vice Chair Jones, Trexler, Brewington, Turner and Strickland. Nays: None)

NEW BUSINESS
VARIANCE

- (a) **BOA-11-20: 4123 SHERIDAN ROAD** Steve and Cindy Vernon requests a variance from the minimum rear setback requirement. The applicant is proposing to add a proposed sun room addition to the rear of the existing dwelling. *Variance:* The addition will encroach 4 feet into a 30 foot rear setback. Section 30-7-3.2, Present Zoning-R-3, Cross Street-Merton Road.
(GRANTED)

Loray Averett stated that the applicant is requesting a variance to add a proposed sunroom over an existing deck, which will encroach 4 feet into a 30-foot rear setback. The property is located on the south side of Sheridan Road north of Merton Road. The applicant is proposing to construct a sunroom addition at the rear of the existing house over an existing deck. The sunroom addition is proposed to be 12 feet x 19 feet for a total of 228 square feet. The addition will encroach 4 feet into a 30-foot rear setback. Uncovered decks that are less than 4 feet in height from finished grade can encroach 50 percent of a required rear setback. The applicant's survey indicates there is a chain link fence established on the rear portion of the lot. The rear portion of this lot and the side portion of the adjoining lot appear to be wooded. The R-3 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Vice Chair Jones asked if there was anyone wishing to speak in favor of this matter

Steve Vernon, the applicant, was sworn in and stated that there is an existing deck on the rear of the house and it is too hot in the summer and too cold in the winter to really enjoy it. They wish to enclose the deck and make a sunroom to accommodate his wife, who is going through cancer treatments, so that she can enjoy this area. It would also enhance the rest of the house. He has spoken with abutting and adjoining neighbors and no one is in opposition to this request.

Loray Averett stated that all neighbors within 150 feet of this request have been notified of this matter and there has been no communication from any of the neighbors.

There was no one speaking in opposition to the request.

After a short discussion, Mr. Turner stated that in regard to BOA-11-20, 4123 Sheridan Road, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the variance granted based on the fact that there are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of the ordinance. If the applicant complies with provisions of the ordinance he can make no reasonable use of the property given the age of the neighborhood and the fact that the existing deck and proposed sunroom would be on the same footprint. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because of the encroachment. The hardship results from the application of this ordinance to the property because it would cause the owner to be unable to improve his property. The hardship is not the result of the applicant's own actions, as previously stated. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit as the proposed sunroom would improve the value and appearance of the property as well as the neighborhood and the granting of the variance assures the public safety and welfare and does substantial justice as the structure, as presented, does not present a safety hazard and would conform with the look of the neighborhood. Vice Chair Jones stated that he wished to make a friendly amendment to the motion to reference Section 30-7-3.2, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion.

SPECIAL EXCEPTION

- (a) BOA-11-21: **202 SOUTH PARK DRIVE** Robert Payne and Crasandra Hurt request Special Exceptions as authorized by Section 30-4-12(l)2) to allow a detached garage to encroach into a side and rear setback. Special Exception Request #1: The garage will encroach 9 feet into a 10-foot rear setback. Sections 30-8-11(C) and 30-4-12(l)2) Special Exception Request #2: The garage will encroach 8 feet into a 10-foot side setback requirement. Sections 30-8-11(C) and 30-4-12(l)2) The Historic Preservation Commission has recommended this Special Exception. Present Zoning-R-7-Fisher Park Historic District, Cross Street-Magnolia Street. **(GRANTED)**

Loray Averett stated that the applicant requests Special Exceptions for a detached garage to encroach 9 feet into a 10-foot rear setback and 8 feet into a 10-foot side setback. The property is located at the northwestern intersection of South Park Drive and Magnolia. It is zoned R-7 and is located in the Fisher Park Historic District. The applicant is planning to demolish an existing building and rebuild a new detached garage. The new building footprint will not encroach beyond the existing building foot print. The new garage will have 3 more feet of depth and the height will increase from 8 feet to 17.6 feet. The garage will contain 288 square feet. The elevations reflect that the garage will be 1.5 stories tall. At their June 29, 2011 meeting, the Historic Preservation Commission recommended in favor of the applicant's request for a Special Exception to the zoning setback requirements. The R-7 Residential Single-Family District is primarily intended to accommodate low to moderate density single-family detached

residential developments. The overall gross density in R-7 will typically be 7.0 units per acre or less. She added that Mike Cowhig, the Historic District Planner, is available to answer any questions by the Board members.

Robert Payne and Cassandra Hurt, the applicants, were sworn in and stated that they wish to construct a garage in the same footprint as the existing garage. There is a large sycamore tree that is growing up next to the garage structure and it is starting to knock over the existing garage and presents a hazard to the neighbor on the other side. The proposed garage structure will not be any closer to the existing neighbors but it will be larger because it will be a 1 ½ story garage structure. It will be constructed in the same footprint as the existing garage. Photos of the existing garage and the sycamore tree were shown for the Board members' review.

Mike Cowhig, Planning & Community Development, stated that the Historic Preservation Commission approved this request at their August 2011 meeting and there was no one speaking at that meeting in opposition.

Loray Averett stated that all property owners within 150 feet of this property were notified of this request.

There was no one speaking in opposition to the request.

Mr. Brewington stated that in regard to BOA-11-21, 202 South Park Drive, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the Special Exception granted on both violations, based on the fact that there are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of the ordinance. If the applicant complies with provisions of the ordinance he can make no reasonable use of the property because the applicant is returning the garage to the original footprint with slight modifications which have been reviewed and approved by the Historic Preservation Commission, it is reasonable for the applicant to be able to reconstruct there and the property would conform with the general neighborhood. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property. As stated in his presentation, returning the garage to the original footprint is in keeping with the look and feel of the neighborhood and continues to serve as a quality building as opposed to one that is currently questionable and is sound as the old building is a safety hazard. The hardship results from the application of this ordinance to the property and the hardship is not the result of the applicant's own actions, as previously stated. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit as the applicant is rebuilding a garage on the original footprint and this would be in keeping with the original look of the structure and the granting of the variance assures the public safety and welfare and does substantial justice as the structure, as presented, does not present a safety hazard and would conform with the look of the neighborhood, seconded by Mr. Strickland. The Board voted unanimously in favor of the motion.

APPEAL OF NOTICE OF VIOALTION

- (a) BOA-11-22: **2828-E BATTLEGROUND AVENUE** Tuggle, Duggins, and Meschan, Attorneys at Law representing the Owners of My Secret Drawer, appeal a Notice of Violation concerning the land use violation that Appellant cannot lawfully establish a Sexually Oriented Business at this location based on current ordinance requirements. Section 30-8-10.4, Present Zoning-CM, Isaacs Place. **(CONTINUED TO OCTOBER MEETING)**

OTHER BUSINESS

None.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Huffman and Mr. Pearce was acknowledged.

* * * * *

ADJOURN:

There being no further business before the Board, the meeting adjourned at 6:01 p.m.

Respectfully submitted,

Frankie T. Jones, Jr., Vice Chair
Greensboro Board of Adjustment

FTJ/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
OCTOBER 24, 2011**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, October 24, 2011 at 5:30 p.m. in the Council Chamber, Melvin Municipal Office Building. Board members present were: Brian Pearce Chairman, Scott Brewington, Kelly Trexler and Clinton Turner. Staff present were: Loray Averett, Zoning Services Coordinator, Jeff McClintock and Mike Cowhig from the Planning Department, as well as Jim Clark, City Attorney's Office.

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 approval of the minutes from the August 22, 2011 meeting, as submitted, seconded by Ms. Trexler. The Board voted unanimously in favor of the motion (Ayes: Brian Pearce, Kelly Trexler, Scott Brewington, Clinton Turner. Nays: None)

SWEARING IN OF STAFF

Loray Averett was sworn in for her testimony for this meeting.

CONTINUANCES/WITHDRAWALS

OLD BUSINESS

APPEAL OF NOTICE OF VIOLATION

- (a) BOA-11-22: **2828-E BATTLEGROUND AVENUE** Tuggle, Duggins, and Meschan, Attorneys at Law representing the Owners of My Secret Drawer, appeal a Notice of Violation concerning the land use violation that Appellant cannot lawfully establish a Sexually Oriented Business at this location based on current ordinance requirements. This case was continued from the September 26, 2011 meeting. Section 30-8-10.4, Present Zoning-CM, Isaacs Place. **(CONTINUED TO NOVEMBER)**

Chair Pearce asked if there was anyone wishing to speak on this matter.

Mike Fox, attorney representing the applicant, stated that his client appeals the Notice of Violation and they wish to ask for a continuance.

Mr. Pearce moved that the item be continued, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion to continue. (Ayes: Brian Pearce, Kelly Trexler, Scott Brewington, Clinton Turner. Nays: None)

NEW BUSINESS

SPECIAL EXCEPTIONS

- (a) BOA-11-23: **836 OLIVE STREET** Suresh Nagappan requests a Special Exception as authorized by Section 30-4-12(I)2) to allow a proposed deck to encroach into a side street setback requirement.

Special Exception Request: A proposed deck will encroach 10 feet into a 15-foot side street setback adjacent to East Hendrix Street. Table 7-2 and Section 30-4-12(I)2)

The Historic Preservation Commission has recommended this Special Exception. Present Zoning-R-5, Fisher Park Historic District, Cross Street-East Hendrix Street. **(GRANTED)**

Loray Averett stated that the applicant request a Special Exception for a proposed attached deck which will encroach 10 feet into a 15-foot side street setback, adjacent to East Hendrix Street. The property is located at the northeast intersection of Olive Street and East Hendrix Street. It is zoned R-5 and is located in the Fisher Park Historic District. The applicant is planning to construct a 14 foot by 16 foot deck over an existing concrete patio. The proposed deck footprint will not encroach beyond the existing concrete patio footprint. The deck will contain 224 square feet. The property line adjacent to East Hendrix Street contains a fence and a landscaped privacy buffer. At their September 28, 2011 meeting, the Historic Preservation Commission recommended in favor of the applicant's request for a Special

Exception to the zoning setback requirement. The R-5 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential developments. 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 on this matter.

Sarah Jordan, representing the applicant, was sworn in and stated that Ms. Averett had already given the pertinent information and she had nothing to add.

Mr. Turner asked if Fisher Park is still designated Historic District and if the proposed deck would have any negative impact on the neighborhood.

Ms. Jordan stated that the deck will be larger than the existing concrete patio and will come out from the house just a little bit and will be toward the front yard just a little but further than the concrete patio does. She has discussed the proposed deck with a few of the neighbors and they have not indicated any opposition to it.

Mike Cowhig, Administrator of the Greensboro Historic Preservation, stated that the Historic District Ordinance has a provision to allow some relief from the Zoning requirements because these neighborhoods were developed prior to zoning and the lot configuration on many of these homes sets up a legally nonconforming situation so it is difficult for homeowners to do things like this. Allowing a Special Exception helps homeowners in situations like this.

There was no one speaking in opposition to the request and the public hearing was closed.

Mr. Pearce moved that in regard to BOA-11-23, 836 Olive Street, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the Special Exception be granted based on the fact that the Special Exception is in harmony with the general purpose and intent of the ordinance, preserves its spirit because Special Exceptions are permitted to help with situations such as this where it is a legally nonconforming lot and granting of the Special Exception assures the public safety and welfare and does substantial justice because it allows the applicant to use their property, which is in a special area, such as the historic district, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion. (Ayes: Brian Pearce, Kelly Trexler, Scott Brewington, Clinton Turner. Nays: None)

- (b) BOA-11-24: **206 FISHER PARK CIRCLE** Robert Beaumont requests a Special Exception as authorized by Section 30-4-12(I)2) to allow a detached garage to encroach into a side setback requirement.

Special Exception Request: A proposed detached garage will encroach 2 feet into a 10-foot side setback. Section 30-8-11.1(C)2)

The Historic Preservation Commission has recommended this Special Exception. Present Zoning-R-5, Fisher Park Historic District, Cross Street-Carolina Street. **(GRANTED)**

Loray Averett stated that the applicant requests a Special Exception for a detached garage to encroach 2 feet into a 10-foot rear setback. The property is located on the north side of Fisher Park Circle west of Carolina Street. It is zoned R-5 and is located in the Fisher Park Historic District. The applicant's property is rectangular in shape, except the western property line is moderately angled. This causes the property to narrow towards the rear, as the depth increases. The garage is proposed to be built on the rear portion behind the existing house. The garage dimensions are proposed to be 24 feet x 30 feet and will contain 720 square feet. The elevations reflect that the garage design will be 1.5 stories and approximately 18 feet in height. Ordinance Section 30-8-11.1(C)2 states: Accessory structures must be set back at least 3 feet from side and rear lot lines. In the R-districts, this setback must be increased to 10 feet for accessory structures over 15 feet tall. At their September 28, 2011 meeting, the Historic Preservation Commission recommended in favor of the applicant's request for a Special Exception to the zoning setback requirements. The R-5 Residential Single-Family District is primarily intended to accommodate low-density single-family detached residential developments. 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 on this matter.

Robert Beaumont, 206 Fisher Park Circle, the applicant, was sworn in and stated that he really did not have anything else to add, but is available to answer any questions by the Board members. He did explain that the location of the proposed garage is an attempt to line it up with the side of the house.

There was no one speaking in opposition to the request and the public hearing was closed.

Mr. Turner moved that in regard to BOA-11-24, 206 Fisher Park Circle, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the Special Exception be granted based on the fact that the Special Exception is in harmony with the general purpose and intent of the ordinance, preserves its spirit granting the Special Exception assures the public safety and welfare and does substantial justice, seconded by Ms. Trexler. The Board voted unanimously in favor of the motion. (Ayes: Brian Pearce, Kelly Trexler, Scott Brewington, Clinton Turner. Nays: None)

OTHER BUSINESS

Loray Averett presented a handout for the Board members' review. The handout consists of some recommendations made on combining some of the Boards and Commissions as there are numerous Boards and Commissions and the City Manager's Office and Department Heads have been looking at how to combine these Boards and Commissions to make them more

efficient. There are no changes in the number of Board members for the Board of Adjustment and will not be combined with anything as it is considered a “stand-alone” Board. There have been discussions about the Advisory Commission on Trees (ACT) being combined with the Planning Board. Therefore, if there are any Notices of Violation relative to the ACT, those would still come before the Board of Adjustment.

In regard to a question concerning additional Board members, Ms. Averett stated that she is unsure when new members will be appointed to serve on the BOA. Staff communications concerning appointments are underway.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Huffman, Mr. Jones and Mr. Strickland were acknowledged.

* * * * *

ADJOURN:

There being no further business before the Board, the meeting adjourned at 6:07 p.m.

Respectfully submitted,

Brian Pearce, Chair

Greensboro Board of Adjustment

BP/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

NOVEMBER 28, 2011

The regular meeting of the Greensboro Board of Adjustment was held on Monday, November 28, 2011 at 5:30 p.m. in the Council Chamber, Melvin Municipal Office Building. Board members present were: Brian Pearce, Chair, Frankie T. Jones, Jr., Cheryl Huffman, Scott Brewington, Bill Strickland, and Clinton Turner. Staff present were: Loray Averett, Zoning Services Coordinator, Fred Boateng, Jeff McClintock, as well as Jim Clark and Tom Carruthers, City Attorney's Office.

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 approval of the minutes from the October 24, 2011 meeting, as submitted, seconded by Ms. Huffman. The Board voted unanimously in favor of the motion (Ayes: Chair Pearce, Frankie Jones, Scott Brewington, Cheryl Huffman, Clinton Turner and Bill Strickland. Nays: None)

SWEARING IN OF STAFF

Loray Averett, Fred Boateng and Jeff McClintock were sworn in for their testimony for this meeting.

CONTINUANCES/WITHDRAWALS

None.

OLD BUSINESS

APPEAL OF NOTICE OF VIOLATION

(a) BOA-11-22: **2828-E BATTLEGROUND AVENUE** Tuggle, Duggins, and Meschan, Attorneys at Law representing the owners of My Secret Drawer, appeal a Notice of Violation concerning the land use violation that appellant cannot lawfully establish a Sexually Oriented Business at this location based on current ordinance requirements. This case was continued

from the September 26, and October 24, 2011 meetings. Section 30-8-10.4, Present Zoning-CM, Isaacs Place. **(NOTICE OF VIOLATION UPHELD)**

Loray Averett stated My Secret Drawer, through its counsel, appeals a Notice of Violation that a recently established Sexually Oriented Business located at 2828-E Battleground Avenue cannot lawfully establish a Sexually Oriented Business at this location based on current ordinance requirements. This case was continued from the September 26 and October 24, 2011 meetings. City of Greensboro Land Development Ordinance, Section 30-5-3.2 Appeal: Any owner or occupant who has received a Notice of Violation may appeal in writing the decision of any city employee charged with enforcement of the provisions of this ordinance to the Board of Adjustment (unless this ordinance expressly states that another board is responsible for hearing the appeal) within 15 days following the date of the Notice of Violation. The Board of Adjustment, or other designated board, must hear an appeal within a reasonable time, and it may affirm, modify, or revoke the Notice of Violation. In the absence of an appeal, the decision of any city employee charged with enforcement of the provisions of this ordinance shall be final. The C-M, Commercial Medium District is primarily intended to accommodate a wide range of retail, service and office uses. The district is typically located along thoroughfares in areas which have been developed with minimal front setbacks.

Jeff McClintock, Zoning Enforcement Officer, stated that this particular case came to his attention in the form of a complaint to the Zoning Administrator on June 20, 2011, from a citizen, Lisa Gerald. The complaint stated that a sexually oriented business was located at 2828-E Battleground Avenue. A check of the City's Privilege License records indicated that a business license was obtained for My Secret Drawer on May 8, 2011 and was applied for women's clothing/specialties store. The property was inspected on August 4, 2011 and the following observations were made: The first floor is a retail showroom with dressing rooms, the space is primarily lingerie and clothing items with some general novelties and party favors. The second floor is called the "Treasure Loft" in the store's advertising and is accessible by going out of the first floor showroom through glass doors and up the stairs. It has one main retail room and a few divided rooms adjacent with retail items displayed. The second floor main retail space has several racks of sexual devices and associated items that meet the definition of an adult book store. He was allowed to take photographs during his visit. These photographs are a representation of the whole store and all of the items that were observed are available for retail sale. Copies of these photos were included in the Board members' packets for review. He explained the content of these photos in detail. The Notice of Violation was issued on August 5, 2011. The use was determined to be in violation based on the current LDO per Section 30-8-10.8. The items documented in the photographs clearly meet the definition for an Adult Book Store or an Adult Video Store under the ordinance and is described as "instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities". This section of the ordinance is also included in the Board members' package. Because the use meets the definition, it is considered a sexually oriented business and must conform to the standards outlined in Section 30-8-10.4. The standards are also included in the information packet. This section also states, "All sexually oriented business uses are considered principal

uses". The property at 2828-E Battleground Avenue does not meet the requirements for the sexually oriented business because: This location is contiguous with residential zoning. The ordinance clearly states that a sexually oriented business is required to be 1,000 feet away from residential zoning; This location is a multi-tenant building with other principal uses by other tenants. The ordinance states "No other principal use may occupy the same building, structure, property or portion thereof, with any sexually oriented business". The compliance remedies outlined in this Notice of Violation are to cease operation of the sexually oriented business or remove the instruments, devices or paraphernalia that are designed for use in connection with specified sexual activities at this location.

Chair Pearce asked if there was anyone wishing to speak in favor of the request for an Appeal of the Notice of Violation.

Nathan Duggins, 100 N. Greene Street, attorney representing the applicant, was sworn in and stated that he wished to ask questions of Mr. McClintock. He asked if Mr. McClintock could define "principal business purpose" as that term is used in the Adult Book store definition in Exhibit # 9 which is presented as; "A commercial establishment which as one of its principal business purposes, offers for sale or rental, for any form of consideration, any one or more of the following ", how does the City define principal business purposes as it is used in that definition?

Jeff McClintock stated that he does not have the definition for that. Mr. Duggins stated that Mr. McClintock or no one at the City directed how "principal business purpose" would be defined. Mr. Duggins asked if the square footage of the violation paraphernalia or the sales volume was considered in determining whether or not it was a principal business purpose?

Mr. McClintock stated that he did not. Mr. Duggins then asked if the presence of the devices and the paraphernalia that he witnessed satisfied the definition of item "b", whether it be 1% of the sales of that store or 100% of the sale of that store, their mere presence makes it an Adult Book store and therefore, a sexually oriented business? Mr. McClintock stated that was correct.

Ms. Averett stated she wished to give some clarification on "principal business use", on Exhibit #10, Section 30-8-10, Item 5, states "restriction of uses on the same property or in the same building, there shall not be more than one (1) sexually oriented business in the same building structure or portion thereof. No other principal use may occupy the same building structure, property or portion thereof." A principal use is typically a property or business that operates on its own business or privilege license. In the LDO there are definitions for principal use, i.e. "It is a primary purpose or function that a lot or structure serves or is proposed to serve." That is Section 30-15-20. The determination made to staff is that this is the principal use in a multi-tenant building.

Mr. Duggins pointed out that for that to apply, there has to be an established sexually oriented business to be within the multi-use building and to be a sexually oriented business, they would have to be either an Adult Book store, an Adult Video store or Adult Arcade. The definition is

presumed and is unfounded. He suggests that this is not a sexually oriented business, and to the extent that it is, the statute is so vague that it does not meet the constitutional obligations that the ordinance has to the citizens of Greensboro. He pointed out that there are other businesses within the city that sell some of the same products and are not considered sexually oriented business and are not in violation. Some examples of this are Wal-Mart, CVS pharmacy, Spencer Gifts, etc. The violation is not based on sales volume, not based on square footage and is not based on what is being sold. In response to a question from Chair Pearce, Mr. Duggins stated that it is his contention that the ordinance is unclear and if you look at what a sexually oriented business is defined as, it says, "all sexually oriented business uses are considered principal uses" and these other stores sell products that are very similar to what his client sells in her store. If you use that definition, that means that Wal-Mart, Walgreens, Rite Aid, and Spencer's Gifts has, as one of its principal purposes, sexually oriented items and, therefore, they are in violation. He does not feel that is the purpose of the ordinance, but it demonstrates the absence of clarity. His client came to the City and asked if they would be able to operate this business. The purpose of the ordinance is to prevent a sexually oriented business from being beside a neighborhood.

Anna Frieberg, the applicant, 1014 Glenwood Avenue, was sworn in. Counsel Duggins presented additional photos for the Board members' review. Ms. Frieberg explained each photo in detail. It is her contention that they are mainly a lingerie store and that the upstairs portion of the business is where they have specialty shoes, novelty items and a bachelorette room for parties or "girls night out" parties. There is also a storage area on the 2nd floor. There were also photos of items sold at Walgreens, indicating some of the gels and lubricants that they sell in their store. There were also photos taken at Rite Aid, Spencer's Gifts and Wal-Mart, showing some of the sexually oriented items that they sell. In response to questions by the Board members, Ms. Frieberg stated that their primary business is lingerie that is a little more risqué and the novelties as a second addition of items sold. This location was chosen, specifically, so that the novelty items and shoes would be separate from the lingerie sales floor. She does not consider the store to be a sexually oriented business because their advertisements are geared toward the lingerie items and they do have novelties.

There was no one speaking in opposition to the request and the Public Hearing was closed.

Mr. Pearce stated that the questions at hand are really whether this is an Adult Book store or Video store and would be a sexually oriented business. He noted that in the definition of Adult Book store and Video store, the ordinance states, "A commercial establishment which has one (1) of its principal business purposes . . ." he feels that leads to the fact that you can have other business purposes and still be an adult book store or adult video store. He does not feel that the other establishments that sell a few of these types of items are not comparative to what is sold at this specific location. When he views Exhibit #6, it is his opinion that this is pornography and is a sexually oriented business.

Mr. Jones stated that in regard to BOA-11-22, 2828-E Battleground Avenue, the findings of fact are to be incorporated as stated. He moved that the Notice of Violation and the Enforcement Officer be upheld based on the fact that the property located at 2828 E Battleground Avenue is within the corporate limits of the City of Greensboro and subject to its jurisdiction and the application of its ordinances. At the time the Notice of Violation was issued, the property was occupied by the appellant. Exhibit #9 is Section 30-15-18, definition of sexually oriented business and Section 30-15-2, definition of Adult Book store/Adult Video store is in Section 30-8-10 and development standards for sexually oriented business concerning use property separations and restriction of uses on the same property in the same building of the City of Greensboro Land Development Ordinance, all apply to the property. The Board accepts the following testimony in evidence as true. The Board finds that one of the principal business purposes of My Secret Drawer is Adult Book store or Adult Video store. The greater weight of evidence presented shows that the appellant violated Section 30-8-10.4 of the City of Greensboro Land Development Ordinance. The lawful exception to the application of the ordinance does not exist.

Chair Pearce asked for a friendly amendment; There are other uses in the building where the premises are located and also that the property where the business is located is within 1,000 feet of a residential zoned property and that the exhibits be incorporated. Mr. Jones accepted the friendly amendment.

Ms. Huffman seconded the motion and the friendly amendment. The Board voted unanimously in favor of the motion. (Ayes: Brian Pearce, Frankie Jones, Jr., Scott Brewington, Cheryl Huffman, Clinton Turner and Bill Strickland. Nays: None)

NEW BUSINESS

VARIANCES

- (a) BOA-11-25: 1130 WESTRIDGE ROAD Steven D. Sides requests a variance from the requirement that utilities to detached accessory buildings be provided by branching service from the principal building. Variance: The applicant is proposing to have a separate electrical meter for a proposed detached garage. Section 30-8-11.1(G), Present Zoning-R-3, Cross Street-Westminster Drive. **(VARIANCE GRANTED)**

Loray Averett stated that the applicant is requesting a variance from the requirement that utilities to detached accessory buildings be provided by branching services from the principal building. The applicant is proposing to locate a separate electrical meter on a proposed detached accessory garage. The property is located at the southeastern intersection of Westridge Road and Westminster Drive and is zoned R-3 (Residential Single Family). The lot is approximately 1.39 acres containing approximately 60,718 square feet. The property contains a

dwelling. In April 2011 the applicant obtained a building permit for a detached accessory garage. The garage is under construction and is being built approximately 50 feet behind the house and 44 feet from the rear property line. The applicant's site drawing shows there is an existing power pole supply directly adjacent to his rear lot line, which is approximately 44 feet in distance. The distance to supply the power from the existing service on the house is 190 feet. The applicant has heavy landscaping and trees in the areas east and north of his building location back to the side of the house where the main meter is located. The applicant is aware that the detached garage is for accessory personal use only. The GIS aerial and recent field photos shows the lot is developed with existing detailed hardscapes, infrastructure, and heavy landscaping. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

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

Steve Sides, 1130 Westridge Road, was sworn in and stated that as part of the Westridge Neighborhood and Conservatoin Overlay, they do take interest in preserving the character of the neighborhood. The building has been designed with the same roof line, the same shingles, same matching brick as the original structure so it would be in harmony with the rest of the property. He would have to cut across an asphalt driveway and roots for some of the old existing trees would be damaged and possibly die. It would be more logical, to be able to save these trees, to hook up to the closer power pole at the rear of the property.

There was no one speaking in opposition to the request and the Public Hearing was closed.

Mr. Strickland stated that in regard to BOA-11-25, 1130 Westridge Road, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the Variance granted, based on the fact that there are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of the ordinance. If the applicant complies with provisions of the ordinance he can make no reasonable use of the property because it would be disruptive to existing landscaping and hardscaping that is already in place and it is more reasonable to run the power from a destination that is approximately 40 to 50 feet versus close to 190 feet. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because the area is an existing power pole that is located much closer to the garage than going to the opposite location. The hardship results from the application of this ordinance to the property because it would result in a lot of damage to existing landscaping and to the roots of existing trees, and the hardship is not the result of the applicant's own actions because the house and power pole already currently exist, and were there before the garage. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because of the proximity of the power pole. The variance assures the public safety and welfare and does substantial justice as the structure, as presented, does not present a safety hazard and would conform with the look of the neighborhood, seconded by Mr. Strickland. The Board voted unanimously in favor of the

motion. (Ayes: Brian Pearce, Frankie Jones, Jr., Scott Brewington, Cheryl Huffman, Clinton Turner and Bill Strickland. Nays: None)

- (b) BOA-11-27: 2923 WYNNEWOOD DRIVE** Peter Kotting requests a variance from a minimum side setback requirement. Variance: A single family dwelling that is currently under construction encroaches 2 feet into a 10-foot side setback. Section 30-7-3.2, Table 7-1, Present Zoning-R-3, Cross Street-Canaan Drive. **(VARIANCE GRANTED)**

Loray Averett stated that the applicant is requesting a variance from a minimum side setback. A recently constructed single family dwelling encroaches 2 feet into a 10-foot side setback. The property is located on the west side of Wynnewood Drive south of Canaan Drive and is zoned R-3. Records reflect on September 14, 2011, the applicant applied for a building permit and on September 23, 2011 received a building permit to construct a two-story single family dwelling. The site drawing showed the house met the side setback requirements. On October 4th and 17th, footing and foundation inspections were approved by the building inspector. On November 3, 2011 a foundation survey was done and it was discovered by the surveyor, the house was encroaching 2 feet into a side setback requirement. On November 4, 2011, the applicant immediately filed for a variance request. The general contractor also provided staff with written documentation that they would cease construction until the Board heard the case and a ruling is made. The plat is recorded as The Noles At New Irving Park, Phase 1B containing 14 lots. The applicant's lot is lot #9. The lot is rectangular shaped, is approximately 101 feet wide by 150 feet deep and contains 15,263 square feet. The property adjacent to the side lot line where the encroachment occurred is designated as common elements. It is not a buildable area. The areas of common elements are typically dedicated to the homeowner's association and are for benefit of all lot owners in the subdivision. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

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

Pat Damon, attorney representing the applicant, 314 N. Church Street, was sworn in and stated that he had some evidence to present to the Board for their review. The applicant is requesting a variance from the setback provisions contained in the development ordinance. The applicant would be required to remove the home that is now under construction and is substantially built at this point. Given the current stage of construction that would present some practical difficulties for the home owner and would present some unreasonable hardships because of the costs incurred. The cause of the setback violation is a surveyor error. The encroachment is adjacent to a lot line that is adjacent to a common area, thus the encroachment does not have an impact on adjacent properties.

Peter Kotting, the property owner, was sworn in and stated that he was made aware of this problem in early November and he immediately applied for the variance. He purchased the property and contracted with Mr. Johnson to build the house for him. The roof is now being

installed and it would be an encumbrance for him to have to tear the house down at this stage of construction.

Tony Johnson, the home builder, 3395 Tribridge Court, was sworn in and stated that he was made aware of the encroachment by Mr. Stutts and they looked to see if they could alter the building at that point. Then problem is that the front corner of the building is in compliance and as it goes toward the rear of the building, the property line is closer to the building. The house would be 2 feet out of square and that would be unacceptable. They met with staff and volunteered to stop construction until this matter is resolved.

Joseph Stutts, the surveyor, 300 E. Bessemer Avenue, was sworn in and stated that he is embarrassed to be before the Board because of an error in their survey of this property. The building permit was obtained and staking for the house was done so the foundation could be put in. Somehow during construction, the field crew twisted the house and the front corner of the house was placed where it was supposed to be and the back corner was placed 2 feet too close to the property line. He asked that the Board consider granting a variance for this property. There was no one speaking in opposition to the request and the Public Hearing was closed. Mr. Turner moved that in regard to BOA-11-27, 2923 Wynnewood Drive, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the variance granted based on the fact that 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 applying the ordinance would require removing the existing house. The hardship which the applicant complains results from unique circumstances related to the applicant's property because the surveyor accidentally shifted the rear corner of the location of the house by 2 feet. The hardship results from the application of this ordinance to the property because the variance will encroach only 2 feet into a 10 foot side setback. The hardship is not the result of the applicant's own actions because the surveyor made a mistake during the survey process. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the 2 foot variance would not impact the property or the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because the house abuts the common area which is dedicated to and for public usage. The common area would not be developed, seconded by Mr. Jones. The Board voted unanimously in favor of the motion. (Ayes: Brian Pearce, Frankie Jones, Jr., Scott Brewington, Cheryl Huffman, Clinton Turner and Bill Strickland. Nays: None)

- (c) BOA-11-28: **5403 GREENOUGH WAY** Maribel Ramos requests a variance from the minimum rear setback requirements. Variance: A proposed screened porch will encroach 7 feet into a 20-foot rear setback. Section 30-7-3.2 , Table 7-2, Present Zoning-R-5, Cross Street-Windlestraw Lane. **(VARIANCE GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed attached screened porch which will encroach 7 feet into a 20-foot rear setback. The property is located

on the south side of Greenough Way west of Fleming Road and is zoned R-5. The applicant is proposing to construct a screened porch over an existing rear deck. It will be 12 feet x 22 for a total square footage of 264 square feet. Records reflect the applicant applied for the permit on October 18, 2011. Staff did not approve the permit because the structure encroached into a minimum rear setback. On November 4, 2011, the applicant filed a request variance. No construction has begun on this site concerning this request. The property is described as The Cardinal, Phase A, Section 1, Lot #27-P. The Plat note states: "The areas designated as "Open Space" are not dedicated hereby for use by the general public, but are dedicated to the common use and enjoyment of the homeowners in the Cardinal." The Open Space located behind the applicant's lot is approximately 60 feet wide. The request is for the applicant to be 13 feet from the rear lot line, which is adjacent to the Open Space. The R-5, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential developments. 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 the request.

Maribel Ramos, the property owner, was sworn in and stated that she moved into this property last December and she would like to add a screened porch to the rear of the house. She has small children and they cannot enjoy being outside because of the mosquitoes. There is a greenway at the rear of the property and there is a creek there. Most of her neighbors also have screened porches on the back of their houses.

Joshua Sanes, 14 W. Main Street, Thomasville, NC, was sworn in and presented photos of the property for the Board members' review. He stated that when they applied for a building permit, they learned about the restrictions. There is an existing deck on the rear of the house and they just wish to enclose it. The footprint of the existing deck would not change and they are not planning to extend it any further.

John Roshambo, 14 Rosalee Lane, was sworn in and stated that he had nothing to add but is available to answer any questions the Board may have.

There was no one speaking in opposition to the request and the Public Hearing was closed.

Mr. Jones moved that in regard to BOA-11-28, 5403 Greenough Way, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the variance granted based on the fact that 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, she can make no reasonable use of the property because she would be unable to use her deck. The hardship of which the applicant complains results from the unique circumstances related to the property because the house is located near a creek which creates a mosquito problem and the existing deck footprint is only 13.3 feet away from the rear setback. The hardship results from the application of the ordinance to the property because the ordinance requires a 20 foot rear setback. The hardship is not the result of the

applicant's own actions because the existing deck was within the 20 rear setback. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it promotes the most enjoyable use of the applicant's property. The granting of the variance assures the public safety and welfare and does substantial justice because the variance would not result in any further encroachment into the rear setback, seconded by Mr. Strickland. The Board voted unanimously in favor of the motion. (Ayes: Brian Pearce, Frankie Jones, Jr., Scott Brewington, Cheryl Huffman, Clinton Turner and Bill Strickland. Nays: None)

SPECIAL EXCEPTIONS

- (a) BOA-11-29: 715 MOREHEAD AVENUE Martha Carter requests a Special Exception as authorized by Section 30-4-14.4 and 30-9-4.6. Special Exception Request: A proposed fence will exceed the maximum height of 4 feet by 2 feet within 15 feet of the public right-of-way adjacent to Fulton Street. Sections 30-4-14.4 and 30-4-4.6 The Historic Preservation Commission has recommended this Special Exception. Present Zoning-R-7, College Hill Historic District, Cross Street-Fulton Street. **(GRANTED)**

Loray Averett stated that the applicant requests a Special Exception for a proposed fence which will exceed the maximum height of 4 feet by 2 feet within 15-feet of the public right-of-way adjacent to Fulton Street. The property is located at the dead-end of Morehead Avenue south of Fulton Street. It is zoned R-7 and is located in the College Hill Historic District. Due to the recent construction of the Province multifamily project, the city had to remove the existing landscaping at the 715 Morehead Street property adjacent to Fulton Street. This removal was necessary to install new sewer utilities/easements to serve the new construction. The applicant and the City reached an agreement that the City would replace her landscaping and install a new fence along the Fulton Street right-of-way. The fence will be six feet tall, instead of the 4 feet as permitted. No portion of the fence will be placed in the Fulton Street right-of-way. There are no sight triangle concerns. Morehead Avenue has been terminated at the end of the applicant's property. New curbing, and sidewalk, along with a painted pedestrian crossing has been installed at the end of the terminus. At their October 27, 2011 meeting, the Historic Preservation Commission recommended in favor of the applicant's request for a Special Exception for the fence height to be 6 feet instead of 4 feet. The R-7 Residential Single-Family District is primarily intended to accommodate low to moderate density single-family detached residential developments. The overall gross density in R-7 will typically be 7.0 units per acre or less.

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

Mike Cowhig, Department of Planning and Community Development, was sworn in and stated that there was a privet hedge along the property line from the back corner of the house all the way to the front corner of the property and was probably 5 to 6 feet tall. There is a fence in the back yard but only the fence and privet hedge and some trees were removed. A landscape firm

looked at the property and came up with a proposal for the best way to provide some screening because the applicant lost all of the privacy on that side of the house. A 6 foot ornamental fence was suggested in combination with an evergreen screen. It is felt that the 6 foot fence would provide a sense of privacy because once this project was completed, there is a lot of foot traffic through the area. The extra height of the fence would give the applicant more privacy and security.

There was no one speaking in opposition to the request and the Public Hearing was closed.

Mr. Pearce moved that in regard to BOA-11-29, 715 Morehead Avenue, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the Special Exception granted based on the fact that 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 they can make no reasonable use of the property because the property has been changed by the City through a right-of-way taking out some landscaping that is being replaced with a similar type of landscaping. The hardship of which the applicant complains results from the unique circumstances related to the property as a neighboring development caused an impact on this property. The hardship results from the application of the ordinance to the property because this was caused by a neighboring property and is not the result of the applicant's own actions. The hardship is not the result of the applicant's own actions for the reasons previously mentioned. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the property has already received a Special Exception in the past for a similar fence. Granting of the Special Exception assures the public safety and welfare and does substantial justice for the reasons previously stated, seconded by Ms. Huffman. The Board voted unanimously in favor of the motion. (Ayes: Brian Pearce, Frankie Jones, Jr., Scott Brewington, Cheryl Huffman, Clinton Turner and Bill Strickland. Nays: None)

- (b) BOA-11-30: **1513 LEXINGTON AVENUE** Virginia Parker requests a Special Exception as authorized by Section 30-8-10.1(B) to allow a separation of 2,554 feet from one family care home (6 or less persons) to another family care home (6 or less person) when 2,640 feet is required. Present Zoning-R-5, Cross W. Florida Street. **(GRANTED)**

Loray Averett stated that 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 2,554 feet from another family care home, located at 2214 Atlanta Street, (6 or less persons) when 2,640 feet is required. This proposed home will be 86 feet too close. The lot is located on the eastern side of Lexington Avenue west of Freeman Mill Road. The applicant is proposing to locate a family care home (6 or less persons) at 1513 Lexington Avenue. It is 86 feet too close to an existing family care home located at 2214 Atlanta Street. Privilege license records reflect the existing family care home at Atlanta Street is in operation, along with required privilege license renewals. The proposed family care home and the existing family care home are

separated by Freeman Mill Road, which is classified as a thoroughfare, and numerous other streets and homes. 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 the request.

Virginia Parker, 2103 Chards Park Road, Pleasant Garden, NC, the applicant, was sworn in and stated that she has 3 special needs adults who volunteer in the community and they go to these volunteer facilities daily. They are very well behaved but need 24 hour supervision. These adults range in age from 25 to 30 years old. They currently live in apartments and live separately because the apartments are one-bedroom units. She currently has to pay about \$1,875 per month for their housing plus staffing. She owns the house on 1513 Lexington Avenue and would like to move these people into this house. The house is a three-bedroom house and would accommodate these clients.

There was no one speaking in opposition to the request and the Public Hearing was closed.

Mr. Pearce moved that in regard to BOA-11-30, 1513 Lexington Avenue, the findings of fact are to be incorporated as stated. He moved that the Enforcement Officer be overruled and the Special Exception granted as it is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the property is separated by a major thoroughfare, Freeman Mill Road and various other roads. The granting of the Special Exception assures the public safety and welfare and does substantial justice for the reasons previously stated, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion. (Ayes: Brian Pearce, Frankie Jones, Jr., Scott Brewington, Cheryl Huffman, Clinton Turner and Bill Strickland. Nays: None)

OTHER BUSINESS

Loray Averett stated that there is a training opportunity on December 7th from 4:00 until 5:30 p.m. in the 3rd floor GDOT Conference Room, for any the Board members, as well as the Zoning Commission, Planning Board or other Boards or Commissions who wish to attend. An e-mail with presentation information will be sent out this afternoon.

Loray Averett stated that there are no cases scheduled for the December meeting, so that meeting will be cancelled.

Jim Clark introduced Tom Carruthers who will be covering the BOA meetings in the future if he is appointed to be counsel for the Police Department.

Chair Pearce stated that he has spoken with the new Mayor and he emphasized the importance of new appointments to the Board and he assured him it would be taken care of.

Mr. Strickland stated that several months ago he asked about text amendments regarding handicapped ramps and asked if there has been any progress on that. Loray Averett stated

that staff had a meeting about that and there is a list of text amendments that is being prepared for Council. Staff has been asked to make a fuller assessment of text items, instead of bringing individual text amendments. Staff is looking at other cities and counties to see how they handle some of their language, as well.

Loray Averett stated that a calendar for the 2012 meetings dates has been given to the BOA members in paper and electronic format.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Trexler was acknowledged.

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ADJOURN:

There being no further business before the Board, the meeting adjourned at 7:38 p.m.

Respectfully submitted,

Brian Pearce, Chair

Greensboro Board of Adjustment

BP/jd

No meeting was held for Dec 19, 2011 because there were no cases filed.

Loray Averett /