

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

JANUARY 23, 2012

The regular meeting of the Greensboro Board of Adjustment was held on Monday, January 23, 2012 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, and Clinton Turner. Staff present were: Loray Averett, Zoning Services Coordinator, Fred Boateng 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

Ms. Huffman moved approval of the minutes from the November 28, 2011 meeting, as written, seconded by Mr. Jones. The Board voted unanimously in favor of the motion (Ayes: Chair Pearce, Jones, Brewington, Huffman, Turner. Nays: None)

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

None.

NEW BUSINESS

VARIANCE BOA-12-01: **319 MEADOWBROOK TERRACE** Eric and Susan Wiseman request a variance from the minimum side setback requirements. The applicant is proposing to attach a garage with accessory space to the rear of an existing attached carport/pool/guest house. The existing carport/pool/guest house is attached to a single family dwelling by a covered walkway. The structure encroaches into a 10-foot side setback. The carport portion encroaches 4.7 feet into the 10-foot side setback and the pool/guest house encroaches 8 feet-7 inches into a 10-foot setback. An attached garage addition is proposed to be located to the rear of the existing pool/guest house and will also encroach 8 feet-7 inches into the 10-foot side setback. Section 30-7-3.2, Table 7-1, Present Zoning-R-3, Cross Street-Sunset Drive. **(GRANTED)**

Loray Averett stated that the property is located on the western side of Meadowbrook Terrace south of Sunset Drive. The property is currently zoned R-3. The property contains a single family dwelling with an attached carport/pool-guest house and a detached in-ground swimming pool. Exhibit 3 contains case material from a previous BOA case that was heard and ruled upon at the February 27, 2006 meeting. This request was submitted by the owner, which at that time was Frank and Robyn Eiler, for a detached garage to be constructed to an existing pool/guest house. The site drawing that was submitted with this request noted a 10-foot separation between the house and the proposed garage. The variance was granted at the February 27, 2006 meeting. Exhibit 4 contains the record minutes for the February 27, 2006 case. Those minutes reflect the requested structure would be detached and placed 10 feet from the existing house. Exhibit 5 is a copy of the building permit that was approved by the City on June 19, 2006. The building permit reflects at that time the owner was Eric Wiseman. The permit application notes that the request was for a detached carport. Attached to the application is a site drawing that includes the BOA approval note and that the building would be 5.4 feet from the side lot line. On January 3, 2012, staff made a site visit to the property and observed that the carport and the pool/guest house were in conflict with the approved variance, which was for a detached structure. This attachment raised concern, based on the granting of the 2006 variance, which was for a detached structure. Based on LDO setbacks and other standards, attached and detached residential structures have different development requirements. By attaching the covered walkway/carport to the house, the structures become principal structures and are required to meet principal setbacks. Due to the size of the carport, whether attached or detached it was (and is) required to be 10 feet from the side lot line without an approved variance. The item that was heard and ruled upon at the February 27, 2006 meeting did not include attaching the proposed structure to the house.

On December 16, 2011, the applicants, Eric and Susan Wiseman, through their counsel filed a variance request to construct a garage which will encroach 8 feet-7 inches into a 10-foot side setback. This garage is proposed to be located 1.3 feet from the side lot line. During the following week, staff had more discussion with Mr. Isaacson and it came up in conversation that the existing carport that was granted a variance in 2006 was attached to the principal dwelling. Following additional discussion concerning the conflict, Mr. Isaacson confirmed with city staff that he would like for his applicant's request to be heard at the January 23, 2012 meeting. The proposed garage with a fitness room addition will contain approximately 2,314 square feet. It is proposed to be located to the rear of the existing pool/guest house. The pool/guest house is located 1.3 feet from the side lot line. The proposed garage would not encroach any further, and is proposed to line up with the existing pool/guest house structure. The access to the garage would be created by removing the lower portion of the guest house and driving through it to gain vehicular entrance to the proposed garage. Tax records reflect the lot contains approximately 42,250 square feet and that the original house was constructed in 1925. The property is somewhat rectangular shaped with a severe angle on the eastern (side) lot line. Attached to this report are two field photos that were taken on January 12, 2012. Also attached is a pictometry photo which shows nearby area properties. 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.

Henry Isaacson, 101 W. Friendly Avenue, attorney representing the applicant, presented handouts for the Board members' review. He stated that the applicants have lived in this property since 2006. He provided a brief history of the property, stating that the architect that designed the house and the pool guest house was Harry Barton, the same architect that designed the First Presbyterian Church in

Greensboro, the Guilford County Court House and the Chancellor's house at UNCG. The previous owners of the property were Dr. and Mrs. Ken Eiler, who purchased the property in 1997. Because of its architectural significance, they elected to do renovations from the ground up rather than demolish the house and start over with new construction. When the house was originally built in 1925, there were no side yard setbacks and the pool guest house was built very close to the north property line. Now that setbacks are part of the Ordinance, the pool guest house encroaches 8.7 feet into the 10 foot setback on the northern side yard. It is grandfathered and not in any violation. In early 2006, the Eilers applied for and received a variance from the Board of Adjustment in order to build a structure at the end of the driveway and in front of the pool guest house. Before it could be built. Dr. Eiler retired and sold the property to the Wiseman's later in 2006. The Wiseman's then built the existing carport in front of the pool guest house so that it would not block the architectural integrity of that structure. The building permit for that structure is available for review in the information packet provided by staff. The current owners would now like to build a garage in back of the pool guest house, which will allow them the security and safety of an enclosed structure and will not detract from the architectural integrity of the property. To do so and place it in the most practical and convenient location, they have applied for the variance before the Board today. The request is for 8 feet, 7 inches into the 10 foot side yard setback which is now in effect. This is the same amount of encroachment as the existing pool guest house, which was built in 1925. A site plan was filed with the City and shows the exact location, not only of the proposed garage, but also the existing carport, pool guest house and driveway. There have been a number of break-ins in this neighborhood, including vehicle break-ins on each side of this property. An enclosed garage will allow the family to be substantially secure. If the variance is allowed, the garage can be constructed in alignment with the existing driveway, carport and pool guest house. To locate the garage in another place on the property would cause several hardships. A site plan shows how impractical it would be to locate the garage outside of the 10 foot side yard setback and would create an awkward situation entering and existing the garage. The applicant is trying to avoid losing the existing large hardwood trees on the property.

Larry McRae, 425 Draden Park Road, Kernersville, NC, was sworn in and stated that the original intent of the design of the carport was to allow a structure that allowed access to the rear yard and the pool guest house without having a massive garage in front of it. The intention is to maintain the integrity of what is already in place and to keep the views of the existing structures open. Mr. McRae answered questions asked by the Board members.

Eric Wiseman, the applicant, was sworn in and stated that he hopes to clear up some of the confusion on this request. There is quite a large opening at the pool guest house for light to get through and for air flow in that area. When a garage door is in place, it will be a standard 9 foot garage door. By having a closed structure there will be more security for the family in that area.

Robin Tyler, 403 Meadowbrook Terrace, was sworn in and stated that he owns the property directly to the north of the applicant's property and have a shared driveway. He and his wife have looked at the plans and feel it makes a great deal of sense from an alignment standpoint. They support this request.

There being no one speaking in opposition to the matter, the public hearing was closed.

Discussion of the Board Members:

Mr. Jones stated that the Board is treating alternatives as the garage and back yard attached to this building or enclosing the carport does not appear to be the options the property owners are looking at. It is his opinion that the owners want to attach a garage or build a garage further in the back yard to align with the driveway. Enclosing the carport is not being considered. He stated that he would be inclined to grant the variance. Ms. Huffman stated that she is concerned that they would still be

encroaching in the setback. Mr. Jones pointed out that there is a 6 foot slope to contend with in the area where the garage is proposed. Ms. Huffman stated that she is still concerned that if the main idea is to preserve the historic value of the home, she doesn't feel that adding concrete and buildings would preserve the historic value. Mr. Brewington stated that he agrees with Mr. Jones' arguments and he would also be inclined to grant the variance. Chair Pearce stated that he, too, would be inclined to grant the variance but he asked staff to clarify their comments about the covered area. Mr. Averett stated that the house was a detached structure and met the setback requirements. The pool guest house was a detached structure and a variance was granted for the detached structure and when it was all attached together, the principal structure got included and became part of the setback, as well and is not in the original request.

Ms. Huffman moved that in regard to BOA-12-01, 319 Meadowbrook Terrace, based on the findings of fact, moved that the Zoning Enforcement Officer be upheld and the variance denied based on the following: if the applicant complies with the provisions of the ordinance, they can make reasonable use of the property because they have enough space in the area to secure the vehicles as they stated and want to, the hardship of which the applicant complains does not result in unique circumstances related to the applicant's property because there is a variance allowed on the property that utilized the setback that works best for them today, prior to any setbacks being in place back in 1925. The hardship does not result from the application of the ordinance to the property because there is ample space available regardless of the shape of the lot itself. The variance is not in harmony with the general purpose and intent of the ordinance and does not preserve its spirit because it encroaches into the setback that has been established after the building of the home. The granting of the variance does not assure the public safety and welfare and does not do substantial justice because of all the reasons stated previously, seconded by Mr. Turner.

Counsel Carruthers stated that the Board could vote to amend the motion to have it deny the applicant's request with the exception of the 2nd and last sentence, which would then correct the 2006 variance concerning the existing attached carport and guest house. The attached garage addition which is proposed to be located to the rear of the existing pool guest house will also encroach 8 feet 7 inches into the 10 foot setback. That would specifically deny the request as to the addition, but not deny the request as to the existing structure that is already attached.

Chair Pearce stated that the problem is that they deserve a vote on purely what they are asking for. Mr. Brewington stated that he agreed. Counsel Clark stated that the appropriate thing to occur, before the vote occurs, is for an amendment to the motion to be made to allow the existing attachment.

After further discussion, Ms. Huffman withdrew her original motion, seconded by Mr. Turner.

Chair Pearce moved that in regard to BOA-12-01, 319 Meadowbrook Terrace, moved to grant the variance with inclusion of the variance request, as written in the variance description, with the exception of the 2nd sentence and the last sentence, the Board reserves the right to amend the variance. In support of the variance, the Board finds that there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicants comply with the provisions of the ordinance they can make no reasonable use of the property because this is construction that was already built in compliance with a building permit that was issued by the City of Greensboro. The hardship of which the applicant complains results from unique circumstances related

to the applicant's property because the structure was built as permitted by the building permit issued by the City of Greensboro. The hardship results from the application of the ordinance as the structure was already built as permitted by a building permit issued by the City. The hardship is not the result of the applicant's own actions because the applicant relied upon the building permit that was issued to them. The variance is in harmony with the general purpose and intent and the ordinance and preserves its spirit because the ordinance permits people to be able to rely upon the City's staff. The granting of the variance assures public safety and welfare and does substantial justice because it, again, allows individuals to rely on building permits issued by the City, seconded by Mr. Brewington. The Board voted 5-0 in favor of the motion. (Ayes: Chair Pearce, Jones, Huffman, Brewington, Turner. Nays: None.)

Chair Pearce stated that the Board would now hear a motion to grant the variance with respect to clarifying it.

Mr. Jones stated that based on the findings of fact, moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance and if the applicant complies with the provisions of the ordinance, they can make no reasonable use of their property because they will be unable to safely harbor their vehicles and safely navigate to their proposed garage. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because the property was constructed in 1925, prior to the implementation of any side setback requirements and because of the unique shape of the property. The hardship results from the application to the property because the property was built prior to implementation of the ordinance and the hardship is not the result of the applicant's own actions because the property was built prior to the implementation of the ordinance and the applicant did not construct the house. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it maintains the view of the property and it promotes the safe harboring of the vehicles and the safe construction and navigation on the property. The granting of the variance assures the public safety and welfare and does substantial justice because it ensures the safety of the drivers on the property and provides the owners the opportunity to safely harbor their vehicles, seconded by Mr. Brewington. The Board voted 4-1 in favor of the motion. (Ayes: Pearce, Jones, Brewington, Turner. Nays: Huffman.)

ACKNOWLEDGEMENT OF ABSENCES

The absence of Mr. Strickland and Ms. Trexler was acknowledged.

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ADJOURN:

There being no further business before the Board, the meeting adjourned at 6:51 p.m.

Respectfully submitted,

Bryan Pearce, Chair

Greensboro Board of Adjustment

BP/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

FEBRUARY 27, 2012

The regular meeting of the Greensboro Board of Adjustment was held on Monday, February 27, 2012 at 5:30 p.m. in the Council Chamber, Melvin Municipal Office Building. Board members present were: Brian Pearce, Chair, Cheryl Huffman, Scott Brewington, Bill Strickland, and Clinton Turner. Staff present were: Loray Averett, Zoning Services Coordinator, David Ortega, GDOT 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

Ms. Huffman moved approval of the minutes from the January 23, 2012 meeting, as submitted, seconded by Mr. Turner. The Board voted unanimously in favor of the motion (Ayes: Chair Pearce, Bill Strickland, Scott Brewington, Cheryl Huffman, Clinton Turner. Nays: None)

SWEARING IN OF STAFF

Loray Averett and David Ortega were sworn in for their testimony during the meeting.

CONTINUANCES/WITHDRAWALS

None.

NEW BUSINESS

VARIANCE

BOA-12-02: 677 CHESTNUT STREET Lindley Heights Apartments, Inc. (Minas Dascalakis) request a variance from a development standard that primary access must be taken from a thoroughfare or collector street for a cemetery. Section 30-8-10.2(C)2, Present Zoning-RM-18, Cross Street-Sunset Drive.

Loray Averett stated that the applicant is requesting a variance from a development standard that primary access must be taken from a thoroughfare or collector street for a proposed cemetery. Chestnut Street is classified as a local residential street. The property is located west of Chestnut

Street, east of N. Church Street, and north of Leftwich Street. The applicant is proposing to combine and develop six parcels into a cemetery. Cemeteries are permitted in any zoning district with development standards. The vast majority of the property is zoned RM-18 and a small portion to the south is zoned R-5. The combination of the six lots will total approximately 5.923 acres. The lot has frontage along the North Church Street property line, which is classified as a thoroughfare street. This portion of the property contains railroad tracks and railroad easement areas with restrictive vehicular access. The access to the property must be taken from Chestnut Street. The RM-18 zoning district for this property will allow residential density permitted by right for about 105 dwelling units. Exhibit 6 contains average trip generations that show vehicular comparisons between the proposed cemetery and multifamily development. Exhibit 5 is a map that shows the vehicular distance to the nearest collector/thoroughfare street, which is Yanceyville Street. The distance from the proposed driveway location to Yanceyville Street is approximately 1,337 feet. 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.

Demetri Dascalakis, the applicant, 1101 N. Elm Street, was sworn in and stated that he represents Lindley Heights Apartments, Inc., a North Carolina Corporation which is owned by his family. They wish to obtain a variance, because of an interpretation by the staff of the Greensboro Department of Transportation. They are asking the Board to interpret the classification of Chestnut Street as a collector street. The development ordinance states, "several factors were evaluated when designating existing and future streets as collectors." Among those are: existing designations, existing and future land uses, the degree of connectivity between local streets and major and minor thoroughfares, and the impacts on the environment, either natural or cultural. This property is unique and deserves special consideration for a variance from the development standards. The Dunleith estate was built in the mid-1800s for the prominent family of Robert P. Dick. Judge Dick served on the NC Supreme Court and established one of NC's earliest law schools. A historic marker is located on North Elm Street. A photo of the marker was submitted as evidence. The center piece of the estate was the Dunleith mansion. The original grounds of the estate encompassed more than 100 acres and included most of Fisher Park. Drawings of the estate and their ornate gardens which surrounded it were also submitted for review. The home and grounds were designed by a prominent Philadelphia architect and the building plans and landscape design are archived at NC State University. In the 1960s, the Dunleith estate was purchased by the Boyles and Stern families and under their ownership the Dunleith mansion was demolished. His family purchased the property approximately 35 years ago and the property was zoned RM-26 and they intended to build a 144 unit apartment complex. They worked with the City to gain necessary approvals and there was no legal reason the property could not be developed for what it was zoned for. The Aycock Historic District was then established to specifically stop this development. The neighborhood was in opposition of multi-family development at this site. During the past 35 years, the family has attempted to develop the property for what it is zoned, they have hired architects with extensive knowledge of historic design and submitted countless building and landscape site plans. They have spent over \$350,000.00 on engineers, architects and consultants to try and develop this property. The key element to getting the design approved is the support of the neighborhood. All designed must be approved by the Greensboro Historic District Commission. They have never had a site plan approved by the

Commission because the neighborhood is generally against any type of multi-family development at that site. They have gone to extraordinary lengths and expense to get a project, any project, approved. This Board can grant a variance based on special circumstances. Detailed plans which meet the development guidelines have been submitted for 8 consecutive months, only to be denied. Studies have been made which specifically measured every windows, doors, porches, building typology, street orientation, building heights, et cetera and to his knowledge, no other developer has had to conduct such a study. They were also forced to conduct an archeological dig on the site to determine if any bodies or artifacts were located on the site. There was no evidence to justify such a dig, other than it was required by Board members of the Historic Commission in order to gain their approval. They were also forced to have an arborist and horticultural expert conduct a survey to determine if there was any endangered species of plant life on the site. No other development have ever been forced to conduct these types of costly and unnecessary studies. These are only a few examples of this type of discrimination against development of this site.

The specific project before the Board at this time is the proposed Dunleith Cemetary which was conceived as alternate land use for this site. New Orleans, LA, Charleston, SC and Savannah, GA have prime examples of center-city cemeteries and how they are incorporated into historic neighborhoods. This proposal allows a creative use of this site, that would not only be economically viable, but an asset to the neighborhood and to the city. He has met with the Planning Department staff and has been told that the property is zoned correctly and that all the initial criteria has been met, regarding development standards. An expert in cemetery design has been hired to produce an initial sketch which would meet all local and state regulations. The designer worked with the Planning Department to ensure that the project met all these regulations and standards. After those initial meetings, the designer informed him that the Planning Department required a detailed site plan in order to grant their approval. He can not approach the Historic Commission without Planning Department approval. Once the development concept was approved, it was critical to gain neighborhood support. He has met with the Neighborhood Association and this plan was well-received. After \$10,000.00 in design work, he found out that this proposed project could not progress because the Planning Review Committee, after further review, determined that the change collector street interpretation was a problem. The staff interpretation could have come a long time before this design work and expense. Upon reviewing the specific language and as defined by the City, a collector street is a street which links a thoroughfare to local streets and in this case, Chestnut Street links Heritage, Leftwich and Brandon Streets to Yanceyville Street. The map indicating these streets in the Historic Aycock neighborhood was submitted for review. In addition, the Dunleith site has approximately 800 feet of frontage on Church Street and Church Street is a thoroughfare. Access is limited by the railroad tracks, which is a practical difficulty. Chestnut Street is designed as a collector street and is to service Murrow Boulevard. The site also has frontage on Leftwich Street, which until recently, accessed Church Street. In summation, he asked that the Board grant the requested variance because the Dunleith estate is zoned properly, has neighborhood support, is economically viable and fits the criteria required for a variance.

Burt Mandermann, 719 Fifth Avenue, was sworn in and stated that he is the current president of the Aycock Neighborhood Association and explained that this property has been extremely frustrating. He hopes to see something good happen with this property. The Association was very much against the apartment project and subsequent projects have not been very well accepted. The current project

seems to be a very unique project that is acceptable by the neighborhood association. They feel that an apartment complex or any kind of multi-family project would increase traffic on the collector street, making the neighborhood very unsafe for the children that live there. The neighborhood board voted to support this project for the cemetery plan at their last meeting.

Jacob Jaloski, 682 Chestnut Street, was sworn in and stated that he lives directly across the street from the subject property and he supports this plan for a cemetery on this property.

Jonathan Wallace, 674 Chestnut Street, was sworn in and stated that he is also in support of the plan for a cemetery for this property.

Ester Waltbee, 680 Chestnut Street, was sworn in and stated that she also lives right across the street from the property and she also supports this request. She is very grateful to the family for allowing them to have a community garden for the past 4 years. Although they will miss having the community garden, they realize that it is better to have a cemetery on the property instead of an apartment complex.

Effie Demetriatis, 301 W. Market Street, was sworn in and stated that her family would not be before the Board without the neighborhood support and she really appreciates that they agree that this plan is best for the neighborhood. She asked the Board to grant the variance so they can move forward with this project.

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

Chair Pearce stated that he feels the family has gone above and beyond trying to find a use that will make the neighbors happy.

In response to a question by Ms. Huffman, the public hearing was re-opened and David Ortega, GDOT, stated that the existing roads will be sufficient for any traffic related to the cemetery project. He does not foresee any traffic issues because of the cemetery project being completed in this area.

Mr. Brewington moved that in regard to BOA-12-02, 677 Chestnut Street, that the findings of fact be incorporated into the record. Based on these findings he moved that the Zoning Enforcement Officer be overruled and the variance granted because there are practical difficulties or unnecessary hardships that result from the carrying out of the strict letter of this ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of the property as testimony has been presented that indicates the history that the applicant and his family have tried to provide a reasonable development of this property. Testimony has also been presented with the history of denials through the Neighborhood Association and Historic Preservation Commission and the difficulties that were presented with this property and goes from a geographic stand-point and from a development use stand-point. Given those difficulties, it is felt that there are practical difficulties present. The hardship of which the applicant complains results from the unique circumstances related to this property because there have been several barriers including railroad tracks and the way the property is land-locked in presents certain barriers and the most significant of that would be the approval of the Neighborhood Association and that is certainly unique is the way this property is having to seek those approvals. The hardship results from the application of the ordinance to this property because without the granting of the variance, it would not make this

particular project feasible and testimony has been presented that by granting the variance, it would not result in a significant increase in traffic in the neighborhood. The hardship is not the result of the applicant's own actions because as previously mentioned, this is in the Aycock Historic District and that was not the choosing of the applicant. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because members of the Neighborhood Association have shown their support for the project and the applicant has presented evidence and testimony that the design would be in keeping with the harmony of an urban cemetery and feel that it would blend into the neighborhood and there is neighborhood support of this plan. The granting of the variance assures the public safety and welfare and does substantial justice because, as has been presented in testimony, this does not seem to present a significant increase in traffic flow and as a result, does not present a hazard to the neighborhood, seconded by Mr. Turner.

Chair Pearce asked that a friendly amendment be added, in regard to hardships, he asked that it be stated that neighborhood approval is not necessary. Mr. Brewington and Mr. Turner accepted the friendly amendment. The Board voted unanimously in favor of the motion to grant the variance as requested.

OTHER BUSINESS

In response to a question by Chair Pearce regarding new appointments to the Board, Loray Averett stated that staff is still asking City Council for appointments and are told to be patient.

ACKNOWLEDGEMENT OF ABSENCES

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

ADJOURNMENT

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There being no further business before the Board, the meeting was adjourned at 6:18 p.m.

Respectfully submitted,

Brian Pearce, Chairman

Greensboro Board of Adjustment

BP/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
MARCH 26, 2012**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, March 26, 2012 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, Bill Strickland, and Clinton Turner. Staff present were: Loray Averett, Zoning Services Coordinator, Fred Boateng, 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

Ms. Huffman moved approval of the minutes from the February 27, 2012 meeting, as submitted, seconded by Mr. Jones. The Board voted unanimously in favor of the motion (Ayes: Chair Pearce, Bill Strickland, Frankie T. Jones, Jr., Cheryl Huffman, Clinton Turner. Nays: None)

SWEARING IN OF STAFF

Loray Averett and Fred Boateng were sworn in for their testimony during the meeting.

CONTINUANCES/WITHDRAWALS

None

Loray Averett pointed out that there were some special guests at today's meeting. Some members of Boy Scout Troup 109 is working on a civil project and wanted to see City government at work. They were welcomed to the meeting.

NEW BUSINESS

SPECIAL EXCEPTION

BOA-12-03: **2511 FONTAINE ROAD** Gerald D. Ward, II requests a Special Exception from a development standard that allows chartered homes to have a maximum of up to six (6) residents. The applicant is requesting for this location to be allowed to have seven (7) residents. Section 30-8-10.1(O)2, Present Zoning-R-5, Cross Street-Cheltenham Boulevard. **(GRANTED)**

Loray Averett stated that the applicant, through his attorney, Greg Heafner, requests a special exception to allow 7 individuals to reside in a chartered home instead of 6 as permitted by the Land Development Ordinance. Staff worked with the City Legal Department and other staff to draft a Land Development Ordinance text amendment concerning the number of persons permitted in a chartered home and a due process to request to exceed the maximum number of persons permitted. The result was a special exception process with standards applicable to the impacts relative to charter homes. This amendment was approved by Council on March 6, 2012. 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.

Counsel Jim Clark stated that there is additional information he wished to provide for the Board. He presented a handout to the Board members for their review and stated that this will be Exhibit 10. The handout is an expert witness report for litigation between the City of Greensboro and Oxford House. The report comes from Dr. John Major and specifically addresses the therapeutic needs of Oxford House to occasionally deviate from the number of clients housed in their facility. At the bottom of page 5, there is an indication that an inspection was performed at the Fontaine Road facility and the information derived from that was taken. Dr. Major has access to a rather large data set concerning Oxford Houses all over the nation and the levels of performance found related to the number of occupants within the houses. Then on page 8, the last 2 paragraphs indicate the logistical information. The most important aspects of this report shows that follow-up analysis of variance tests reveal that residents who live in Oxford Houses with 8 or more residents reported significantly lower levels of depression, lower levels of both criminal behaviors and aggressiveness than residents who lived with less than 8 residents. The request before this Board is the increase in residents. There are specific data sets that support that the total number of days living in Oxford Houses correlate to reduced numbers with regard to aggressive behaviors and depression. A previous case that came before the Board with Oxford House was a Notice of Violation. The matter before the Board today is a request for a Special Exception. After the Notice of Violation appealed, which was not upheld, because at that time the Board was working under a violation of the family provision, with 4 or fewer residents. Oxford House proceeded with litigation with regard to a violation of the federal Fair Housing Act and Fair Housing Amendments Act and that is on the basis that people that are recovering from alcoholism or drug use fit the definition of handicapped people and they are

entitled, as far as chartered homes and are people that are working in a home like an Oxford House model which is self-sustaining and self-supporting and is located in very specific areas to try and make sure there is good access to public transportation and various things, such as community resources, which are needed for program support. The City undertook two different actions; the first action was passing a chartered home provision that accommodates chartered homes by establishing that there can be 6 or fewer people in single family residential location, 9 or fewer in multi-family homes. There are 16 or 17 Oxford House homes in Greensboro. Additionally, after evaluating the information that has been presented with this report, there is an additional and earlier report that speaks to Oxford Houses, in general, with regard to 8 residents as a model for a reliably self-sustaining Oxford House and with the information staff has been presented, the City agreed that the City would present this and make a positive recommendation provided under the Special Exception.

In response to a question by Mr. Strickland regarding the number of residents in the other Oxford House homes in Greensboro, Counsel Clark stated that he does not have specific information on each house, but due to people coming into the program and other people leaving the program the numbers fluctuate, but on an average, there are usually 7 residents in the single family homes. Those numbers would be higher in multi-family homes.

Counsel Clark also stated that Counsel Carruthers is the Counsel for the Board and he is only at this meeting in an advisory role.

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

Greg Heafner, attorney representing the applicant, 1510 Twisted Oak Drive, Chapel Hill, NC, was sworn in and stated that he had a couple of handouts to present to the Board pertaining to their request. Oxford House is asking for a Special Exception under the recently adopted text amendment relating to a chartered house which currently allows 6 people at this location and the Special Exception request is for an increase to 7. He will not go over the same arguments that were presented at the last meeting he attended for Oxford House, but he would be glad to go into more detail, if the Board members feel it is necessary. The reasons that Oxford House feels they have a need for 1 more person is the economic need, a therapeutic need and the practical need for a maximum capacity to receive federal funding. Most of the residents have a stay of, on average, 18 months. Those vacancies may not be filled immediately and it may take several weeks or months to fill them. If they lose some of the residents at or near the same time, it could become a hardship on them to meet their requirements. Dr. Majors addressed the need, in his report, that the home works more efficiently economically and therapeutically with 7 or 8 residents. In response to a question by Mr. Turner, Mr. Heafner stated that most of the residents do not have vehicles and do not drive, therefore, extra vehicles and parking at the residence is not a problem.

In response to a question by Ms. Huffman, Loray Averett stated that according to Police Department records, there have been no complaints in the 4 ½ years this house has been in operation.

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

Ms. Huffman moved that in regard to BOA-12-03, 2511 Fontaine Road, the Code Enforcement Officer be overruled and the Special Exception be granted based on the following: the Special Exception may be granted by the Board if evidence presented and the applicant is able to reach the following conclusions: The Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it has met the three new ordinances provided by the City, wherein, Item A is reasonably necessary and related to meeting the therapy needs of the resident persons and will not otherwise result in impairment to them by residing in the community. We believe that has been supported by the report submitted by Dr. John Majors, referenced as an Exhibit. Item B does not present an unreasonable risk of harm to the health and safety of the resident persons residing in the chartered home, seeking Special Exceptions by ensuring the house and structure meets the minimum code requirements necessary to support the total number of proposed residents, as provided by the bedroom space requirements for the City of Greensboro and exceeds the zoning requirements. Item C does not result in significant adverse impacts to adjacent properties or the neighborhood, wherein a chartered home is located, as they are in harmony with their neighbors and they are supporting the neighborhood. The granting of the Special Exception assures the safety and welfare and does substantial justice because it is a supporting residential use that is compatible with the existing neighborhood, seconded by Mr. Turner. The Board voted unanimously in favor of the motion to grant the Special Exception. (Ayes: Chair Pearce, Bill Strickland, Frankie T. Jones, Jr., Cheryl Huffman, Clinton Turner. Nays: None)

OTHER BUSINESS

None.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Mr. Brewington and Ms. Trexler was acknowledged.

Chair Pearce again thanked the Boy Scouts for coming out and observing the meeting this evening.

* * * * *

ADJOURNMENT

There being no further business before the Board, the meeting was adjourned at 6:16 p.m.

Respectfully submitted,

Brian Pearce, Chairman
Greensboro Board of Adjustment

BP/jd

GREENSBORO BOARD OF ADJUSTMENT

MAY 29, 2012

A meeting of the Greensboro Board of Adjustment was held on Tuesday, May 29, 2012 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, Scott Brewington Frankie T. Jones, Jr., Frank Forde and Cheryl Huffman. Staff present was: Loray Averett, Zoning Services Coordinator, Jeff McClintock, and Mike Cowhig, as well as 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 twenty (20) minutes to present evidence.

APPROVAL OF MINUTES

Ms. Huffman pointed out a correction of the March 26, 2012 minutes. On Page 4, 5th sentence down should read, "intent of the ordinance preserves its spirit because it has met the three new ordinances". Ms. Huffman moved their approval as corrected, seconded by Mr. Jones. The Board voted unanimously, in favor of the motion.

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

Loray Averett stated that there has been a request for BOA-12-07, 200 East Newlyn Street to be continued.

Chair Pearce asked that he would recuse himself from this matter as he has spoken to the applicant about something related to this matter, and he has a conflict. Mr. Jones moved to recuse Chair Pearce from this matter, seconded by Mr. Brewington. The Board voted 5-0-1 in favor of the motion to continue. (Ayes: Brewington, Jones, Turner, Huffman, Forde. Nays: None. Abstained: Pearce.)

Vice Chair Jones asked the applicant or anyone wishing to speak on this matter to come forward.

Jeffrey Hyde, 200 E. Newlyn Street, asked that this item be continued to the June Board of Adjustment meeting. His counsel could not attend today's meeting.

Vice Chair Jones asked if there was anyone wishing to speak in opposition to the continuance.

George Phillips, 111 Massey Street, was sworn in and stated that when Mr. Hyde remodeled this house the first thing he told him was that this area when through a rezoning fight last year.

Vice Chair Jones stated that this was not the time to receive testimony. The applicant is only asking for a continuance to the next meeting and the speaker should only give comments related to a continuance.

Mr. Phillips stated that he does not think the City should allow it as Mr. Hyde is running a business out of his house.

Vice Chair Jones stated again, that this was not the time for testimony, but only objections to a continuance.

Phillip Howard, 205 E. Newlyn Street, was sworn in and stated that the only opposition he has is that this would cause a lot of traffic and there are concerns about that.

Vice Chair Jones again stated that this was not the time for testimony, but only objections to a continuance.

Mr. Brewington moved to continue the matter to the June 25, 2012 meeting, seconded by Mr. Turner. The Board voted 5-0-1 in favor of the motion to continue. (Ayes: Brewington, Jones, Turner, Huffman, Forde. Nays: None. Abstained: Pearce.)

Chair Pearce returned to the podium as Chair.

NEW BUSINESS

VARIANCE

- (a) BOA-12-04: **3 SAWMILL COURT** Debra and Bryan Brendley request variances from the minimum rear setback requirements. The applicant is proposing to add two additions to the rear of the existing dwelling. *Variance #1*: Proposed addition "A" will encroach 15.1 feet into a 25-foot rear setback. *Variance #2*: Proposed addition "B" will encroach 0.8 feet into a 25-foot rear setback. Section 30-7-7.2(E), Present Zoning-PUD, Cross Street-Adams Farm Parkway. **(BOTH VARIANCES GRANTED)**

Loray Averett stated that in case BOA-12-04, #3 Sawmill Court, the applicant is requesting a variance for two additions to be attached to the rear of the existing house. Proposed addition "A" will encroach 15.1 into a 25-foot rear setback and proposed addition "B" will encroach 0.8 feet into the 25-foot rear setback. The property is located at the north end of the Sawmill Court cul-de-sac and east of Adams Farm Parkway. The lot is zoned PUD (Planned Unit Development). The applicant is proposing to construct two separate rear additions identified as addition A (bonus room) and addition B (bathroom/laundry space). Records reflect the applicant applied for a building permit on March 16, 2012. The applicant's site drawings have changed slightly since that submittal. Staff did not approve the permit because of the encroachments. No construction has begun on this site concerning this request. The property is described as Adams Farm Winterberry, Lot 14, Plat Book 87, Page 140. The Plat note states: "Common area and open space shown hereon is expressly not for use by the general public, but is to be conveyed to Adams Farm Community Association Inc. The Open Space located behind the

applicant's house ranges in width from 24 feet to approximately 30 feet. *PUD-Planned Unit Development*, is primarily intended to allow a diverse mixture of residential and/or nonresidential uses and structures that function as cohesive and unified projects.

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

Bryan Brendley, the applicant, was sworn in and presented photos of the site. He stated that at the rear of the house is a 13' x 20' deck that was built before they took possession of the house in 2004. They have recently decided that they would like to convert that deck into a bonus room and a 4-season room for the family. They have discovered that an extra 7 feet would be necessary to complete the additional space because of the setback lines. They feel that this renovation and addition would help them make better use of the house as a dwelling. The proposed addition will be a one-story, A-frame addition and the smaller addition where the bathroom is will be located in line with the part of the kitchen that protrudes from the garage area.

Ms. Huffman asked if any trees would be removed as a result of the addition to the house.

Mr. Brendley stated that only one small maple tree would have to be removed.

Mr. Forde asked if the applicant has spoken with the neighbors. Mr. Brendley stated that he has spoken with the neighbors and they have not indicated any opposition.

Mr. Brewington asked the applicant to describe his lot in regard to the shape and topography.

Mr. Brendley stated that the lot presents some unique circumstances as they wanted to expand the house with their growing family but they could not encroach on the sides. The photographs show the left and right sides of the house. The widest part of the lot cuts from the control corner down at a slight angle which is where they wanted to construct the bonus room. That is the most reasonable placing of the addition.

David Flanders, 2517 Fairway Drive, was sworn in and stated that he will be the builder. The kitchen and bath location of the existing house is pretty cramped and is not open at all. The placement of the proposed addition is where they will need a variance.

Loray Averett stated that the GIS aerial and the scale for the measurements indicate that the proposed placement for the addition would be the least intrusive adjacent to the common area.

There being no opposition to the request, the public hearing was closed.

Mr. Turner stated that he is concerned about this being too close and may create a problem in the future.

Mr. Forde asked Ms. Averett to repeat her previous comments about the common area.

Loray Averett stated that because of the varying width, the common area is wider as you go further west across this lot. Staff has determined that the note on the plat, indicates that a 25 foot setback is required unless there is 30 feet of common space or open space directly behind the lot. The 30 feet of open space would have to be behind the lot and not just a portion of the lot. The common space behind the property starts at around 24 feet and then further to the west, it widens out to 30 feet of common space directly behind the rear property line.

Mr. Brewington stated that normally in these circumstances neighborhoods do not object to someone encroaching in the setbacks adjacent to open or common space. In this particular case he is inclined to support the request given that this common area and the topography of the land causes some problems for the property owner. Chair Pearce stated that this is under a PUD rather than just a regular single

family residential area. The PUD was approved in March of 1993, and the community association has not indicated that they have a problem with the request. Ms. Huffman stated that she is having a difficult time with this one because of there being no unique circumstances, no fault of the applicant, and she would have a difficult time coming up with the correct wording of a motion. She pointed out that there does seem to be ample space in the back and the support of the HOA, so she could vote either way on this one. Mr. Jones stated that he is also inclined to support the applicant and feels the shape of the lot provides some unique circumstances. Mr. Forde stated that it appears that the neighbor's house also has an addition on the rear of it and it would seem to him that he would support the application as the common area is divided amongst the lots.

In regard to Variance #1, Mr. Jones stated that based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of this ordinance because if the applicant complies with the provisions of the ordinance he can make no reasonable use of this property because he will be unable to provide sufficient living space for his family; the hardship of which the applicant complains results from the unique circumstances related to the applicant's property because of the awkward shape of the lot and those of the neighboring lots; the hardship results from application of the ordinance to the property because the ordinance requires a 25 foot rear setback that the property cannot meet if the addition is made; the hardship is not the result of the applicant's own actions because the applicant did not build the home and did not design the lot; the variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because the variance has been recommended by the Adams Farm Community Association and also provides for the renovation and improvement of existing homes; the granting of the variance assures the public safety and welfare and does substantial justice because it results in the owner's ability to build without encroaching into the common area and also is in line with the wishes of Community Association, seconded by Mr. Brewington. The Board voted 5-1 in favor of the variance. (Ayes: Pearce, Brewington, Jones, Huffman, Forde. Nays: Turner.)

In regard to Variance #2, Mr. Jones stated that he moved that the Zoning Enforcement Officer be overruled and the variance granted based on the same findings of fact for Variance #1, seconded by Ms. Huffman. The Board voted 5-1 in favor of the variance. (Ayes: Pearce, Brewington, Jones, Huffman, Forde. Nays: Turner.)

- (b) BOA-12-05: **225 NORTH SPRING STREET** Randel and Ann Roberts request variances from the minimum side setback requirements. The applicant is proposing to relocate a residential duplex onto this lot. The duplex will encroach into both side setback requirements. *Variance #1:* The duplex will encroach 6 feet into a 10-foot side setback adjacent to the northern side property line. *Variance #2:* The duplex will also encroach 6 feet into a 10-foot side setback adjacent to the southern side property line. Section 30-7-7.2(E) and Table 7-6, Present Zoning-O (Office), Cross Street-Bellmeade Street. **(DENIED)**

Loray Averett stated that the applicant is requesting variances from minimum interior side setbacks. An existing duplex dwelling is proposed to be re-located onto property located at 225 N. Spring Street. An existing duplex will encroach 6 feet into each 10-foot side setback. The property is located on the west side of N. Spring Street north of West Friendly Avenue and Canaan Drive and is zoned O (Office). The lot is a legal nonconforming lot. It has 50 feet of lot width and based on the proposed use for RM-12 zoning standards it would need 75 feet of lot width. The lot area is in compliance at 7,500 square feet of area. The lot was previously zoned GO-M and based on Section 30-7-5.2(F)(1), the structure must meet the RM-12 setback standards. Table 7-6 (which is Exhibit 4) reflects the setback requirement is 10 feet from the side lot line. The duplex is shown to be 42 feet wide. The lot is 50 feet wide. The plan shows the duplex to be centered on the lot, thus the applicant is requesting a variance of 6 feet for each side. The O, *Office District*, is primarily intended to accommodate moderate-to-high intensity office and institutional uses and supporting service and retail.

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

Ann Roberts, 3402 Wedgewood Place, was sworn in and stated that she is requesting a variance on the lot they own at 225 N. Spring Street so that they can move a duplex owned by the Zenke family to this property. She presented photos for the Board members' review. She stated that the pictures show the specific house in question, on the far right. This house was originally on Blandwood before it was moved to Washington Street. It is in imminent danger of being destroyed and the house was moved once in an attempt to save it. She is very interested in historic preservation, having owned the Ireland house that was restored several years ago. Unfortunately, it was destroyed by a fire several years ago and they were unable to rebuild it. She is very interested in preserving and saving the structure. She also had pictures that show the lot and the properties on either side of the subject property. There is a very nice Queen Anne house to the right and a parking lot to the left which is owned by Carruthers & Roth. She asked that the Board honor her request for the variance so the house can be saved from potential demolition.

Mike Cowhig, Housing & Community Development Department, stated that the neighborhood is not a designated historic district but there are some older early 20th Century homes located in the area.

In response to questions, Ms. Roberts stated that her two daughters hope to move into the house once it is in place. If everything falls into place, the house is successfully moved and all permits are obtained, she hopes to have someone in the house within six months.

Ginia Zenke, 1003 Carolina Street, was sworn in and stated that the house can be moved and there is the possibility that someone could move into the house within six months.

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

Patrick Blair, 516 W. Friendly Avenue, was sworn in and stated that he is the general counsel for Officebiz Spring, LLC., which is the owner of 227 and 231 N. Spring Street properties. These properties are adjacent to 225 N. Spring Street. His company opposes the variance request because the reduction of the 10 foot setbacks to 4 foot setbacks would effectively create an alley in the neighborhood where there are no existing alleyways. If the variance is granted it would hurt the look of the neighborhood as the other structures in the neighborhood are well spaced out. He presented photographs showing the subject area and he explained the photos.

Chair Pearce asked for Mr. Blair's response to the fact that if the applicant wanted to use this a commercial use, they could place the house right on the line. Mr. Blair stated that they would not be very happy with that, but there is nothing they could do about it and they could not stop it. They are opposed to it because of additional noise and traffic especially if there were college students living there. There are also concerns about increased fire dangers. He is also concerned about the loss of trees that would have to be removed for placement of a house on this property. There is already a lack of parking in this area and additional housing would cause more stress on finding appropriate parking spaces. They have to enforce towing, especially when there is a ballgame at the nearby stadium. They feel it would be more appropriate to place the house on a larger lot. They feel that the variance should not be granted and development should follow normal regulations.

Lorraine Marksosantios, 5416 East Shores Drive, was sworn in and stated that she is opposed to this variance because she feels it would be a detriment to the neighborhood. She and her husband really like historical houses and purchased the property at 227 and 231 N. Spring Street because of the beauty and historic value of the homes. It is also very difficult to find parking in this neighborhood. She hopes to move their office back to this area in the future and would be concerned about who their neighbors would be.

Chris Vaughn, 235 N. Edgeworth Street, was sworn in and stated that he is with Carruthers & Roth, the property next door that has an office building and parking lot. He pointed out that this is not an historical district even though there are several older homes in the immediate area. He is the owner of a 30,000 square foot, Class "A" office building and he owns half of the block. He gave a summary of some of the property uses in the area. He feels that the applicant does not have an undue hardship or a lot that is not buildable, but she has a lot that is buildable and she can do something with it. The zoning ordinance allows her to do a lot of things on this property. He is mainly concerned about this property becoming a slum house if used for student housing. He pointed out that he had to build a fire wall on his property and he is concerned about two wooden structures being so close together and the dangers of fire breaking out and spreading to other properties. They bought some older homes on this street several years ago and tore them down and built a new parking lot. He pointed out that the applicant has another lot on the corner of Friendly Avenue and Spring Street where she could move the house she plans to move. There will be a lot of conflict with the parking and he will have to tow a lot of cars. There will not be enough parking if college students are in this proposed house and they will look for other convenient parking, which would be his property. The house would also be so close to his property that the property owner would be unable to get between the property for upkeep and maintenance without being on his parking lot. He hopes the Board will not grant the variance as requested.

Ms. Huffman stated that she takes testimony from neighbors very seriously, but she is only allowed to review the evidence, not speculation, and she cannot use slum building as a fact as there is no evidence to slum building. She also cannot use a fire wall issue that he had to go through with his office space as a requirement for the applicant's property and she cannot go with the assumption that residents of the proposed house would be in his parking lot.

Mr. Vaughn was given an opportunity to ask questions of Ms. Roberts and Ms. Roberts was given an opportunity to ask Mr. Blair questions.

Board Member Discussion:

Mr. Brewington stated that he was very disappointed that the opposition made comments about slum houses and making inflammatory and argumentative comments. He hopes they will be more prepared if this is taken to Superior Court with their concerns being more thoughtful, concise and rational. Ms. Huffman agreed with Mr. Brewington and stated that she would be voting in favor of the request. Mr. Jones he has been persuaded on this one because it is a 50 foot lot and that whoever owns it is going to have a right to build something on it. He feels that the fact that an historic house is planned to be moved to the property would fit in very well with the surrounding properties. The City does not want to see a lot of vacant lots. Mr. Forde stated that he understands the concerns of those in opposition and he is unsure of how he is going to vote. He feels sure that something will be put on the property but is not sure what would be a better use. He is having difficulty with the residential use.. Chair Pearce stated that he is finding it difficult to be able to justify no reasonable use for the property in this case. His thoughts are that some people feel that they can keep this property vacant and that's an argument that is becoming pervasive in Greensboro. Mr. Turner stated that he has concerns about the parking issues and that causes him some problems being able to vote in favor of the request

Mr. Jones stated that in regard to BOA-12-05, 225 N. Spring Street, he moved that the Zoning Enforcement Officer be overruled and the variance granted based on the following findings of fact: 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 this ordinance she can make no reasonable use of the property because of the narrowness of the lot. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because the lot is narrow, compared to the width of other lots within the same neighborhood. The hardship results from the application of this ordinance to the property because the ordinance requires a minimum 10 foot side setback for the property. The hardship is not the result of the applicant's own actions because she did not design the lot. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it is in agreement with the Cedar Street/ Bellemeade Area Strategic Plan, which applies to this neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because it promotes for the development of vacant lots within the City of Greensboro, seconded by Ms. Huffman. The Board voted 4-2 in favor of the motion. (Ayes: Brewington, Jones, Huffman and Turner. Nays: Forde and Pearce.) Therefore, the variance is denied.

SPECIAL EXCEPTION

- (a) BOA-12-06: **910 WALKER AVENUE** Patrick and Clara Kelly request a Special Exception as authorized by Section 30-4-12(I)2) to allow an attached addition to encroach into a side setback. A proposed room addition will encroach 3 feet into a 5-foot side setback requirement. Section 30-4-12(I)2) and Table 7-3, Present Zoning-R-7-(College Hill Historic District Overlay), Cross Street-South Mendenhall Street. The Historic Preservation Commission has recommended this Special Exception. **(GRANTED)**

Loray Averett stated that the applicant requests a Special Exception for an attached addition to a single family dwelling, which will encroach 3 feet into a 5-foot side setback. The property is located on the north side of Walker Avenue west of South Mendenhall Street. It is zoned R-7 and is located in the College Hill Historic District. The applicant's property is rectangular in shape. It is approximately 50 feet wide by 148 feet deep and contains approximately 7,400 square feet. The addition is proposed to be attached to the rear of the eastern elevation of the house. The eastern rear portion of the existing wall of the house already encroaches approximately 3 feet. The applicant is aligning the proposed addition to the existing wall of the house. At their April 25, 2012 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.

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

Mike Cowhig, Housing & Community Development Department, Administrator of the Historic District Program, stated that he has worked closely with Ms. Kelly on the plans for the addition. A Certificate of Appropriateness has been obtained from the Historic Preservation Commission. The proposed addition met the Historic District Guidelines. The proposed addition is a very small addition but like so many houses in the historic district conforming setbacks are very difficult to achieve. The house was built within a foot or two of the property line so it does not meet the modern zoning setbacks. The addition is designed very carefully to meet the Guidelines. This is one of the best preserved houses in the historic district because it has been lovingly restored and maintained over the years. There is a provision in the Historic District Ordinance that addresses issues like this, where people want to make improvements to their houses but the house already encroaches into the setbacks. That provision says that if the Certificate of Appropriateness is issued and meets the Guidelines, that can be justification for a Special Exception in the Historic District. The Commission was very pleased with the quality and design work and is strongly supportive of this application for a Special Exception.

In response to a question, Ms. Clara Kelly, the applicant, 910 Walker Avenue, was sworn in and stated that she has not talked to her immediate neighbor but she has spoken with the other two neighbors and they support this request. No one spoke in opposition to the request at the Historic Preservation Commission meeting.

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

Chair Peace moved that in regard to BOA-12-06, 910 Walker Avenue, based on the stated findings of fact, he moved that the Zoning Enforcement Officer be overruled and the Special Exception be granted based on the following: The Special Exception may be granted by the Board of Adjustment if evidence presented by the applicant persuades it to reach each of the following conclusions: the Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit because there has been testimony from the City official that the Historic Preservation Commission has been through this application and agrees that it meets the general purpose and intent of the ordinance, the granting of the Special Exception assures the public safety and welfare and does substantial justice because of the previous reasons stated, seconded by Mr. Jones. The Board voted 6-0 in favor of the motion. (Ayes: Pearce, Jones, Brewington, Turner, Forde and Huffman. Nays: None.)

APPEAL OF NOTICE OF VIOALTION

- (a) BOA-12-07: **200 EAST NEWLYN STREET** Jeffrey Hyde appeals a Notice of Violation concerning the use of this property for a commercial photography business in a single family residential zoning district. Table 8-1-Permitted Uses, Section 30-8-8.5, Present Zoning-R-5, Georgia Street. **(CONTINUED TO JUNE MEETING)**

OTHER BUSINESS:

Board Members Terms

To be addressed at the June meeting.

* * * * *

ADJOURNMENT:

There being no further business before the Board, the meeting adjourned at 7:45 p.m.

Respectfully submitted,

Brian Pearce, Chair

Greensboro Board of Adjustment

BP/jd

GREENSBORO BOARD OF ADJUSTMENT**JUNE 25, 2012**

A meeting of the Greensboro Board of Adjustment was held on Monday, June 25, 2012 at 5:35 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Brian Pearce, Chair, Clinton Turner, Scott Brewington, Frankie T. Jones, Jr., Frank Forde and Kelly Trexler. Staff present was: Loray Averett, Zoning Services Coordinator, and Fred Boateng, as well as 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 twenty (20) minutes to present evidence.

APPROVAL OF MINUTES

Mr. Turner moved approval of the May 29, 2012 meeting minutes as submitted, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Ms. Averett and Fred Boateng were sworn in for their testimony during the meeting.

CONTINUANCES/WITHDRAWALS

Ms. Averett stated that BOA-12-07 has been withdrawn and there has been a request for BOA-12-10 1111 S. Benbow Road to be continued to July 2012 meeting.

Marc Isaacson, attorney representing the applicant, asked that this item be continued to the July meeting to give them adequate time to prepare the matter.

Mr. Brewington moved that BOA-12-10, 1111 Benbow Road be continued to the July meeting, seconded by Mr. Jones. The Board voted unanimously in favor of the request.

OLD BUSINESS**APPEAL OF NOTICE OF VIOLATION**

- (a) BOA-12-07: **200 EAST NEWLYN STREET** Jeffrey Hyde appeals a Notice of Violation concerning the use of this property for a commercial photography business in a single-family residential zoning district. This case was continued from the May 29, 2012 meeting. Table 8-1-Permitted Uses, Section 30-8-8.5, Present Zoning-R-5, Cross Street - Georgia Street. **(WITHDRAWN)**

NEW BUSINESS**VARIANCE**

- (a) BOA-12-08: **1903 MEDHURST DRIVE** Stefanie and Jeff Milroy request a variance from a minimum side setback requirement. The applicant is proposing to attach a carport addition to the existing dwelling. *Variance:* The carport addition will encroach 7 feet into a 10-foot side setback. Table 7-1, Present Zoning-R-3, Cross Street-Derbyshire Drive. **(GRANTED WITH CONDITION)**

Loray Averett stated that the applicant is requesting a variance to attach a proposed carport addition to the side of the dwelling. The carport addition will encroach 7 feet into a 10-foot side setback. The property is located on the western side of Medhurst Drive north of Derbyshire Drive. It is described as Plat Book 39, Page 39, Lot 2 of the British Woods Subdivision. The applicant is proposing to construct an attached carport to the side of the house. The carport addition is proposed to be 19 feet wide and will encroach 7 feet into a 10-foot side setback. It is proposed to align with the existing house and over the existing paved driveway area. The applicant's plot plan reflects that a 2nd story addition will also be included in their plans to update the house. That proposed 2nd story addition is in compliance with regards to setbacks requirements. The applicant has made mention that they are trying to save a significant tree located just west of the proposed garage. Attached to this report is a detailed report from the City's Urban Forester. 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.

Jeff Milroy, the applicant, was sworn in and stated that the main goal here is to save some trees that are on the property and still be able to construct an attached carport to the side of the dwelling. The City Arborist has visited the site to look at the existing trees and has determined that the proposed location would be the best location to save the trees. Even if the structure is pushed back on the lot, there would still be issues with the setbacks and they would lose more trees. He has talked to the neighbors and there is no one in opposition to the proposed construction.

Adam Johnson, 1518 Forest Hill Drive, was sworn in and stated that he met with the City Arborist and they discussed different ways they could excavate the site and save the most trees. The proposed location is what the Arborist determined was the most logical location for the construction of the car port to be able to save the roots of the existing trees.

Loray Averett stated that the conclusion and recommendations from the Arborist noted that prior to constructing the building, a certified Arborist should be employed to crown the decayed limbs and removed the limb overhanging the proposed building and to inspect the tree for the general health and condition of the tree. If it is determined by the Arborist, the large branch which will overhang the proposed building, make a cable to support it from high winds, heavy snow or ice buildups. This technique would at least mitigate the potential of damage to the structure if the limb should split off the tree.

There being no opposition the public hearing was closed.

Board Comments:

Mr. Turner stated that he has some concerns about the limbs from the tree causing damage to the proposed new structure. Mr. Brewington stated that he feels the applicant has made a reasonable effort to seek out the Arborist and incorporate the recommendations in this plan.

Mr. Brewington stated that based on the stated findings of fact, in regard to BOA-12-08, 1903 Medhurst Drive, that the Enforcement Officer be overruled, the findings of fact be incorporated 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 can make no reasonable use of the property. As presented, the applicant has considerable hurdles to overcome in seeking to make the expansion of carport, i.e. the tree that has been there prior to the house being built, and trying to maintain the integrity and keeping the structure on the footprint of the existing garage. Testimony has been that the placement of the carport in any other place would significantly disrupt the tree and create more difficulty for the applicant. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property as has been presented and previously noted. The tree creates the structure of the carport in this request and the footprint of the desired placement of the carport is on the property from the driveway which has been in place for a significant period of time. The hardship results from the application of the ordinance to the property because the intent is to preserve the tree and to accommodate the applicant's request and in order to do that, the applicant has asked for feedback from the City Arborist of the proper placement of the proposed carport. The hardship is not the result of the applicant's own actions because of information previously submitted, the age of the tree, the age of the house, and the position of the current driveway. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit as has been presented. Building the carport would be in keeping with the general harmony of the neighborhood and the information submitted, as well as there being no objection by the closest neighbor. The granting of the variance assures the public safety and welfare and does substantial justice because it preserves a tree that has existed for a long time and also keeps the general look of the neighborhood. As part of the motion, he asked that the findings of the City Arborist be incorporated and added as a condition to the granting of the variance, seconded by Mr. Turner. The Board voted unanimously in favor of the motion. (Ayes: Pearce, Troxler, Forde, Jones, Brewington and Turner. Nays: None.)

SPECIAL EXCEPTION

- (a) BOA-12-09 **3617 TEMPLE STREET** Vincent Rashad Sweet requests a Special Exception as authorized by Section 30-8-10.1(B) to allow a family care home separation encroachment from the current one-half mile development spacing standard. Special Exception Request: The proposed family care home (6 or less persons) will be 2,444 feet from an existing family care home (6 or less persons) located at 2318 Juliet Street when 2,640 feet is required. Present Zoning-R-5, Cross Street-Old Jones Road. **(GRANTED)**

Loray Averett stated that this is a request for a Special Exception as authorized by Section 30-8-10.1(B) to allow a family care home separation encroachment from the current one-half mile development spacing standard. Special Exception Request: The proposed family care home (6 or less persons) will be 2,444 feet from an existing family care home (6 or less persons) located at 2318 Juliet Street when 2,640 feet is required. Present Zoning-R-5, Cross Street-Old Jones Road. The applicant is proposing to locate a family care home which will be too close to an existing family care home. The proposed family care home (6 or less persons) will be 2,444 feet from another family care home, located at 2318 Juliet Place, (6 or less persons) when 2,640 feet is required. This proposed home will be 196 feet too close. The lot is located on the eastern side of Temple Street west of Rehobeth Church Road. The applicant is proposing to locate a family care home (6 or less persons) at 3617 Temple Street. It is 196 feet too close to an existing family care home located at 2318 Juliet place. Privilege license records reflect the existing family care home at Juliet Place 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 this matter.

Vincent Sweet, the applicant, 2607 Blue Suede Street, was sworn in and stated that he proposes to establish a family care home at 3617 Temple Street. He tried to do this several years ago, but he was unable to obtain the proper zoning at that time. There was another family care home in closer proximity to the property. There has been a recent situation with one of his son's classmates that is a resident of another family care home. He has learned that he can apply for a Special Exception.

Mr. Turner asked the age of the clients for the proposed home, Mr. Sweet stated that they would range in age from 5 to 17 years old. There would be a minimum of 4 staff persons with 24 hour care. Mr. Forde asked what is the definition of a family care home. Mr. Sweet stated that it is a group home which is like a foster care home for kids that are in need of special care. Mr. Brewington pointed out that there are apartment complexes and thoroughfares that separates the proposed home from another family care home.

There being no opposition the public hearing was closed.

Mr. Pearce stated that based on the stated findings of fact, he moved that in regard to BOA-12-09 that the Enforcement Officer be overruled, the findings of fact be incorporated and the Special Exception be granted. The Special Exception may be granted if evidence presented by the applicant provide that the Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit, because the purpose of the ordinance sets the distance between one family care home and another existing family care to keep these types of homes from being in close range to each other, The granting of the Special Exception assures the public safety and welfare and does substantial justice because of the facts previously stated, i.e. Freeman Mill Road is a thoroughfare and there are apartment complexes near the property. The reduced separation in this case will not permit the clustering of homes which could lead resident persons to cluster themselves and there would not be increased interaction with other members of the community, seconded by Mr. Jones. The Board voted unanimously in favor of the motion. (Ayes: Pearce, Troxler, Forde, Jones, Brewington and Turner. Nays: None.)

- (b) BOA-12-10 **1111 S. BENBOW ROAD** David Black 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 2,225 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1208 Sloan Street when 2,640 feet is required. Special Exception Request #2: The family care home will also be 1,806 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1309 Gorrell Street when 2,640 feet is required. Special Exception Request #3: The family care home will also be 1,366 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1403 South Benbow Road when 2,640 feet is required. Present Zoning- R-5, Cross Street-South Holden Road The applicant is proposing to locate a family care home which is too close to three existing family care homes.
(CONTINUED TO JULY 2012 MEETING)

OTHER BUSINESS: Board Members Terms and Elections

Chair: Annually, at the regular meeting of the Board held in the month of June, a Chair shall be elected by the full membership of the Board of Adjustment from among its regular members. The Chair's term shall be one year (unless earlier terminated as a result of death, resignation or removal) and until a successor is elected, beginning on July 1, and the Chair shall be eligible for re-election. The Chair shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matters before the Board.

Chair Pearce nominated Mr. Jones to serve as Chair, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion.

Vice Chair: A Vice-Chair shall be elected by the Board from among its regular members in the same manner and for the same term as the Chair (unless earlier terminated as a result of death, resignation or removal). The Vice-Chair shall serve as acting Chair in the Chair's absence, and at such times shall have the same powers and duties as the Chair.

Chair Pearce nominated Ms. Huffman to serve as Vice Chair, seconded by Mr. Brewington. The Board voted unanimously in favor of the motion.

Loray Averett stated that staff has talked to Board members going off the Board and, typically, it has been that Board members will serve a reasonable amount of time until an appointment is made for their replacement. Chair Pearce stated that he feels that appointments should be made before the September meeting.

Mr. Forde stated that he would not be available for the July meeting.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Huffman was acknowledged.

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ADJOURNMENT:

There being no further business before the Board, the meeting adjourned at 6:15 p.m.
Respectfully submitted,

Brian Pearce, Chair
Greensboro Board of Adjustment

BP/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

JULY 23, 2012

The regular meeting of the Greensboro Board of Adjustment was held on Monday, July 23, 2012 at 5:30 p.m. in the Council Chamber, Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair, Kelly Trexler, Patti Eckard and Clinton Turner. Staff present were: Loray Averett, Zoning Services Coordinator, and Tom Carruthers, City Attorney's Office.

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 June 25, 2012 meeting, as submitted, seconded by Ms. Trexler. The Board voted unanimously in favor of the motion

SWEARING IN OF STAFF

Loray Averett was sworn in for testimony during the meeting.

CONTINUANCES/WITHDRAWALS

Ms. Averett stated that the applicant for 225 N. Spring Street has asked for a continuance on this matter.

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

Ann Roberts, the property owner, came forward and stated that she would like to have this case heard at the August meeting, to allow her extra time as they are in conversation with the owners of 225 N. Edgeworth Associates, LLC, regarding their concerns about moving the building to her property, which adjoins their property.

Chair Jones stated that since there were only four members present, the request for a continuance is automatically granted.

Also, the applicant for 1111 S. Benbow Road has asked for a continuance.

Marc Isaacson, attorney representing the applicant, came forward and asked that this matter be continued to the August meeting.

Chair Jones stated that this request for a continuance would also be granted.

NEW BUSINESS

SPECIAL EXCEPTION

BOA-12-10: 1111 S. BENBOW ROAD David Black 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. This case was continued from the June 25, 2012, meeting. **(CONTINUED TO AUGUST MEETING)**

VARIANCE

BOA-12-11: 206 FISHER PARK CIRCLE Robert Beaumont 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 garage. Section 30-8-11.1(G). Present Zoning R-5, Cross Street – Parkway Street. **(GRANTED)**

Loray Averett stated that the applicant requests a variance from the requirement that utilities to detached accessory buildings be provided by branching service from the principal building. The applicant is proposing to be permitted to have a separate electrical meter on his proposed detached garage. 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. A garage is proposed to be built on the rear portion behind the existing house. A Special Exception was granted for a two foot side setback encroachment at the October 24, 2011 meeting. The applicant's site drawing shows there is an existing power pole supply directly adjacent to his rear lot line, which is approximately 40 feet in distance from the rear of the garage location. The distance to supply the garage power from the existing service on the house would be approximately 62 feet. The applicant has heavy landscaping and trees in the area between the house and the garage. There are also existing hard-scaped patio areas and retaining walls between the garage and the house. The photo exhibits labeled 4, 5, and 6 which are attached to this report reflect the trees, retaining walls, landscaping and hard-scape areas between the house and the proposed garage location. The applicant is aware that the detached garage is for accessory personal use only. The R-7 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 Jones asked if there was anyone wishing to speak in favor of this matter.

Robert Beaumont, the applicant, was sworn in and stated that he really did not have anything else to add except that it would be an extreme hardship to try and put in a branching service from the house to the garage, requiring disturbing of a significant retaining wall.

Mr. Turner asked if this home is located in the Greensboro Historic District and asked if they have reviewed the plans. Mr. Beaumont stated that they have, and they support the request.

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

Mr. Turner moved that in regard to BOA-12-11, the Zoning Enforcement Officer be overruled and the variance granted as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, he can make no reasonable use of the property because of the location of the property being in an historic district. The hardship of which the applicant complains results from unique circumstances related to the property because of its unique shape and the fact that it would be very difficult to displace trees and a retaining wall currently in place in the yard. The hardship result from the application of the ordinance to the property because of being in the historic district. The hardship is not the result of the applicant's own actions because the area was developed as an historic district before the applicant purchased the home. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it would have no negative impact on the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because the proposed plan will not have an impact on the neighborhood, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion to grant the variance as requested.

BOA-12-12: 225 NORTH SPRING STREET Randal and Ann Roberts request variances from the minimum side setback requirements. The applicant is proposing to relocate an existing structure for office uses onto this lot. The structure will encroach into both side setback requirements. *Variance #1:* The structure will encroach 1 (one) foot into a 5-foot side setback, adjacent to the northern side property line. *Variance #2:* The structure will also encroach 1 (one) foot into a 5-foot side setback adjacent to the southern side property line. **(CONTUED TO AUGUST MEETING)**

OTHER BUSINESS

Chair Jones stated that Ms. Cyndi Hayworth has been appointed to the Board and will attend the August meeting.

ACKNOWLEDGEMENT OF ABSENCES

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

ADJOURNMENT

* * * * *

There being no further business before the Board, the meeting was adjourned at 5:50 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman
Greensboro Board of Adjustment

FJ/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

AUGUST 27, 2012

The regular meeting of the Greensboro Board of Adjustment was held on Monday, August 27, 2012 at 5:30 p.m. in the Council Chamber, Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair, Patti Eckard, Cheryl Huffman, Jeff Nimmer, Cyndy Hayworth, Frank Forde and Joseph Hampton. Staff present were: Loray Averett, Zoning Services Coordinator, Fred Boateng and Tom Carruthers, City Attorney's Office.

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

Ms. Huffman moved approval of the minutes from the July 23, 2012 meeting, as submitted, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion

SWEARING IN OF STAFF

Loray Averett and Fred Boateng were sworn in for their testimony during the meeting.

CONTINUANCES/WITHDRAWALS

Ms. Averett stated that the applicant for 225 N. Spring Street has asked for a continuance on this matter and BOA-12-14 812 Lily Avenue has also asked for a continuance.

Chair Jones asked if there was anyone wishing to speak on the matter related to 225 N. Spring Street.

Ann Roberts, 3402 Wedgewood Place, the property owner, came forward and stated that she would like to have this case heard at the September meeting so that she can be adequately represented by counsel. She has discussed this matter with, and provided documentation to Thomas Terrell, who is with Smith, Moore, Leatherwood and he is unable to attend this meeting due to other legal matters today.

Speaking in opposition to the continuance was Patrick Haywood, 235 N. Edgeworth Street, the location of Carruthers and Roth Law Offices. This matter was continued from the July meeting because there only four member present. He hopes that the applicant can move forward with this matter at the September meeting.

There being no other speakers, the Public Hearing was closed.

Ms. Huffman moved to allow the continuance to the September 24, 2012, meeting, seconded by Mr. Nimmer. The Board voted 6-0 in favor of the motion to continue.

Jennifer Fountain, attorney representing the applicant, for BOA-12-14, 812 Lily Avenue came forward and stated that this is the first time the applicant has asked for a continuance. They are requesting additional time to be able to meet with the neighbors and an investigation needs to be done into the parking issues, as well as the street system and alley-way in the area. A letter has been sent to neighboring residents, advising that they would be requesting a continuance.

Speaking in opposition to the continuance, was Melanie Bassett, 815 Spring Garden Street, stated that she is opposed to this matter being continued because the gym moved into the neighborhood in February and they have had many complaints because of the parking issues that already exist in this neighborhood. There was a meeting with the gym in May, where the neighbors strongly objected to the use of the gym's clients parking all over the neighborhood, blocking driveways and causing a lot of problems. There have been notes left on these vehicles, expressing their desire for them to park somewhere else. She has contacted the Police Department about traffic community relations and they have talked with the Neighborhood Association. It is felt that this has been going on a long time and should be addressed today, instead of delaying it for a longer period of time.

Ronald Walters, 610 Morehead Avenue, stated that he opposes the continuance. This matter is about parking and he does not feel that a continuance would be needed to hash anything else about this matter.

There being no other speakers the Public Hearing was closed.

Ms. Huffman stated that she would have a hard time agreeing with a continuance in this matter, due to the fact that this issue has been going on for at least since May and the neighbors have tried to rally together and there seems to be a severe disruption in the neighborhood.

Ms. Eckard stated that she feels the reason the applicant is asking for the continuance is to get the neighborhood behind their agreement on parking and she does not see that as being something that can be accomplished, so she would also have a hard time supporting the continuance.

Mr. Nimmer asked what additional conversations would be had if another 30 days is granted, that they have not already had.

Ms. Huffman moved to deny the continuance and the motion died for lack of a second.

Mr. Forde stated that this is the first time this has been on the agenda and he thinks that the Board customarily allows a continuance, especially if the applicant is wanting to have more input from the neighborhood to try and work out a solution. He would be willing to give them one continuance to try and work things out.

Mr. Nimmer moved to reopen the Public Hearing so the applicant can explain what additional conversations they might have, seconded by Ms. Huffman.

Ms. Fountain returned to the podium and stated that in addition to talking with the neighbors, which you always want to do to make sure that you keep a dialog open, they also need to meet with the architect about the building to review his plan as to when the business was original designed and set up. There is a street system and alleyway that there needs to be some research done on, to determine what impacts that may have on the parking requirements. There needs to be some more investigation into the legal requirements for the parking at this location.

Ms. Eckard stated that one of the speakers has said that everything has pretty much been spelled out in the report that was given to the Board members and if there is additional information, they are not aware of it. She does not know what else needs to be researched, at this point.

Ms. Hayworth felt that she is having a difficult time understanding why there is a need for more change. The building and the parking lot is not going to change, and she has a problem with why it took so long to decide to have a meeting with the neighborhood.

Mr. Jones stated that he understands everyone's concerns and he also thinks that

Mr. Forde brought up a good point, that customarily, an applicant is provided a continuance on the first request. Traditionally, the Board has conditioned continuances, that there would not be any additional request for continuances granted. This would allow the applicants the opportunity to properly prepare their case, especially given the nature of this Board. He recommended that the Board consider hearing this matter on September 24th.

Ms. Eckard called the question.

Ms. Huffman moved to deny the request for a continuance, seconded by Ms. Eckard. The Board voted 3-3. (Ayes: Eckard, Huffman and Hayworth. Nays: Nimmer, Forde and Jones.)

Counsel Carruthers stated that since there were not a majority vote to continue, the case must go forward and the continuance would be denied. This matter would be heard in order on the agenda.

OLD BUSINESS

SPECIAL EXCEPTION

- (a) **BOA-12-10 1111 S. BENBOW ROAD** David Black 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. This case was continued from the June 25 and July 23, 2012 meetings. Special Exception Request #1: The proposed family care home will be 2,225 feet from one family care home (6 or less persons) to another family care home, (6 or less persons)

located at 1208 Sloan Street when 2,640 feet is required. Special Exception Request #2: The family care home will also be 1,806 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1309 Gorrell Street when 2,640 feet is required. Special Exception Request #3: The family care home will also be 1,366 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1403 South Benbow Road when 2,640 feet is required. Present Zoning-R-5, Cross Street-Douglas Street. **(GRANTED)**

Loray Averett stated that this property is owned by David Black. The applicant is proposing to locate a family care home which is too close to three existing family care homes. This case was continued from the June 25 and July 23, 2012 meetings. Special Exception Request #1: The proposed family care home (6 or less persons) will be 2,225 feet from another family care home, located at 1208 Sloan Street, (6 or less persons) when 2,640 feet is required. This proposed home will be 415 feet too close. Special Exception Request #2: The same proposed family care home will be 1,806 feet from another family care home, located at 1309 Gorrell Street, (6 or less persons) when 2,640 feet is required. It will be 834 feet too close. 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 Jones asked for speakers in favor of the request to come forward.

Ruby Marshall, 1115 S. Benbow Road, was sworn in and stated that that she is opposed to this request. Her home is two houses down from the subject property. She is concerned because there are mostly seniors in that block.

Chair Jones stated that the Board needs to hear from those in favor of the request and then those in opposition would have an opportunity to speak.

Marc Isaacson, attorney representing the applicant, 1-1 W. Friendly Avenue, was sworn in and presented handouts for the Board members' review. He stated that the applicant,

Mr. Black owns and operates several family care homes in the Greensboro area. He is now requesting a Special Exception to the ½ mile spacing requirement between family care homes. There are three other family care homes within the ½ mile radius of the property located at 1111 S. Benbow Road. This distance of ½ mile spacing requirement is a relatively new amendment to the Greensboro Family Care Ordinance and the City Council adopted it on May 18, 2010. Before that, the ordinance required only a 1/4 mile spacing requirement between family care homes. He pointed out that this particular home which caters to a different group and different demographics than the other two homes, which are across a major thoroughfare, E. Lee Street and they are completely physically separated from Mr. Black's property. The City Council knew that when they adopted this requirement that some exceptions would need to be granted. If is felt that this is one of those situations. The tests under the ordinance is not the same test as a variance, as it discusses that this is in keeping with the harmony and spirit of the ordinance, the

purpose and intent of the ordinance and that the granting of the Special Exception will do substantial justice. He feels that all these tests have been met with the facts of the situation here. The applicant, Mr. Black is available for questions, if needed.

Chair Jones asked if there was anyone wishing to speak in opposition to the Special Exception request.

Ruby Marshall, 1115 S. Benbow Road, was previously sworn in and stated that she lives about two houses away from this proposed family care home. She is concerned about the elderly people that live in this block and they cannot get around well. They are concerned that this type of facility in this neighborhood would interrupt their quiet way of living. She pointed out that there is no guarantee of the type of people that would be living in this family care home.

There being no one else to speak on this request, the Public Hearing was closed.

Discussion:

Mr. Hayworth stated that these types of homes have the spacing requirement for a reason and it is to prevent them from being clustered together and the City makes spacing requirements so that they will not intrude into neighborhoods. They do change neighborhoods in some cases. She suggested that the Board think about the neighborhood and pointed out that there would be three of these types of homes within ½ mile of each other.

Chair Jones pointed out that the reason that the ordinance provides the capability to grant a Special Exception is to allow the residents to interact with the other members of the community. He feels that the quality of the evidence presented is sufficient to show the Board that this home would not cause the members to cluster to the exclusion of the rest of the community. He feels that with E. Lee Street being a major thoroughfare is enough to be the type of separation that would allow this type of home within the limitations provided.

Mr. Forde stated that when Mr. Black purchased this property for the use he intended, the rules were in place and had he opened the family care home in sufficient time to begin operation before the spacing requirements were changed, he would not be here asking for a Special Exception. He pointed out that he feels the applicant has done what he was required to do, and it is not through his own actions that the new ordinance placed more restrictions on the spacing requirements. He also feels that E. Lee Street is enough of a separation between these homes. He would be inclined to support the request.

Mr. Nimmer stated that he also feels that there is enough separation between the three homes and also agrees that E. Lee Street is enough of a barrier between the homes.

Ms. Huffman stated that even though the spacing requirement was ¼ mile at the time the property was purchased, she feels that the applicant should follow the rules that were in place at the time.

Mr. Forde moved that in regard to BOA-12-10, 1111 S. Benbow Road, that the Special Exception #1. be granted as it is in harmony with the general purpose and intent of the

ordinance and preserves the spirit because the homes which infringe upon the separation are predominantly in a separate neighborhood and/or of a different type and that the granting of the Special Exception assures the public safety and welfare and does substantial justice because the applicant purchased this home when the property was under the prior ordinance, seconded by Mr. Nimmer. The Board voted 5-1 in favor of the motion. (Ayes: Jones, Nimmer, Forde, Eckard, Hayworth. Nays: Huffman.)

Chair Jones asked Counsel Carruthers if a separate motion needed to be made for each request. Counsel Carruthers stated that was correct.

Therefore, Mr. Forde moved that in regard to Request #2, for the same reasons, the request be granted, seconded by Mr. Nimmer. The Board voted 5-1 in favor of the motion. (Ayes: Jones, Nimmer, Forde, Eckard, Hayworth. Nays: Huffman.)

In regard to Request #3, Mr. Forde moved to grant the Special Exception for the same reasons as #1 and #2, seconded by Mr. Nimmer. The Board voted 5-1 in favor of the motion. (Ayes: Jones, Nimmer, Forde, Eckard, Hayworth. Nays: Huffman.)

VARIANCE

- (a) **BOA-12-12: 225 NORTH SPRING STREET** Randel and Ann Roberts request variances from the minimum side setback requirements. The applicant is proposing to relocate an existing structure for office uses onto this lot. The structure will encroach into both side setback requirements. This case was continued from the July 23, 2012 meeting. Variance #1: The structure will encroach 1 (one) foot into a 5-foot side setback adjacent to the northern side property line. Variance #2: The structure will also encroach 1 (one) foot into a 5-foot side setback adjacent to the southern side property line. Section 30-7-5.1 and Table 7-14, Present Zoning-O (Office), Cross Street-Bellmeade Street. (CONTINUED TO SEPTEMBER MEETING)

NEW BUSINESS

VARIANCE

- (a) **BOA-12-13: 4928 FOX CHASE ROAD** Ram Homes, Inc. requests a variance from the minimum rear setback requirement. Variance: The applicant is proposing to construct a single family dwelling with a rear screened porch. A portion of the porch will encroach 4.7 feet into a 20-

foot rear setback. Section 30-7-3.2(A)(2) and Table 7-2, Present Zoning-R-3, Cross Street-Fleming Road. **(GRANTED)**

Loray Averett stated that the applicant is proposing to construct a single family dwelling and is requesting a variance for an attached rear screened porch. A portion of the screened porch will encroach 4.7 feet into a 20-foot rear setback. The property is located at the eastern end of Fox Chase Road (cul-de-sac) west of Fleming Road. The lot is zoned R-3 (Cluster), which means the lot may use the R-5 zoning setbacks. The applicant is proposing to construct a single family dwelling with an attached screened porch. Records reflect the lot is recorded as Fleming Meadows Phase 2, Lot # 84. The rear property line has an irregular shape. A portion of the rear line is angled. That portion of the rear lot line is adjacent to an area recorded as Bio-Retention Area #2, along with common elements. Common elements are typically conveyed to owner's association within the development for maintenance purposes. The common area is 30 feet in width adjacent to the rear line and then decreases in width to only a small triangular portion. 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 Jones asked if there was anyone wishing to speak in favor of the request.

James Boykin, representing Ram Homes, Inc., 4009 Hobbs Road, was sworn in and stated that he owns Ram Homes and submitted this request for a new residence under construction and the deck is consistent with the surrounding neighborhood. The proposed screened porch is also consistent with other structures in the neighborhood. The encroachment is caused because of the irregular shape of this particular lot in the subdivision.

There being no speakers in opposition to the request, the Public Hearing was closed.

Discussion:

Mr. Forde asked the applicant if he has contacted the surrounding neighbors about the proposed project. Mr. Boykin stated that he has sent a letter to the surrounding neighbors explaining his intentions, but he has not actually spoken with any of the neighbors.

Ms. Huffman stated that she does not have a problem with this request, particularly because it is a heavily wooded area and there is a lot of common space to the rear of the property.

Ms. Eckard stated that she has a few concerns about the request as she feels it may set a precedence for other requests in the future.

Mr. Huffman moved that in regard to BOA-12-13, 4928 Fox Chase Road, the Enforcement Officer be overruled and the variance granted as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of the property because the standards of the homes that are near this property and the existing deck is already in place. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because it is an irregular shaped lot. The hardship is not the result of the

applicant's own actions as the applicant wishes to maintain the standards of the surrounding properties and to protect the potential future homeowners from insects that would be in the common area that adjoins the lot. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because of the difficulty of the irregular shape of the lot. The granting of the variance assures the public safety and welfare and does substantial justice because it upholds the deck standard and just asks for a screened porch on top of the deck, seconded by Mr. Forde. The Board voted 6-0 in favor of the motion. (Ayes: Jones, Nimmer, Forde, Eckard, Hayworth, Huffman. Nays: None.)

BOA-12-14: 812 LILLY AVENUE Tommie Lauer requests a variance from the minimum off-street parking requirements. Variance: The use of the property for a physical fitness center, based on the size of the building requires 29 spaces and the applicant is proposing to provide 4 spaces; therefore, a variance of 25 spaces is requested. Section 30-11-2.3 and Table 11-1, Present Zoning-LI (Light Industrial), Cross Street-South Mendenhall Street. (DENIED)

Chair Jones asked that all speakers, in favor of or opposed to the request come forward to be sworn in.

Mr. Hampton arrived at 6:39 p.m. for the remainder of the meeting.

Loray Averett stated that Tommie Lauer requests a variance from the minimum number of required parking spaces. The applicant has changed a property use from warehouse to physical fitness center, which will require 25 additional parking spaces. The applicant is requesting a variance to be allowed to provide 4 parking spaces when 29 spaces are required. The property is located on the north side of Lilly Avenue east of South Mendenhall Street and is zoned LI (Light Industrial). The property contains a building that was last used as a warehouse/storage facility. It is now being used as an indoor physical fitness center/Sports Instructional School. This use is permitted in the LI zoning district. The change in use from a warehouse to a physical fitness center increased the minimum number of parking spaces. On or around March 22, 2012 staff received a complaint concerning the occupancy of this property. The complaint was the property did not provide parking spaces and there were also noise level complaints from nearby residents. The occupant was issued a Notice of Violation to comply with submitting a change in use site plan for the property. The applicant and their Architect requested a meeting and presented a drawing for staff to discuss. There was no official review for this plan, only comments through a meeting and various emails. The change in use plan will require other departmental reviews, in addition to zoning. The access and parking requirements appear to be an area of compliance that the applicant has difficulty achieving. Based on the preliminary drawing, the building is approximately 8,584 square feet. The previous warehouse use required one space per 2,000 square feet or a minimum of four spaces. The current use requires one space per 300 square feet which equates to 29 spaces.

The LDO required access, parking spaces and back-up drive aisles are required to be paved, striped and designed to minimum parking space size and safety standards. This cannot be achieved on this property. The property fronts on Lilly Avenue and the rear or northern portion of the lot is adjacent to an alley. In order to access the alley for any legal ingress/egress, the alley must be paved. A portion of the alley is located in the College Hill Historic District. The applicant met with staff and discussed a preliminary plan for parking. The spaces could not be achieved. The Land Development Ordinance provides alternative options to allow reductions for parking spaces based on certain criteria. The applicant did not show the criteria to be allowed to qualify for these alternative measures on their preliminary drawing. These parking alternatives are described in Exhibit 9. Staff is of the opinion that perhaps by showing how this property will be designed to accommodate for some or all of the alternative options, the lot could possibly qualify for exemption for a few required spaces. That number has not been determined, as the applicant's drawing did not contain or show how they met the criteria for the exemptions. Historical data (Exhibit 10) indicates that New Home Builders was granted a variance from a Lilly Street setback in 1994 to re-build this warehouse building. The drawing that accompanied that request showed 3 lots under the same ownership (New Home Building Supply Company). Also, the adjacent property was then operated by Newman Machine Company and parking was not an issue for either of these two uses. Records reflect that in 1996, the lots under the ownership of New Home Supply Co., were sold or changed ownership. The lot on the corner that faces South Mendenhall Street was conveyed to College Hill Neighborhood Association. The lot (812 Lilly Avenue) was conveyed to Gary Jobe Builder, Inc. There was a small lot that appears to have been combined with the Newman Machine Shop property and later to the developers of the Province multi-family project that was recently constructed. Guilford County Deed Records reflect that in 2009 the applicant acquired the property at 812 Lilly Avenue. The area has been in transition in recent years with most of the industrial uses declining and being replaced with other uses. Staff has attached a list of uses (Exhibit 6) in the case packet that are permitted in the LI zoning district. 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.

Marc Isaacson, 101 W. Friendly Avenue, attorney representing the applicant, was previously sworn in and stated that they were asked to file the variance request after there were several discussions back and forth with the architect and the owner of the property to reconfigure the property to enable them to fit the required parking on their property. The property is in transition and this area has been in transition and there is an issue of change in this area and how the property has been affected. He feels that is the purpose of the Board of Adjustment, to take into account situations like this, where there are transitions and there are changes happening in an area and where every piece of property is not a perfect square or rectangle that does not fit that well into the puzzle of the map of the City. In response to the tests that the Board is to keep in mind as it deliberates this matter, the first test is that if the applicant complies with the provisions of the ordinance, he can make no reasonable use of the property. In response to that, he would point out that the property is zoned Light Industrial and has been for all of its history. It is now being used for indoor recreation purposes, which is a permitted use in Light Industrial districts.

By its very nature, the City Council determined that all permitted uses in Light Industrial are appropriate and reasonable for the property when they zoned it as such. The simple issue here is that this property owner does not have the land area to meet the 29 parking space requirements for the reasonable use of indoor recreation or athletic instruction. The property is no longer practical for its previous use as a warehouse. The main change was the residential project adjacent to this site. As a result of that, several of the roads accessing this site were closed or reconfigured, making access to this site inadequate for tractor trailers or other vehicles that would typically support and use a warehouse in a Light Industrial zoned area. Without a change in use, this building would likely sit vacant for many, many years. He suggested that any change of use from warehouse would trigger the need for additional parking spaces.

Mr. Isaacson also pointed out that because of the placement of the warehouse on the property, it practically precludes the required number of parking spaces under this change of use ordinance that is triggering this issue. Surrounding development has rendered the property practical unusable as its previous use as a warehouse. The difficulty in meeting the required number of parking spaces comes from the way that the building is situated on the property. The building has been in place for over 21 years and was already built on the site when the owner purchased the property. This change of use is triggering parking requirements and that change in use is due to the changed circumstances in the neighborhood and the area. The purpose of the parking ordinance is to provide adequate parking for users of that parking and to avoid on-street parking for safety reasons. The issue here is that the new use of the property as a specialized indoor recreation facility does not invoke those same concerns. This fitness facility is unlike other common work-out venues and is not a YMCA, not like a Gold's Gym, or a Rush Fitness facility. It is a very individualized, customized, cross-training facility. The photos presented what the interior of the building looks like for this type of cross-training. Unfortunately, the parking ordinance is written in such a way that it contemplates that there will be many, many more people using the facility at one time, than are actually using the facility. He pointed out that the property owner was able to obtain a business license for the intended use as an indoor recreational facility. He feels that the applicant has met the tests, as set forth in the ordinance.

Tammy Williams, 3606 Dogwood Drive, was sworn in and stated that she wished to reiterate one of the points that Mr. Isaacson made and that is the zoning that is required for this building is in excess for parking and contradictory to what is needed for the philosophy of the work-out programs that are actually conducted within the facility, as the cross-fit philosophy is such that the class sizes are small and the space needed for the participants is much greater than the typical gym. Class sizes are maxed at 12 participants. There are also people who bicycle there, walk from the neighborhood, family members, and couples who car pool together. Their need for parking is much less than might be indicated by what the City ordinance says the zoning might require. There have been some points of contention with the area residents, but parking does not seem to be the major points of contention. They have made efforts to address the neighborhood's concerns. There is also a verbal agreement with the Providence apartment complex which allows members to park in the back of their parking lot. Ms. Williams asked those in attendance who support the variance request to stand and there were about 30 – 35 people who stood in support.

Ms. Huffman asked several questions and, in particular, what Ms. Williams' relationship is to the facility and she stated that she is a business partner. Ms. Williams stated that there are 3 coaches for their trainees and they are not all there at the same time. At this time there are approximately 120 members of the facility.

In response to questions by Ms. Eckard, Ms. Williams explained the parking that is near the building and in the alleyway. She also explained that there is on-street public parking on Mendenhall Street, near the facility. Ms. Eckard asked if there are bike racks provided for the members. Ms. Williams stated that they have not as yet provided bike racks, but that is certainly something that they can address in the future.

Chair Jones moved that the time for those speaking on this matter be increased an additional ten minutes, seconded by Ms. Huffman. The Board voted unanimously in favor of the motion.

Ms. Williams stated that they would like to have a written agreement with the apartment complex so that their parking is sufficient and they would like to install the bicycle racks and document the other ways they are meeting parking requirements.

In response to a question by Mr. Nimmer, Loray Averett stated that the over-flow parking provided by the apartment complex would provide the needed parking spaces required. These parking spaces could be legally encumbered, if all parties agreed but there would have to be a written agreement and approved by the Legal Department.

Sergeant Zachary Barlow, 618 S. Mendenhall Street, was sworn in and stated that he is the closest neighbor and has lived on Mendenhall for about 3 years. He has never seen any of the parking issues and has not seen anyone blocking driveways.

John Conklin and Lori Campbell, 69 Joyner Street, were sworn in and stated that they live and work in the immediate area. They have witness several people who ride their bicycles to the facility.

Tammy Hillard, 2106 Tennyson Drive, was sworn in and stated that she has been attending Cross-Fit classes since it opened and she drives to the facility and parks in the over-flow at the apartment complex and has never had a problem with parking.

Jeninne Rice, 5723 Mabe Drive, Oak Ridge, NC, was sworn in and stated that she drives there every morning for training and she feels that change is never easy for some people to take. She feels that the property owners have taken tremendous consideration of the historical significance of this area.

Chair Jones asked for those wishing to speak in opposition to the request. There would be a total of 30 minutes to speak.

Ronald Walters, 610 Morehead Avenue, was sworn in and presented a handout for the Board members' review. He stated that the handout shows all the fitness and work-out centers in Greensboro. He pointed out that if the railroad should take back their property from the apartment complex, they would lose all those spaces that are now empty and the fitness facility

would no longer have access to the over-flow parking. He also does not agree with the attorney that the warehouse is useless, as warehousing can be done, depending on what you are warehousing. He is also unsure whether the apartment complex could sign an encumbrance on those spaces since it actually belongs to the railroad. It is also difficult to travel the local streets because the members of the fitness facility are using the streets to do their exercising.

In response to a question by Chair Jones, Loray Averett stated that the Land Development Ordinance does not address parking lots in railroad easements, they prohibit and limit buildings and structures in railroad easements, but not parking spaces and parking lots..

Ann Curtis, 619 S. Mendenhall Street, was sworn in and stated that her house is located across the street from the gym. Last week her house went on the market and the gym played a big in her decision to sell her home. The noise from the gym is very intrusive, with the sounds of weights crashing to the floor, trainers screaming loudly and loud music and chanting are difficult to deal with. The noise starts at 6:00 a.m. and sometimes continues until 9:00 p.m. and weekends are especially distressful. It is very difficult for her to back out of her driveway because she fears she will hit someone running down the street. Weights and tires are pushed up and down the street.

Melanie Bassett, 815 Spring Garden Street, was sworn in and stated that she cannot sleep late because of the noise, she cannot have visitors come to her home, as there is nowhere for any visitors to park. She pointed out that there are other cross-fit gyms that provide adequate parking. This historic neighborhood is very densely populated and not everyone rides a bicycle. There has been an additional of 700 living units added to the block where she lives. There has been a tremendous impact on this neighborhood because of all the additional vehicles, new to the area.

There being no further speakers, the Public Hearing was closed.

Ms. Eckard asked if the variance is not granted, what happens next. Loray Averett stated that the applicant has the right to appeal the decision by the Board of Adjustment to Superior Court. They would also have the option of asking staff for more time to try to encumber the parking spaces at the apartment complex.

Chair Jones asked Counsel Carruthers if the Board could grant the variance subject to satisfactory parking agreement being entered into within thirty (30) days, that would be satisfactory to City staff. Counsel Carruthers stated that he would be uncomfortable with that, as it is a question of first impression, for him, but when the Board starts reaching beyond the facts that are present now, he feels they would be getting beyond what the mission of the Board is.

Ms. Huffman stated that she is having difficulty with this, as originally it stemmed from her disagreement to continue the matter, because this has been going on since March 24, 2012, and that is her biggest issue. It could have been resolved if the parties worked together and had good intentions and had they done anything to work forward. It has gotten this far because of a lack of attention, and that disturbs her.

Ms. Hayworth stated that this is a very difficult case for both parties. Parking is at a premium for this area because of the student housing and the historical neighborhood as a whole. She is not comfortable making a decision based on getting parking from somewhere else and encumbering their property to make this work.

Mr. Forde stated that even though he agrees with the comments made by the Board members, he also feels that had the applicant submitted a building plan where the parking issues would have come up at the beginning, they would not have had to go through all this at this time. At the same time, he feels that there is parking available to them by using the ordinance as it is.

Mr. Forde moved that in regard to **BOA-12-14, 812 Lily Avenue**, that the Enforcement Officer be overruled and the variance granted as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of the property because there simply is not enough parking available on-site. The hardship of which the applicant complains results from the unique circumstances related to the property because of the way the building is situated on the lot. The hardship results from the application of the ordinance to the property because this is in the LI district and the use of the property is allowable in the LI district and there just simply is not enough on-site parking. The hardship is not a result of the applicant's own actions because the lot was in place when it was obtained. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it is an allowable use in the LI zone and the granting of the variance assures the public safety and welfare and does substantial justice because the persons and the owners of the property will get to use it in a manner that is consistent with the zoning of the property, seconded by Mr. Jones. The Board voted 3-4. (Ayes: Jones, Forde and Hampton. Nays: Hayworth, Huffman, Eckard and Nimmer.) The motion failed and the request was denied.

There was a 10 minute break from 8:10 until 8:22 p.m.

APPEAL OF ZONING ADMINISTRATIVE DETERMINATION

- (a) **BOA-12-15: 514 HICKORY RIDGE DRIVE** Claude Clark of Bojangle's Restaurant, Inc. appeals a decision by the office of the Zoning Administrator that awnings for a proposed restaurant are considered a part of the building instead of building trim. The NC 68 zoning overlay district prohibits bright colors, except for building trim and signage. Section 30-7-8.10(a) NC Highway 68 Scenic Corridor Manual Item (D), Present Zoning-CD-CM, Cross Street-NC 68 Highway North. **(GRANTED)**

Loray Averett stated that Claude Clark of Bojangles Restaurant, Inc. appeals of a Zoning Administrative Determination. The applicant appeals a decision that exterior awnings are a part of the building and are not considered as trim on a building. The property is located within the NC 68 overlay and is subject to design guidelines. The lot is currently vacant and the applicant

is proposing to construct a Bojangles' Restaurant. The applicant recently submitted exterior color drawings that reflect orange awnings as part of the building and their design. The applicant has stated they consider the awnings as building trim and staff's interpretation is the awnings are a part of the building and thus are required to meet the design guidelines. Staff considers the color orange as a bright color and this color should be limited to trim only. Attached to this report, described as Exhibit 9 are copies of two photos for a Bojangles' Restaurant located in Cary, North Carolina. Staff considers these awnings to be more earth tone in color with only the trim being a bright color. Staff has asked the applicant to consider this type or a similar design for their awnings that will be placed on the proposed site located in the NC 68 Overlay Corridor. Staff thinks this design will comply with the intent of the design criteria for the subject overlay property. 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.

Counsel Carruthers stated that the Chair had requested that he produce the rules of construction and interpretation that were in the LDO and applicable NC Supreme Court language, which he has provided to the applicant and Board members. He pointed out that the roof and building are defined in Article 15, definitions of the LDO.

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

Claude Clark, 514 Hickory Ridge Drive, representing Bojangles' Restaurants, was sworn in and presented handouts for the Board members' review. He stated that the office address is 9432 Southern Pines Boulevard, Charlotte, NC. Bojangles' restaurants has been in business for 35 years and started in 1977. The first Greensboro location was opened in 1981, and Greensboro is currently home to 9 locations within the city limits. There are 56 restaurants in the Triad area, Greensboro, High Point and Winston-Salem. They are looking forward to replace an existing restaurant with a new structure directly across the street from the current location on Highway 68. In 2008, the opened a restaurant on Pisgah Church Road and in August 2011, another restaurant was opened on E. Cone Boulevard. Photographs were submitted showing this particular restaurant to show the color and placement of the awnings on the building. This shows a prototype restaurant that is typically built for each location in the 13 states where they operate. They do not consider this to be the roof of the building. They can build the restaurant without the awnings being on it, as it is strictly trim. There are no NC requirements in the building codes, to his knowledge, that require windows to be covered. The roof of the building is behind the parapet walls along with the air conditioning units and other mechanical equipment. The color and shape of the awning is looked at as their brand image and the colors of the awning have been used since the beginning of their business. A photo of the restaurant in Cary, NC was provided and he acknowledged that it is a Bojangles' restaurant, but that was a developer covenant restriction that they matched the other buildings in the development and they were aware of that before they put the property under contract and elected to do that project based on that covenant, it was not a City requirement. When they went into negotiations for the current project, they reviewed the covenant restrictions that the developer has in that area and they have complied with all the developer restrictions, and the developer has approved

the layout in this look for the restaurant. They contend that the awnings are not part of the structure and the roof of the restaurant, it is strictly trim and the color is still applicable.

Ms. Averett pointed out that the development ordinance in Cary, NC, has an ordinance that does regulate properties that are developed in unified manners in relation to color and design, and bright colors which are also regulated.

Ms. Huffman asked why they are moving across the street and building a new restaurant at this location. Mr. Clark stated that access to the property is easier on that side of the road on Highway 68 and it would be more easily accessed at the new location because of the frontage road which changed, really limits how people can get in and out of the restaurant. It will also give them more parking on the site.

In response to a comment by Mr. Forde, Ms. Averett stated that bright colors are prohibited and the bright colors should be limited to the trim. Staff's interpretation is that the awnings are a part of the building and Bojangles' wants to appeal that interpretation, as they feel that the awnings are trim.

Counsel Carruthers pointed out that the LDO quotes that "building" is defined as "any structure having a roof supported by walls or columns constructed or used for a residence, business, industry or other private or public purpose." Roof is defined, but trim is not defined.

In response to questions about Wendy's Restaurants, Bryan Upton, 8720 Red Oak Boulevard, representing Bojangles' restaurants, was sworn in and stated that he is not an expert on Wendy's restaurants, but they have also had standardized colors, copper, bronze, looking awnings and the deeper reds are consistent with their new prototype that they introduced about six years ago. Mr. Forde asked if Mr. Upton would consider the orange awning as a type of trademark to Bojangles', and Mr. Upton stated that he absolutely would.

There being no one else to speak on this matter, the Public Hearing was closed.

Discussion:

Mr. Forde stated that he really appreciates and understands the overlay districts and he drove out to the site today and thought that it was quite interesting to see that there was a Bojangles' across the street. There is a Wendy's next door, a Taco Bell across the street, and down the block was McDonald's. To him the overlay district is supposed to enhance an area so that it all looks similar. He feels that this area is what you see everywhere.

Chair Jones stated that members sit on the Board of Adjustment to hear what comes before them and in this case, he feels that the Board has been asked to determine if the ordinance interpretation is correct and whether awnings are considered trim under the LDO.

Ms. Huffman stated that according to her interpretation, she would find in this request that the building would not crumble should the awnings be taken off. She thinks that is a clear definition of whether it is trim or not. It does not have to be structurally there. Therefore, she feels it is trim.

Ms. Huffman moved that in **BOA-12-15, 514 Hickory Ridge Drive**, that the interpretation of the Enforcement Officer be overruled and the findings of fact be incorporated because the proposed awnings are trim and are not a part of the building or roof, thus the orange awnings would comply with the architectural standards for North Carolina Highway 68 Scenic Corridor, because bright colors are permitted, limited to the building trim and signage only. To support this motion to overturn, the Board finds the following facts: the property located at 514 Hickory Ridge Drive is within the corporate limits of the City of Greensboro and subject to its jurisdiction and application of its ordinances. At the time the determination was made, the proposed site plan with exterior color elevations for zoning review were submitted by the applicant for a zoning approval for this property. Sections 30-7-8.10,3a. and NC Highway 68 Scenic Corridor Overlay, Item "d", the City of Greensboro Land Development Ordinance applies to the property. The Board accepts the following testimony in evidence as true, based on a decision, solely upon the NC Highway 68 Corridor, the Section Use and Design Standards, Item "d" under architectural, Section "3", where it states, "Primary colors or bright colors shall be limited to trim and signage." The greater weight of the evidence presented shows that the interpretation of the Zoning Administrator does not require the NC Scenic Highway Overlay Architectural Standards, Section 30-7-8.10(b) of the City of Greensboro Land Development Ordinance states, "Development and construction activity within the Scenic Corridor Overlay district must conform to the adopted Design Guidelines for the subject district. Such guidelines are found in the NC Highway 68 Overlay Manual, seconded by Ms. Hayworth. The Board voted 6-1 in favor of the motion. . (Ayes: Nimmer, Forde, Eckard, Hayworth, Huffman and Hampton. Nays: Jones.)

ADJOURNMENT

* * * * *

There being no further business before the Board, the meeting was adjourned at 8:51 p.m.

Respectfully submitted,

Frankie T. Jones, Jr., Chairman

Greensboro Board of Adjustment

FJ/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
SEPTEMBER 24, 2012**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, September 24, 2012 at 5:36 p.m. in the Council Chamber, Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair, Cheryl Huffman, Vice Chair, Patti Eckard, Jeff Nimmer, Cyndy Hayworth, Frank Forde and Joseph Hampton. Staff present were: Loray Averett, Zoning Services Coordinator, Fred Boateng, Don Sheffield and Tom Carruthers, City Attorney's Office.

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. Forde pointed out that on Page 1, the attorney's name at the bottom of the page should be Haywood, instead of Hayworth. Mr. Forde then moved approval of the minutes from the August 27, 2012 meeting, as corrected, seconded by Ms. Huffman. The Board voted unanimously in favor of the motion.

SWEARING IN OF STAFF

Loray Averett, Fred Boateng and Don Sheffield were sworn in for their testimony during the meeting.

CONTINUANCES/WITHDRAWALS

None.

OLD BUSINESS

VARIANCE

Chair Jones asked that anyone wishing to speak on this matter to come forward to be sworn in for their testimony regarding this matter.

Speakers were sworn in.

Mr. Terrell, counsel for the applicant, stated that Mr. Haywood is here representing his client, who owns adjacent property to the subject request, but it is his understanding that Mr. Haywood would also be giving evidence.

Chair Jones stated that he would have to recuse himself from the first item as one of the attorneys involved for the petitioner is with a law firm that he formerly worked for, and also the firm representing Lincoln Financial Group, which he currently works for. On that basis, he must recuse himself, and Vice Chair Huffman would lead the discussions on this matter.

Mr. Terrell then addressed Ms. Huffman and stated that Mr. Haywood represents the property owner across the street and he will be presenting evidence and either during his presenting evidence or his cross-examination or during his direct and he would like for him to be under oath.

Vice Chair Huffman asked Mr. Haywood to take the oath. Mr. Haywood stated that he would be happy to take the oath but he does not actually intend to present any evidence. Vice Chair Huffman asked Mr. Haywood to go ahead and be sworn in.

Counsel Carruthers asked the Board, in regard to the Spring Street variance, in a separate forum was heard before the Board of Adjustment previously and then a time period elapsed since then. The rules require Board members to disclose any exparte communications or discussions they may have outside the hearing, regarding this matter. He asked if any Board member felt that they may have discussed this matter, and if so, it would be appropriate for them to make those disclosures.

Mr. Forde stated that he has discussed with Counsel Carruthers, previously and before the prior hearing, he disclosed that he used to be employed by Carruthers and Roth and he stopped his employment about five or six years ago and he has no financial ties, whatsoever, with the firm. After the last hearing, he did speak with one of the members of the firm about that hearing but he has not spoken to anyone with the firm about the hearing tonight.

Mr. Terrell asked Mr. Forde if he was discussing a conduct issue? Mr. Forde stated that he made a statement that he did not think the way they presented their opposition was in keeping with what he felt the firm's demeanor should have been. Mr. Terrell stated that he had no objection. Counsel Carruthers stated that hearing no objection, he also would have no concerns.

Ms. Hayworth stated that she was not on the Board at the time of the last hearing. Ms. Eckard stated that she did not have anything to report. Mr. Nimmer stated that his only involvement was that he used to be on the Minimum Housing Standards Commission and the house that sits on Washington Street was under discussion with that Commission and he voted on that. In

response to questions by Mr. Terrell, he stated that he did not feel that he had formed any opinions from that Commission that would affect his ability to be fair in regard to this matter this evening. Vice Chair Huffman stated that she was at the last hearing, and there has been no other communication with anyone outside this Board. Mr. Haywood stated that he had no questions.

- (a) BOA-12-12: **225 NORTH SPRING STREET** Randel and Ann Roberts request variances from the minimum side setback requirements. The applicant is proposing to relocate an existing structure for office uses onto this lot. The structure will encroach into both side setback requirements. This case was continued from the July 23 and August 27, 2012 meetings. Variance #1: The structure will encroach 1 (one) foot into a 5-foot side setback adjacent to the northern side property line. Variance #2: The structure will also encroach 1 (one) foot into a 5-foot side setback adjacent to the southern side property line. Section 30-7-5.1 and Table 7-14, Present Zoning-O (Office), Cross Street-Bellmeade Street. **(DENIED)**

Loray Averett stated that the applicant is requesting variances from minimum interior side setbacks. An existing structure for office use is proposed to be re-located onto property located at 225 N. Spring Street. The structure will encroach one-foot into each 5 foot side setback. This case was continued from the July 23 and August 27, 2012 meetings. The property is located on the west side of N. Spring Street north of West Friendly Avenue and is zoned O (Office). The lot is a legal nonconforming lot. It has 50 feet of lot width. The minimum lot width for O-Office zoning is 60 feet. The lot area is in compliance at 7,500 square feet of area. The lot is currently vacant and the applicant is proposing to locate a two-story structure with a partial basement on the property. The proposed land use for the structure will be office use. The structure including the proposed basement area will contain 4,200 square feet. The structure is shown to be 42 feet wide. The lot is 50 feet wide. The plan shows the structure will be centered on the lot, thus the applicant is requesting a variance for a one-foot encroachment on each side property line. The O, Office District, is primarily intended to accommodate moderate-to-high intensity office and institutional uses and supporting service and retail.

Vice Chair Huffman asked for those speaking in favor of the application to come forward to present their evidence.

Counsel Carruthers asked the attorneys if they would like every question objected to, to make this a smoother presentation.

Mr. Haywood, Mr. Terrell and Mr. Blair agreed.

Tomas Terrell, attorney representing the applicant was sworn in, and stated that he was not at the last hearing and he understands that there were some conduct issues He would like to reserve the right to object, if it is absolutely necessary.

Vice Chair Huffman asked that Mr. Terrell be sworn in.

Mr. Terrell stated that they would like to modify the request and give the Board an option as to how it would handle the request. As it is now, the applicant has asked for a variance for an equal one-foot on each side of the lot, but she would be equally willing to make that variance a two-foot variance on the north or a two-foot variance on the south, so that it could be five-feet remaining the same against the Carruthers and Roth lot, three-feet against Photobiz lot. He pointed out that this is a classic case of a city with lots that were formed in the 19th Century and in the 21st Century with a 21st Century zoning code that makes it extremely difficult to do infill and reinvestment for the older neighborhoods. The City of Greensboro has adopted a Neighborhood Plan that calls for preserving older homes and adopted a plan that calls for infill and encourages this type of reinvestment in old neighborhoods and that is exactly what Ms. Roberts is trying to do with the Land Development Ordinance, which provides for variances. The question of what is in the spirit of the ordinance will come up. The variances provide relief for these odd situations where the lot and an ill-fitting 19th Century lot that somehow needs to find a use. A couple of months ago, this Board issued a seven-foot variance for a family that just wanted to add a bedroom in the same place where they had a deck and the Board granted a variance for them to be able to add that bedroom onto their house, even though it was not absolutely necessary for their home, but it made sense in that circumstance. They feel that the evidence will show today, that this situation is much more difficult and the options that she has are much less. Mr. Terrell asked the applicant, Ms. Roberts, to speak to why there are practical difficulties or unnecessary hardships that result from the strict carrying out of the letter of the ordinance.

Loray Averett stated the request is for one-foot side encroachments and Mr. Terrell mentioned about switching the building setback from the one-foot request to five-feet and three-feet. Before hearing all the testimony, she wished to note that for the request to be changed, it would have to be re-advertised.

Mr. Terrell pointed out that the Board has options of making conditions to ordinances and also has the obligation to do something that was properly noticed.

Counsel Carruthers stated that there are two issues being discussed here for the benefit of the Board. This Board would be deciding whether to grant or deny the variance. If it were to grant the variance, then it could also decide to place special conditions on the granting of the variance, in which include the movement of the setback from one side to another, or a minor adjustment in that way. The advertising requirements have been met and is sufficient for this to proceed upon this lot.

Vice Chair Huffman reminded everyone that there is still a twenty minute time limit. Mr. Terrell stated that these conversations would not interfere with his time limit. Vice Chair Huffman stated that the Board is aware of the conversations and time limit and asked that everyone keep moving along.

Loray Averett added that looking at the map on what the new request would be, the encroachment is one-foot, being four-feet from the property line now and if they reduce that down to three-foot, the encroachment would become more, at two-foot and that cannot be heard unless it is re-advertised, as it became more intense on one side.

Counsel Carruthers stated that the City Attorney has already discussed that with him and they are ready to proceed.

Vice Chair Huffman asked if the Board is to only consider the variance before them.

Counsel Carruthers stated that as a Board, they have the right to place conditions on the variance and it could include a minor alteration of the conditions and this has been discussed in the Law office and they feel like this would be in line or altering.

Ann Roberts, 3402 Wedgewood Place, was previously sworn in and stated that she has been an investor in this area, where the subject property is, buying a house in 1975. They bought the vacant lot at 225 N. Spring Street in 1978. Nothing has been on this lot, which they have paid taxes on for thirty-four years. They would like to do something consistent with the neighborhood and make use of the lot. At the previous Board meeting, they explained that they would like to move a one hundred year old building to this lot. She presented a photograph of the house they wish to move to the lot. At that meeting, they requested a variance for residential use, which required a larger side yard setback. At this time, they are asking for a very minimal side yard setback variance to use this building for office use. The ordinance provides that a commercial building can be placed directly on the lot line, with a zero side yard setback. However, it also provides up to a five-foot setback. There are certain practical difficulties or hardships in carrying out the strict letter of the ordinance. The City has different standards for different areas of the City. When this part of town was established in the late 1800s, a fifty-foot wide lot was sufficient. There were no specific setbacks at that time. At this time it is difficult, if not impossible, to build anything of a practical use on a fifty-foot wide lot. With current development ordinance requirements, even an office building is difficult to build with appropriate setbacks and also have the necessary parking. To build a building under current standards, it would be so small and narrow, that they would be unable to get rent to justify the costs to build it. Moving the proposed building, would allow them to make reasonable use of the lot and keep a very valuable resource out of the land fill. There are very unique circumstances surrounding this request. They did not cause the lot to be fifty-foot wide, it's been in existence since the late 1800s. There are hardships which result from the application of the ordinance to the property. Modern zoning codes were written for much wider lots. They are trying to adapt an older building, a hundred years old, to an older lot established in the late 1800s within the confines of a 21st Century building code. This hardship is not the result of any of her own actions, the lot exists as it has for over a hundred years. She and her husband have considered both residential and commercial use, building a building for that lot, but it is difficult to find a building that would be thirty-feet wide that could be adapted for the lot and make it feasible for building. Likewise, with a commercial building as there are additional requirements for commercial buildings and with the various requirements, it just is not feasible for them to do that. They feel the proposed building

would provide something on the lot that is reasonable, provide infill for the City, increase the tax base and save the building from the land fill. She has never been approached by any developer to develop this property for any type of use. In her opinion, moving the proposed house to this lot for office use is the most reasonable use for the property. There is a provision for variances from the Board of Adjustment for reasonable use. This allows the Code to bend a little to make something good possible. That is the spirit to define times when the variance makes sense. This is to allow variances and interpretation of the ordinance for unique circumstances, which will not only benefit the applicant, but benefit the neighborhood, the community and the City. Section 30-1-3.2 states, "To implement the policies and developments contained within officially adopted plans, including the Comprehensive Plan and other related plans." Section 30-1-3-7 says, "To retain and expand the City's employment base." Moving this house would create a lot of jobs to bring it up to standards to move it and would increase the tax base. Section 30-1-3.4 states, "To maintain orderly and compatible land use and development patterns." Moving this building to this lot would be compatible with the local development. Section 30-1-3.17 states, "To promote rehabilitation and re-use of older buildings." That is exactly what she is trying to do. Section 30-1-3.21 states, "Protect private property rights." She stated she should have a right to use her property in a reasonable way. She referenced the Comprehensive Plan, primarily from the Cedar Street Area Strategic Plan, which actually goes hand-in-hand with the 2025 Comprehensive Plan. In the Executive Summary of that Strategic Plan it states, "the objective is to provide opportunities for investment and growth that do not endanger the valuable assets the neighborhood currently has." She feels this would be in compliance with that. Part One Introduction on page 5, states, "Decades of new development that has not respected the historic character of the area." That is one of the problems that has been noted in this Strategic Plan. Along with these issues, the Cedar Street area has many assets and opportunities, one of them being a mix of uses in a small area, opportunities for development in vacant lots and it also states, "Currently, there are underutilized vacant spaces." Part Four, under Visions, Goals and Strategies, "Stabilize, protect, enhance, and complement the existing area's character, diversity and appearance." This house on this lot would complement the existing area. "Encourage appropriate future development for a variety of purposes, business, commercial and residential in the neighborhood." From Chapter Four, Land Use, 4.5.2 Downtown Goals, "Promote reinvestment, preservation, diversification, and selected intensification of activity in downtown Greensboro to re-enforce its importance as the economic, cultural and civic center of the City, while protecting its heritage and historical resources and enhancing its urban character. Section 5D.2 states, "Support the protection of historic resources." There is no indication that a minor variance would threaten public safety and substantial justice is obtained by promoting development of vacant lots within the City.

Counsel Carruthers asked Mr. Haywood if he would like cross-examination at this time. Mr. Haywood stated he would like to wait.

Virginia Zenke, 1003 Carolina Street, was previously sworn in and stated that when the new jail development was announced in 2005, her primary concern was getting the house and another house moved and saved. They moved the Queen Anne house to Cedar Street and they did so with the cooperation of Preservation Greensboro Development Fund and the City of

Greensboro, and that turned into a textbook perfect case for moving old houses. The house was given to PGDF, the development fund and they in turn, facilitated the funding with the City, coordinated the renovation and ran interference with the County. Mayland Honeycutt purchased the home and the house was moved and completely renovated after several months and years. They kept several tons of materials out of the land fill, employed many, many contractors and workers during the renovation of the home and the tax value, essentially, tripled on that piece of property. All of the money spent, stayed in the local economy, most importantly, supporting the local contractors and tradesmen. Contrary to popular belief, most projects do not support these local trades. For the sake of the opposition, they are not claiming that this house is not considered an historic house, but rather, is a vintage house that has some age on it. They have a strong aesthetic value, but also the value of materials, the framing and the face materials are difficult, at best, to replace or replicate. There is an organization in Raleigh, Builders of Hope, who makes every effort to save and renovate older homes. Out-of-work people and job-training programs were used to supply the labor force. This organization then moved to New Orleans to save and renovate many, many homes in that area. There are now projects in Atlanta, Charlotte, Jacksonville, FL, and Baltimore, MD.

Vice Chair Huffman asked for those opposed to the request to now speak.

Counsel Carruthers asked Mr. Haywood if he would like to cross-examine the previous speakers. Mr. Haywood stated that he would like to question those speakers.

Virginia Zenke returned to the speaker's stand for questions from Mr. Haywood.

Mr. Haywood asked Ms. Zenke to look at Exhibit 4, and asked if that photograph accurately represents the house in question. Ms. Zenke stated it did. He then asked about the next three photographs and Ms. Zenke stated they did. Mr. Haywood asked Ms. Zenke if she knew how wide the eaves are. Ms. Zenke stated that they are about two feet wide. Mr. Haywood asked if the house is currently under contract with Ms. Roberts. Ms. Zenke stated that it is not under contract with the Roberts. She had hoped to give it to Preservation Greensboro and she sees no reason to change that. Ms. Zenke stated that Ms. Roberts does not have any obligation to purchase the house at this time. Mr. Haywood asked if she had contacted any other property owner that could put the house on their property without a variance. Ms. Zenke stated that she has scoured downtown to try and find another location for the house and no one has been willing to do it. She explained that Southern Railway may do the fast-track and, if so, then they would need to be able to move her office across Eugene Court and put it there. She is not responsible for that piece of property and they have tried out Freeman Mill Road to find a location but are constrained by problems in moving the house due to utility power lines, etc. Mr. Haywood asked if she had been told by local property owners within the zone that if she could move it, that there simply is not enough interest because there is no market for that house and renovating it and then letting it out commercially. Ms. Zenke stated, no.

Vice Chair Huffman asked Ms. Zenke what was the date of the photograph that she had presented for the Board to review. Ms. Zenke stated that photograph was taken prior to the jail

expansion, probably in 2009. She explained that, currently, the house is up on stilts waiting to be moved, there are steel bands on the house, the gutters have been taken off, but they have been retained for reinstallation. The two doors at the bottom left-hand of the photograph, there is an open area and that is where a porch used to be but was taken off for the move and that is easily re-installed, also. There are repairs to be made to the house but they are, overall, minor. The structural soundness of the house has not been compromised.

Vice Chair Huffman asked Mr. Haywood when the photographs he submitted were taken. He responded that they were taken within the last month or two and were prepared for the last hearing, which was continued.

Ms. Eckard stated that she needed clarification as to whether this request before the Board today is for residential or commercial. Ms. Zenke stated that they tried residential because that is where the market is now and the Board voted 4-2 in favor, but it was not a favorable motion. So now the request is for an office use. Ms. Eckard mentioned that she has learned that there is a lot available on the corner of N. Spring Street and Friendly Avenue, where the Ireland House used to be, and asked if that would be suitable for this house to be moved on. Ms. Zenke stated that Ms. Roberts would have to answer that, but that is her prerogative to choose to use that lot as she and her husband see fit.

Ms. Hayworth asked if Ms. Zenke knew the distance between one eave to the other. Ms. Zenke stated that if the house is 42' and the eaves are 2' each, then it would be 46'. Ms. Hayworth pointed out that the supports that are on the back, appear to go out even further. She asked if that was in line with the eaves or if they go out beyond the eaves. Ms. Zenke stated that the house is two stories high and for the length of two rooms, it is two stories and then it drops to one story and that is what is shown on the back, is the one-story portion. That eave is not any wider and they are all the same.

Mr. Terrell asked Ms. Zenke if she had a lot of experience in historic homes and doing these sorts of homes. Ms. Zenke stated that she guess she did. Mr. Terrell asked if, in her experience, after the home is moved, if it is moved, repainted, a new porch put on and it goes to the appropriate piers, would it look more like the photograph under Tab 4, that Mr. Haywood submitted, or more like the photograph of five or six years ago, that is Exhibit A. Ms. Zenke stated it would look more like the photograph taken in 2009. They have saved all the columns, the granite caps on the front porch and they would only have to build the brick piers underneath. Likewise, she is not sure what the elevation is, but it should be very similar, as far as the height off the ground.

Mr. Forde asked if there are any other houses that have been moved, that have been placed on the current lot, other than the one shown in the photographs. Ms. Zenke stated that there was also the Queen Anne, which moved to Mayland Honeycutt's property and there are, actually, two and they tried working with a lot owner prior to Mr. Honeycutt and he was supposed to put both houses on the lot. That did not happen as one of the Queen Annes did not sell in time to make all the deadlines and one of them had to be torn down.

Mr. Haywood asked that Ms. Roberts return to the speaker's stand for his questions. He asked if she agreed with the testimony given by Ms. Zenke. Ms. Roberts stated that, to her knowledge, what Ms. Zenke had conveyed was the truth and that it is correct that there is no contract or obligation on her part to purchase the house. He asked what steps Ms. Roberts has taken to design a building to fit the property. Ms. Roberts stated that she had been asked if they had considered other opportunities or options for this and she had indicated that they had considered building a house or a duplex on the property, but due to the requirement restraints and setbacks, it was difficult to find buildings they thought would be appropriate or be cost feasible. They have talked with Carl Myatt several times through the years about various options for this property and the Ireland House property, but they felt that the house owned by Ms. Zenke was the highest and best use for this property, as well as doing something that is compatible and fit in with the existing architecture of the buildings. They did not feel that they could build anything new that would be compatible with the existing buildings in the neighborhood. There have been no site plans drawn by Mr. Myatt, in regard to this property. Mr. Haywood pointed out that the application for a variance was in the booklet before Ms. Roberts and asked if Exhibit B was a site plan. Ms. Robert answered that was a site plan for the residential use. In regard to Exhibit B, Mr. Haywood asked if the square footage of the building is 4,430 square feet and included in the notations out to the side of the drawing, it shows the various encroachment that have been talked about. On Exhibit C, that shows a 4,430 square foot building that has the same parking spaces, no visible lines outside, talking about no encroachments and asked if she had ever considered a building like that for her property. Ms. Roberts stated she had not. Mr. Haywood then asked her to look at Exhibit D, which is also a 4,430 square foot building that could be placed on the property, with no encroachments and no variances, but that one has seven parking spaces, as opposed to four. He then asked Ms. Roberts if she felt that there any reason that a building like that would not work on her property. Ms. Roberts stated she had no reason to believe it is inaccurate or would not work. Mr. Haywood then brought Ms. Roberts' attention to some photographs in Exhibit 1, which showed an overgrown area at the Ireland House lot. Ms. Roberts stated that her husband does the mowing about every two weeks, depending on the weather. She pointed out that this particular picture shows an area that is owned by the City and is not part of the Ireland House property. Mr. Haywood asked if Ms. Roberts has ever considered moving the Zenke house to the Ireland House lot instead of the property on Spring Street. Ms. Roberts stated it would probably fit there, but it would not be the highest and best use for that property. Mr. Haywood pointed out that Ms. Roberts is a lot owner that could save the house and put it on the Ireland House lot, without any need for variances. Ms. Roberts stated that she could put the house on that lot, but she prefers to put it on the lot on North Spring Street, as it would be the highest and best use for that piece of property and would put it contingent to other vintage buildings and it would fit right in with the neighborhood. If it were placed on the Ireland House lot, it would be surrounded by office buildings and not other residential houses that are of historical character. Mr. Haywood asked if Ms. Roberts was looking for an opportunity for a "free" house. Ms. Roberts stated that it might be a "free" house but she would have to put quite a bit of money into upfitting it and bringing it to the building and fire codes. It is not really free. Ms. Roberts stated that they have been in conversations in recent years with some people who wanted to combine some lots that

they own with her lots, but that is not a workable solution. Mr. Haywood asked if any preliminary site work has been done on what would need to happen to the lot to put that house on the N. Spring Street lot. Ms. Roberts stated they have discussed it with the architect and they know they would have to do some excavation to put the basement in, but the lot slopes down so it lends itself to easy excavation for that basement area. She has not talked with a contractor, specifically, about putting a basement on her particular lot. The costs involved would be very expensive. Mr. Haywood asked if there was a time-line on having the house moved. Ms. Roberts stated that the variance would have to be obtained, there are required agreements with Preservation Greensboro to get that in place, they would have to apply for permits to move the house, permits to put it on the lot and there are a lot of permits they would have to obtain before they could actually move the house. It would probably take a couple or three months to get everything in place for the move.

Mr. Terrell pointed out that Mr. Haywood had called it a "free" house and he felt it was important to put that issue to rest. He asked Ms. Roberts if she were to take the site preparation costs, the repair costs to put the elements back on the house, repair it and to pay someone to move the house, the fees to move the power lines, et cetera, what would be the ball park figure of all those expenses. Ms. Roberts stated that it would probably cost approximately \$275,000 to \$300,000 dollars.

Patrick Blair, attorney representing Photobiz Company, 516 W. Friendly Avenue, asked Ms. Roberts if she had previously testified that she is not under contract to purchase the house. Ms. Roberts stated that was correct. Mr. Blair asked if there was any other obligation or anything forcing her to move the house onto her lot. Ms. Roberts stated that there was nothing forcing her to move the house, other than her desire to save the house as she feels it is well worth saving and is structurally sound and is of a vintage nature and is worthy of saving. It would create local jobs and keep the house out of the local landfill. Mr. Blair asked if she could just build a house or an office building on the property. Ms. Roberts stated that she could, but she does not feel that it would have the character that this proposed house would have. Mr. Blair asked if such an alternate building would provide jobs and add to the tax base. Ms. Roberts pointed out that moving the proposed house to her lot would significantly add to the tax base. Any building on the lot would add to the tax base and provide jobs. Her neighbors have been enjoying the trees and the ambience that her property has created for the neighborhood and she has paid, dearly, for her neighbors to enjoy her property. Mr. Blair asked if the reason for bringing this house to the property is to maximize her profits. Ms. Roberts stated that there was nothing wrong with maximizing profits. That is what every business or investor does.

Mr. Forde stated that he was looking at the site plan that was prepared by Carl Myatt and it says the length of the house is 42' and Ms. Zenke testified that she did not know, but she thought the eaves were 2 feet. He went by the house today and the eaves appear to be larger than that. He asked if Mr. Myatt or Ms. Zenke have actually measured the eaves on the eaves. Ms. Robert stated that she is sure that Carl Myatt did measure the eaves and that the 42 feet does not include the eaves. Mr. Forde stated that it seems to him that the overhangs, eaves, gutters and whatnot do not count when taking into account whether or not it encroaches into the side

setback. He asked that staff clarify that for him. Loray Averett stated that there is a section in the ordinance that states that eaves can encroach 2 ½ feet into a required setback, but in no case should be closer than 3 feet to a property line. Mr. Forde stated that based on Ms. Roberts' and Ms. Zenke's testimony there would be a need for another variance because the building would encroach 46 feet and then the eaves would encroach more than 3 feet into the property line. Loray Averett stated that the Chief Building Inspector is at the meeting and would be able to testify to that.

Mr. Terrell stated that staff has proceeded on information in the first variance request, counting from the foundation and it is consistent in the ordinance. He pointed out that those in opposition are trying to oppose a new interpretation that staff has never adopted.

Counsel Carruthers asked that Don Sheffield, the Chief Building Inspector come forward to speak to this issue.

Don Sheffield, Chief Building Inspector for the City of Greensboro, was previously sworn in and stated that he has not measured the eaves and does not know exactly how wide they are. Generally, they would not be over two feet, because two feet is the maximum overhang without support. In looking at the house, if they are over two feet, the eaves start sagging because there is no support, so you don't generally see them wider than two feet wide.

Mr. Haywood stated that he would like Homer Wade to come to the speaker's stand for questions.

Homer Wade, Borum, Wade and Associates, 621 Eugene Court, was previously sworn in and stated that they are engineers. He was engaged by Carruthers and Roth and they have been clients for many years. They asked him to go measure the structure on Washington and Edgeworth Streets and the house measures 42' by 45' on the foundation and the eaves are approximately 2 ½ feet on each side, without including any gutters on the front.

Mr. Haywood asked Mr. Wade to look in that booklet at Exhibit 6, and asked if that was an affidavit prepared by Mr. Wade. Mr. Wade stated that it was. Mr. Haywood then went over the qualifications of Mr. Wade and pointed out that Mr. Wade has been accepted in Court as an expert in the field of Engineering. Mr. Haywood asked Mr. Wade to explain the requirements in regard to the footprint of the house and also the eave overhang issue. Mr. Haywood asked Mr. Wade if, based on his experience and knowledge, that there was any reason to believe that a house could not be placed on the subject property in the same character. Mr. Wade stated that he felt it would be a simple task.

In redirect-examination, Mr. Terrell asked if Mr. Wade was taking the position that Ms. Roberts is supposed to raise and eliminate every possibility before she can do what she thinks is the most reasonable use of her property. Mr. Wade responded that she should be able to do what she wants on her property as long as she is within the requirements.

Ms. Eckard asked Ms. Roberts if the house could be modified to meet the requirements without a variance, without losing the character of the house. Vice Chair Huffman asked if that question could be answered after finishing with Mr. Wade's testimony.

Vice Chair Huffman asked if there was any way to position the house that Ms. Roberts wants to move to the property, without stretching it or adjusting it in any way. Mr. Wade stated no and to meet the setbacks, (both the building setbacks or the eave setback), which is also a setback that has not been asked for another variance perspective, which he feels it would need to have.

Loray Averett stated that when these plans go before the TRC, could the eaves be cut back to whatever dimension would make the house work on this property. Mr. Wade stated that he felt sure that someone could do anything necessary to make the house fit, even if it consisted of cutting the eaves back.

Vice Chair Huffman asked Ms. Zenke to return to the speaker's stand for more questions. Ms. Eckard asked if this is a Georgian style house. Ms. Zenke stated that it is not a Georgian style house but is an odd cross between a Queen Anne and Prairie style. The roof line does make it more Prairie, however, this type of house was done on Cedar Street and that house had to have the roof taken off to make it under the utility lines and some trimming had to take place, so the angled roof actually changed on that house. In this particular case, the eaves could be shortened, as this house would also have to have the roof removed in order to move it under the utility lines. In the rebuilding of that roof, they can do that, so that the eaves could be trimmed back on each side and meet the requirements.

Ms. Hayworth asked if the Inspector could answer a question. If the roof is taken off and the eaves are trimmed, at what point does it have to come under current building codes. Don Sheffield stated that anything they add back would have to be under current building code. They are allowed to keep the house the way it is, unless they actually go in and take something out. Once they take it out, it is gone. So when they put the roof back on, along with no more than two feet overhang, it would have to meet the setbacks for that lot. Ms. Hayworth asked what the minimum would be for the eaves and Mr. Sheffield stated that they are not required to have eaves.

In summary, Mr. Haywood stated that here the case appears to him, to fall squarely within number one, which says, "if the applicant complies with the provisions of the ordinance, he/she can make no reasonable use of the property." It is not sufficient that the failure to grant the variance simply makes the property less valuable. He pointed out that a lot of time has been spent on the eaves and that is just another problem they have, in addition to the current variance request. He feels that what came out in this hearing is that there are not only other uses, but the exact same use, as far as square footage of the building that the applicant can make, using this property. The applicant can put a commercial building, with the exact same square footage and meet all the requirements. They have also presented evidence that more parking spaces could be provided. He also pointed out that the applicant made it clear that the

house would fit on the Ireland House lot, but she chooses to not put the house there. He feels that there is no reason to grant the variance under the standards.

Mr. Terrell stated that he had not yet had an opportunity to ask Ms. Roberts some questions on re-direct and he would like to do that. Mr. Terrell stated that Ms. Roberts had said that she was driven to make reasonable use of her property, and asked if that was true. Ms. Roberts responded that it was to make reasonable use of her property. Mr. Terrell asked if the owners of Photobiz has made an offer to purchase her property. Ms. Roberts stated that they did, and they did not offer anything close to market value. Carruthers and Roth also offered to purchase her property, but also, did not offer anything close to market value. Her property values would go down if she is unable to develop her property.

Mr. Terrell then asked Mr. Haywood to approach the speaker's stand to answer questions. He pointed out that the owners of 235 N. Edgeworth Street will allege standing, if there is litigation, or the right to be in Court, and to that extent, they are planning to be a party, represented by someone. He feels this is absolutely necessary. Mr. Terrell stated that he is referring to 168-3.3, and asked if the owners of 235 N. Edgeworth Street, have financial interests, lease-all interests or interests driven by easement restrictions or covenant in the Roberts property. Mr. Haywood stated that they do not have an interest in the Robert's property, that he is aware of. Mr. Terrell asked if there was an option or contract to purchase that property. Mr. Haywood stated that there is no contract on the property. Mr. Terrell then addressed Special Damages and asked if Mr. Haywood is alleging that there would be a storm water issue if the Roberts property is developed, as she has proposed. Mr. Haywood stated that there absolutely would be all sorts of issues, especially given what she would like to do with the property, which is either, A) the construction already needs a variance to fit there, and to its footprint, getting both neighbors a storm water issue to start with, but then to have to cut the eaves off, because there is not enough room for eaves and gutters, or to leave the eaves and just dump it on the neighbor's property. Yes, he does feel that there is a problem. Mr. Terrell asked if Mr. Haywood is anticipating that there will be nothing done to hamper the storm water. Mr. Haywood stated that he thinks that is the reason why Boards like this have the rules set up and variances and zoning requirements to be followed. Mr. Terrell then asked if Mr. Haywood is speculating that there will be no engineering done to protect it from storm water. Mr. Haywood stated that so far Ms. Roberts has shown no interest in doing any engineering to make use of the property and he does not know why they should expect that in the future.

In closing Mr. Terrell asked that the Board listen closely to what the opponents are saying, as the position they are taking is that every variance the Board has issued in the past has been wrong. The best example is last May, the Board issued a variance to add a bedroom to a house in a subdivision that was not necessary, as they could have lived in the house without the additional bedroom. The fact is, there is no Board of Adjustment that demands that an applicant has to prove that there are zero other possibilities for the use of their property.

Vice Chair Huffman closed the public hearing

Board Member Comments:

Ms. Hayworth stated that she has some experience in moving houses as her office is located in a house that is a hundred and thirty years old and it was moved from one side of the street to the other and cost about \$25,000.00 dollars just to move the house and that does not include the costs to renovate it. She understands what the applicant is trying to do, but she thinks, as a Board, they are charged with what is in front of them and that is, the house as it is right now. It could be cut, sliced and diced and put on the lot, but now there is more than one variance that would be required. There is one with the eaves and then one with the building setbacks itself. She feels that the eaves are a huge part of the discussion and she feels this is a little close for her.

Mr. Forde stated that, generally speaking, this is a great idea, but he feels that the applicant has not done a great deal of study as to how to get the house on the lot, to the degree that it should be. He had thought about the storm water issue, but that is something that should have been addressed before bringing the application to the Board. He feels that there needs to be more background information required before granting a variance at this time.

Ms. Eckard stated that she is really torn because she really likes old houses and likes what Preservation Greensboro has done through the years in saving the older houses. The Board is here to review what is presented tonight, and at this point, she does not feel that this lot is a good fit for this house. She would have to vote against the variance and hopes the applicant can find a more suitable location for the house.

Mr. Forde moved that in regard to BOA-12-12, 225 N. Spring Street, that the enforcement officer be upheld and the variance denied. The findings of fact are to be incorporated by reference. If the applicant complies with the provisions of the ordinance, it is felt that reasonable use of the property can be obtained, because as demonstrated by the record, there are similar type developments that could be built on the lot without requesting a variance. The hardship of which the applicant complains does not result from unique circumstances related to the applicant's property because she would actually be moving the house onto her lot, as opposed to an existing lot or existing building. The hardship is not the result of the application of this ordinance to this property because the ordinance benefits the public by having setbacks as they are. The hardship is the result of the applicant's own actions because she would be moving the house to the lot and the house is not already there. The variance is not in harmony with the general purpose and intent of the ordinance and does not preserve the spirit of the ordinance because, as stated, the applicant can make reasonable use of the property in another manner, very similar, if not identical to the manner in which she is requesting. The hardship is a result of her own actions and the granting of the variance does not assure the public safety and welfare and does not do substantial justice because of the reasons previously stated, seconded by Ms. Eckard. The Board voted 5-0-1 and the variance request was denied. (Ayes: Huffman, Hayworth, Eckard, Forde and Nimmer. Nays: None, Abstained: Jones)

There was a brief break taken between 7:40 and 7:50 p.m.

Mr. Hampton arrived for the remainder of the meeting.

NEW BUSINESS

VARIANCE

- (a) BOA-12-16: 4723 CRICKLEWOOD DRIVE Refugio Landin Acosta and Evelyn D. Bermudez-Vargas requests a variance from the minimum side and rear setback requirement. Variance #1: The existing two-story detached building with a deck encroaches 7 feet into a 10-side setback requirement. Variance #2: The building also encroaches 3.2 feet into a 10-foot rear setback. Section 30-7-3.2(A)2), Present Zoning-R-3, Cross Street-Pennoak Road. **(GRANTED)**

Loray Averett stated that the applicant request variances from the minimum side and rear setback requirements for an existing two-story detached accessory building. Variance #1: The storage building encroaches 7 feet into a 10-foot side setback. Variance #2: The structure also encroaches 3.2 feet into a 10-foot rear setback. The property is located on the south side of Cricklewood Drive north of Hilltop Road and is zoned R-3 (Residential Single-family). The lot is rectangular in shape. The survey reflects the eastern lot line is angled. The lot size is approximately .30 acres (13,068 square feet). The lot is a legal platted lot and is in compliance with Land Development Ordinance lot standards. The lot contains a single family dwelling and a two-story detached accessory building. Exhibit #6 is a Building Permit Record which reflects that in 2003 a permit was requested for a 12 foot x 12 foot detached building. There is no record of an attached site plan or drawing, so the location of that proposed building is not known. That same record also reflects that permit expired and was closed out on January 15, 2009. The existing building is a 12 ft. x 22 ft. building.

In early July 2011, the Building inspector received a complaint concerning construction without a permit at this location. On or around July 11, 2011, the Building Inspector placed a stop work order on the building until a valid permit was approved. On or around July 18, 2011, the applicant applied for a permit and was told the building was in an easement area and would need to request an easement release for that section of building that was located in the easement. At their May 23, 2012 meeting, the Planning Board approved release of a 4 foot x 15 foot portion of easement that the building was built in. After receiving that approval, the permit was still not approved because the building did not meet minimum side and rear setbacks. LDO Section 30-8-11.1(C).2 states: Accessory structures must be setback 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 building is approximately 20 feet tall. Attached are five field photos that show the house and the building with the deck in relation to the house and the lot lines.

The R-3, Residential Single-Family District is primarily intended to accommodate low-density single detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Jones thanked Vice Chair Huffman for her excellent job on the last case. He also recognized that Mr. Hampton has arrived for the remainder of the meeting.

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

Marc Isaacson, attorney representing the applicant, 101 W. Friendly Avenue, presented a handout and stated that the property owner, Mr. Acosta has owned this property since August of 2000. They have three growing children and Mr. Acosta's mother also lives in the home with them. Mr. Acosta is an independent contract painter who works for general contractors from time to time. In 2003, Mrs. Acosta requested a building permit for a detached building, which Mr. Acosta was building to store some of his painting equipment and supplies and to also store some of their household items. A building permit was issued and posted at the property. Mr. Acosta proceeded with the building of the storage building and it met all of the requirements of the city as to side and rear setbacks. Unknown to them, the building encroached into a utility easement at the rear of the property. After receiving notice of that, they applied for an easement release from Duke Power and from the City for that part of the utility easement to allow the building to remain in its current location. A copy of that release, which was obtained from the Planning Board was submitted for review. He referenced the survey of the property. The issue of a variance arose when Mr. Acosta added another level to the existing permitted storage building, without obtaining another building permit. He thought that the existing permit also allowed them to build up, but not extend the original footprint of the building. This upper addition, triggered the regular setback requirements from 3 to 10 feet on the rear and the side yard lines. The building is approximately 20 feet high and if it were 15 feet, there would be no problems with it. There is power to the building. There is no running water within the building and it is not now, nor has been used as a living structure. Several photographs of the interior and exterior of the structure were submitted for review. He feels that the variance would be in harmony with ordinance's general intent and purpose and would not adversely impact the adjoining properties. He also feels that granting the variance would allow the building and property to be in harmony. The storage building is located at the rear of the property and far from the street and is difficult to see from the street. It also allows existing trees to remain on the property, providing coverage and screening for the building and it does no harm to any other property in the area. He hoped the Board would grant the variance request, as submitted.

Landon McNeal, 4712 Cricklewood Road, was sworn in and stated that he feels that the storage building is an asset to this community and it is a really pretty building. The neighbors enjoy the Acosta family and their participation in the neighborhood. He feels that Mr. Acosta just did not understand because of a communication problem. He hopes the Board will grant the request for a variance.

In response to questions, Don Sheffield, Chief Building Inspector, was previously sworn in and stated that there were no inspections done on this property because the City thought it was for a 12 x 12 building and not a 12 x 22 building. There was a complaint by another citizen, stating that the building was built without a permit. There is no violation per the building code on the height of the building and this building meets the building code. Since the building is larger than 12' x 12', they will require an engineer to sign off on the structural value of the building.

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

Board Member Comments:

Ms. Huffman stated that the only problem she sees is that the applicant added another level in 2008, and that does not have a setback issue. Ms. Eckard stated that the original permit was for a 12' x 12' building, not a 12' x 22' building. In response to a question by Chair Jones, Don Sheffield stated that until about two years ago, staff had no way of keeping up with Stop Work Orders, and even though they have a better way of tracking them now, it is still not an exact formula. Any Stop Work Orders that were entered several years ago, cannot be re-visited. Mr. Hampton pointed out that the utility company, apparently did not have a problem with it or they would not have signed off on the easement release for this property.

Chair Jones asked Mr. Isaacson if his client would be adverse to a condition that the building would remain as a storage building. Mr. Isaacson conferred with his client and stated that they would not oppose that condition.

Mr. Jones moved that in regard to BOA-12-16, 4723 Cricklewood Drive, that the Enforcement Officer be overruled and the variance granted based on the stated findings of fact, as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of the property because he would be forced to reconstruct the building. The hardship of which the applicant complains, results from unique circumstances related to the applicant's property, because of the location of utility lines on the property as well as a slope to the back yard. The hardship results from the application of the ordinance to the property because the ordinance requires a greater setback due to the height of the structure. The hardship is not the result of the applicant's own actions because the applicant was awarded a building permit and proceeded to build the structure according to that permit and did not realize that an additional permit would be required for the second level of the building. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the structure is in harmony with other detached structures in the same development and supports the proper development, as well as the overall structure of the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because it weighs the interest of the neighborhood, the applicant and in weighing those decisions, it comes out that it is more beneficial for those involved, that the structure be allowed to remain. A condition placed upon the granting of the variance is that the detached structure be used solely for storage purposes with no water or sewer running to this building, seconded by

Ms. Hayworth. Ms. Huffman asked that a friendly amendment be that the condition be reworded to state, "No running water or sewer." The Board voted 7-0 in favor of the granting of the variance. (Ayes: Jones, Huffman, Eckard, Hayworth, Nimmer and Forde, Hampton. Nays: None.)

There being no further business before the Board, the meeting adjourned at 8:50 p.m.

Respectfully submitted,

Frankie T. Jones, Jr., Chairman
Greensboro Board of Adjustment

FTJ/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
DECEMBER 17, 2012**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, December 17, 2012 at 5:36 p.m. in the Council Chamber, Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair, Cheryl Huffman, Vice Chair, Patti Eckard, Jeff Nimmer, Frank Forde. Staff present were: Loray Averett, Zoning Services Coordinator and Tom Carruthers, City Attorney's Office.

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. Forde asked that the minutes reflect that when speaking about Mr. Carruthers, on page 2, that the minutes designate that it is Counsel Carruthers. He also asked for clarification on page 7, when Mr. Haywood was speaking about Ms. Roberts having a contract to purchase the house, the minutes reflect that it was Ms. Zenke who was speaking.

Ms. Huffman moved to approve the minutes of the September 24, 2012 Minutes as corrected, seconded by Mr. Forde. The Board voted unanimously in favor of the motion and the September minutes were approved.

SWEARING IN OF STAFF

Loray Averett was sworn in for her testimony during the meeting.

CONTINUANCES/WITHDRAWALS

None

NEW BUSINESS

Loray Averett introduced Sheila Stains-Ramp is the new Senior Planner with Planning and Community Development Department who is joining the meeting today for observation.

Chair Jones welcomed Ms. Stains-Ramp to the meeting.

VARIANCE

- (a) BOA-12-17: **208 MACY STREET** Linda and Doug Phillips and Michael Zajkowski request a variance from the maximum fence height. *Variance 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 Macy Street. Section 30-9-4.6(A), Present Zoning-R-5, Cross Street-Roseland Street. **(APPROVED)**

Loray Averett stated that the applicant is requesting to replace a 4 foot picket style fence with a 6 foot privacy fence which exceeds the maximum height of 4 feet by 2 feet within 15 feet of the Macy Street right-of-way. Supporting documents on the applicant's exhibits are the variance application, a survey site plan that reflects the portion of the fence location which will exceed 4 feet in height adjacent to the Macy Street frontage. Supporting documentation for staff is a current zoning map of the property, showing that the property is currently zoned R-5 Residential Single Family; a copy of the Land Development Ordinance, fence section, 30-9-4.6, which regulates the maximum fence height within 15 feet of the street rights-of-way; an aerial photo of the surrounding and nearby properties and four (4) recent field photos. The ordinance section references fencing for residential uses, except as provided in the subsection, no fence shall exceed 4 feet in height within 15 feet of any public or private street right-of-way. On lots where a rear or side yard adjoins a major thoroughfare or a minor thoroughfare and there is no driveway access and no sight distance interference, fences may exceed 6 feet in height within 15 feet of the thoroughfare right-of-way. Otherwise, no fence shall exceed 7 feet in height. The lot is located at the southwestern intersection of Macy Street and Roseland Street. The property is a corner lot and fronts on two different street frontages which are Macy and Roseland Streets. The dwelling was constructed to front on Macy Street and the side entrance is adjacent to the Roseland Street frontage. The front property line and the side lot lines are determined by minimum zoning setbacks. Based on the placement of the house, the front lot line is considered to be Roseland Street and the side street is Macy Street. There is an existing wood picket fence that is located along the side lot line adjacent to Macy Street. This fence is approximately 4 to 4.5 feet tall. The applicant is requesting to replace this fence with a 6 foot tall privacy fence. The portion of the fence that would encroach is highlighted in yellow on Exhibit B. That

portion of the fence is actually be constructed at the rear of the house and is 50 feet (plus) from the intersection. The portion which encroaches will be along the rear of the house. Once the fence setback is increased to 15 feet, the height may increase up to 7 feet. The rear corner of the house is approximately 15 feet from the side lot line.

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

Michael Zajkowski, 208 Macy Street was sworn in and stated that he is living in the house and is currently purchasing the house from the owners. He really does not have a back yard as there is only about 5 feet at the rear of the house. He would like to make the yard on the right side of the house as his back yard. He has small dogs that he would like to allow out in the yard and be safe and he would also like the proposed new fence for privacy.

In response to a question by Mr. Nimmer, Mr. Zajkowski stated that he does not want his neighbors to be able to look over the fence into his back yard. Ms. Eckard asked if the existing picket fence goes across the front of the property. Mr. Zajkowski stated that it does go across the front and all the way down the Macy side of the street and continues around the corner down Roseland. At the back of the house there is chain link fencing on one side and old-fashioned link fencing down the back of the property and there are some bushes planted in that area. He also plans to place a vinyl picket fence at the front to make it all look very nice. In response to a question by Chair Jones, Mr. Zajkowski stated that the location for the proposed fence along the Macy Street frontage will not create any interference with the sight distance. He pointed out that Roseland is a dead-end street, so people do not generally travel through the neighborhood on that street. Mr. Forde asked the applicant if he has spoken with his neighbors and if there are any concerns. Mr. Zajkowski stated that he has talked with his neighbors and they have no problem with this proposal. His parents live just 2 houses down from this location and they also plan to put up fencing, which greatly benefits the neighbor in the middle.

Linda Phillips, 111 Macy Street, was sworn in and stated that she and her husband own this house and they are selling it to Mr. Zajkowski She does not feel that the placement of the proposed fence will have a negative impact on the sight distance, as far as visibility.

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

Mr. Nimmer stated that this area has the same type of lots and he does not have any concerns with the request. Chair Jones stated that he would support a motion to grant the variance. Ms. Huffman stated that she was initially concerned about the safety issues, but feels that has been addressed and she would support the request.

Mr. Forde moved that in BOA-12-17, 208 Macy Street, findings of fact be incorporated by reference and the Zoning Enforcement Officer be overruled and the variance granted

based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he could make no reasonable use of the property because he would technically have no back yard. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because of the location of the house on the lot that prevented it from having a back yard. The hardship results from the application of this ordinance to the property because the ordinance is draft in a manner that is inconsistent with this type of lot and the house placement. The hardship is not the result of the applicant's own actions because the lot and house existed prior to his acquisition. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it will enhance the appeal of this house as well as the surrounding neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because it will allow the applicant to utilize the side yard as a back yard and will enhance the neighborhood in general, seconded by Ms. Eckard. The Board voted 5-0 in favor of the variance request. (Ayes: Jones, Huffman, Eckard, Forde and Nimmer. Nays: None.)

OTHER BUSINESS

None

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Hayworth and Mr. Hampton was acknowledged.

There being no further business before the Board, the meeting adjourned at 6:03 p.m.

Respectfully submitted,

Frankie T. Jones, Jr., Chairman
Greensboro Board of Adjustment

FTJ/jd