

## **GREENSBORO BOARD OF ADJUSTMENT**

### **MEETING HELD**

**JANUARY 28, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, January 28, 2013 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, Sarah Ward and Joseph Hampton. 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**

Ms. Hayworth moved approval of the minutes from the December 17, 2012 meeting, as submitted, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion

### **SWEARING IN OF STAFF**

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

### **CONTINUANCES/WITHDRAWALS**

Loray Averett stated that BOA-13-01, 4517 Holland Road, the applicant and City staff has asked that this item be continued as the applicant feels that he needs an interpreter. This matter would be heard at the February 25, 2013 meeting.

Ms. Huffman moved that this matter be continued to the February meeting, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion to continue.

### **I. NEW BUSINESS**

#### **1. VARIANCE**

- (a) BOA-13-01: **4517 HOLLAND ROAD** Natanael Salomon requests a variance from the minimum side setback requirement. **Variance:** An existing deck attached to a single family dwelling encroaches 2.8 feet into a 10-foot side setback. Section 30-7-3.2-Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-Summit. **(CONTINUED)**
- (b) BOA-13-02: **501 NORTH ELAM AVENUE** Moses H. Cone Memorial Hospital for Wesley Long Hospital, request variances from the maximum sign height requirement. **Variance:** Two proposed freestanding identification signs will exceed the maximum height (which is 6 feet) by 6 feet, for a total height of 12 feet for each sign. Section 30-14-7.3 - Table 14-2, Present Zoning-PI (Public Institutional), Cross Street-Benjamin Parkway. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for two proposed freestanding identification signs to be 12 feet tall, exceeding the allowable height of 6 feet by 6 feet. The property is located north of West Friendly Avenue, south of Benjamin Parkway on the western side of North Elam Avenue and is zoned PI (Public Institutional). The applicant is proposing to replace two freestanding identification signs, which will be up to 12 feet tall instead of 6 feet which is the maximum height permitted for this zoning district. The PI (Public Institutional) zoning district permits freestanding signs for each zoned lot to be 6 feet tall. This zoning district also only allows one freestanding sign per lot frontage. The applicant has submitted a drawing, identified as Exhibit C that shows the proposed locations for the two signs. The property has two lot frontages. One sign is proposed to be replaced and oriented along the West Friendly Avenue frontage and the other sign will be replaced and oriented to the North Elam Avenue frontage. The two existing signs are proposed to be removed. The applicant has been made aware of the additional sign requirements relative to square footage, design, and verifying that signs are not located in sight easements. These items are reviewed for compliance when the applicant submits a request for the sign permit(s) through a sign permit application process. The PI, Public Institutional The PI, Public and Institutional District is intended to accommodate mid- and large-sized public, quasi-public, and institutional uses which have a substantial land use impact or traffic generation potential. It is not intended for smaller public and institutional uses customarily found with-in residential areas

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

Karen Kendall, Director of Campus Projects for Cone Health, was sworn in and stated they are asking for a variance on the Elam Avenue campus and also, later, on the N. Elm Street campus. These requests relate to directional signage on each campus. It has been brought to their attention that existing signs are confusing and too low to the ground for easy identification and visibility. The campus has undergone different renovations recently and many of the departments have been moved to new locations. This causes confusion and delays in visitors trying to get to the correct location and department, especially if there is an emergency situation involved.

The most important points are readability and visibility and they wish to construct signs that will capture the visitor's attention. The proposed signs would be 12 feet high and lit internally for easier visibility. Currently, they are using many small, low signs that are confusing for the public. They hope to reduce the sign pollution on the campus and construct a larger sign that is easier to read and follow. She used the directional signs at an airport as an example of making the campus easier to maneuver by providing signs that quickly direct the campus visitor in locating the right departments. The location of the proposed signs will be on Friendly Avenue, that will direct visitors to the Main Entrance. The other sign will be on Elam Avenue which carries traffic coming in from Benjamin Parkway.

Ray Linder, GSI Graphic Sign Systems, 7 Lockheed Court, stated they have been working closely with the hospital to meet their immediate needs for informational signage on their campus. The organization has checked in the zoning codes to make sure the proposed sign would be allowed in the PI zoning district. The hospital is located in a PI zoning district, and would only be allowed to have a 6 foot sign. Handouts were furnished to the Board members for their review. He pointed out that a 12 foot sign would allow for the proper information in the size and copy that is required to direct visitors more easily, throughout the campus. A consultant has been hired to provide information and designs to make the proposed sign more visible and easier to read. A problem with a 6 foot high sign is that sometimes vehicles that are parked near the sign or even vehicles in traffic near the sign, block visibility to that size sign.

Mr. Nimmer asked if there were examples of other uses that are normally in PI zoning. Ms. Averett stated that schools, churches and larger scale community-type uses are permitted in the PI zoning district.

Mr. Linder pointed out that Friendly Avenue and Elam Avenue are both heavily traveled streets and it can be difficult to see the lower height signage. He feels it is imperative to provide signage that is easily read and followed from a distance.

Chair Jones stated that the matter has gone beyond the 20 minute time limit and asked if the Board wished to vote on extending the time limit.

Ms. Hayworth moved to extend the time limit by 10 minutes, seconded by Mr. Nimmer. The Board voted unanimously in favor of the motion.

Mr. Nimmer asked if the reason for the increased signage height is for a business advantage. Ms. Kendall stated that the reason is for ease of directional use and not for a business advantage.

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

**Board Discussion:**

Mr. Nimmer stated that he sees an advantage to having a taller sign on this property. He feels that getting people to the Emergency Room quicker would be more advantageous. Ms. Eckard stated that she has seen the confusion in this area and feels that the hospital sign should be larger than the medical office building signs across the street and she is willing to support this request. Ms. Huffman stated that she is concerned that the sign contractor did not submit a sign drawing that is more exact in design, rather than just a conceptual drawing. It seems to her that there is nothing definite in the request. She also has concerns about the height of the existing wall and what impact it will have on the proposed sign. She also feels that the signs across the street are a reasonable height and that the proposed sign may be overpowering for this property. She has several questions that she feels have been unanswered regarding this request. Chair Jones stated that concerns could be made a part of the motion. He feels this is a good proposal and would support it.

Chair Jones moved that in regard to BOA-13-02, 501 North Elam Avenue, the findings of fact be incorporated, and that the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance, because if the applicant complies with the provisions of the ordinance they can make no reasonable use of the property because they will be unable to properly inform the public of the location of the hospital and the entrance thereto; the hardship of which the applicant complains results from unique circumstances related to the property because the applicant is a hospital with multiple departments and information must be conveyed in a timely manner; the hardship result from the application of the ordinance to the property because the ordinance limits sign height in PI zoning to only 6 feet in height; the hardship is not the result of the applicant's own actions because the ordinance was passed after the creation of the hospital property; the variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it does not substantially detract from the character of the neighborhood, especially taking into the fact that it is located in close proximity to the Friendly Center, which allows up to 30 feet in sign height; the granting of the variance assures the public safety and welfare and does substantial justice because it provides clear direction to those needing medical treatment, seconded by Ms. Eckard.

Ms. Huffman asked if the Chair would accept a friendly amendment in regard to the elevation changes for the existing wall could potentially increase the sign height. Chair Jones stated that he would accept the friendly amendment, that the sign would not exceed 12 feet in height from the average grade elevation, seconded by Ms. Eckard. The Board voted 7-0 in favor of the motion. (Ayes: Jones, Forde, Hayworth, Nimmer, Eckard, Huffman and Wood. Nays: None.)

- (c) BOA-13-03: **1200 NORTH ELM STREET** Moses H. Cone Memorial Hospital request variances from the maximum sign height requirement. **Variance:** Three proposed freestanding identification signs will exceed the maximum height (which is 6 feet) by 6 feet, for a total height of 12 feet for each sign. Section 30-14-7.3 - Table 14-2, Present Zoning-PI (Public Institutional), Cross Street-East Northwood Street. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for three proposed freestanding identification signs to be 12 feet tall, exceeding the allowable height of 6 feet by 6 feet. The property is bound by four public rights-of way. They are North Church Street, East Northwood Street, North Elm Street and Tankersley Drive. The property is zoned PI (Public Institutional) and contains Moses H. Cone Memorial Hospital. The applicant is proposing to replace two freestanding identification signs and adding a third sign at the main entrance. Each sign will be up to 12 feet tall instead of 6 feet which is the maximum height permitted for this zoning district. The PI (Public Institutional) zoning district permits freestanding signs for each zoned lot to be 6 feet tall and allows one freestanding sign per lot frontage. The applicant has submitted a drawing, identified as Exhibit C that shows the proposed locations for the three signs. The property has four street frontages, as described above. One sign is proposed to be oriented along the North Church Street frontage, a second sign will be replaced and oriented along the Northwood Street frontage and a third sign will be replaced and oriented to the North Elm Street frontage. The two existing signs are proposed to be removed. The applicant has been made aware of the additional sign requirements relative to square footage, design, and verifying that signs are not located in sight easements. These items are reviewed for compliance when the applicant submits a request for the sign permit(s) through a sign permit application process. The two existing signs that are being replaced are shown at 16 feet in height. City records do not indicate that a sign permit or sign height variances were granted to these signs. The property was zoned PI (Public Institutional) under the 1992 UDO (unified Development Ordinance) and that same zoning district carried over with the adoption of The LDO (Land Development Ordinance) effective July 1, 2010. The PI zoning district sign height requirements are the same under both Ordinances. The request to replace these signs from 16 feet in height down to 12 feet in height does require a variance approval. The PI, Public Institutional The PI, Public and Institutional District is intended to accommodate mid- and large-sized public, quasi-public, and institutional uses which have a substantial land use impact or traffic generation potential. It is not intended for smaller public and institutional uses customarily found with-in residential areas.

Ms. Hayworth asked if the signs on the Cone Hospital property had obtained proper sign permits prior to installation. Ms. Averett stated that she had tried to locate records for the sign permit, but was unable to do so.

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

Karen Kendall, previously sworn in, stated that she would now address sign height variance for the signs located on the property of the Moses H. Cone Memorial Hospital. She pointed out that similar criteria and requirements also relate to this property, as in the request for the Wesley Long Hospital application. In response to the question by Ms. Hayworth, she stated that she has worked at Cone Hospital since 1987 and the sign was in place, but it has been re-faced at some point in time. The reasons for the requests are the same. The intent is to design the signs and their locations to provide clear directions and improve travel-flow as vehicles approach the property and travel within the hospital boundaries. There has also been a tremendous amount of construction on the site. Last year there were over 90,000 visits and they estimate there will be close to a 100,000 visits in the coming year. The three signs they are looking to change on the campus is the sign that will designate the new main entrance, so there will be a sign on Church Street. A big issue they have at this campus is the Northwood Street location because it is a divided roadway and with several pedestrian walkways. There is a lot of signage near that location to make for safer entry for pedestrians and a more knowledgeable route for vehicular traffic.

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

Counsel Carruthers stated that the variance would be to construct a new sign and they are not looking to enlarge a nonconforming use, which they would be prohibited under the current Code. Counsel Carruthers also stated that all three signs are proposed to be new signs.

#### **Board Discussion:**

Mr. Forde stated that just because previous sign permits cannot be found does not mean that they are nonconforming signs. He feels that it is important to remember the safety issues involved.

Ms. Averett pointed out that a sign is described as an accessory to a principal use.

Chair Jones moved that in regard to BOA-13-03, 1200 N. Elm Street, the findings of fact from BOA-13-02, be incorporated, subject to the condition that the reference to "Friendly Center" be changed to "the surrounding properties", seconded by Ms. Huffman. The Board voted unanimously 7-0 that the variance be granted, as stated previously. (Ayes: Jones, Forde, Hayworth, Nimmer, Eckard, Huffman and Wood. Nays: None.)

Chair Jones stated that he would recuse himself from BOA-13-04 and BOA-13-05 as the applicant's attorney is with the law firm he currently has active matters with.

Vice Chair Huffman commenced to acting chair for the next two matters on the agenda.

Ms. Averett stated the Board member Joseph Hampton has arrived for the meeting.

Thereupon, there was a short break in the meeting from 6:40 until 6:50 p.m.

- (d) BOA-13-04: **100 and 100 R1 WARD ROAD** Thomas Terrell Jr., Attorney for Bigham Inc., and Tom Bigham Holdings, LLC requests a variance from a standard that a salvage yard (existing) must be separated from any residential use by at least 300 feet. There are 3 (three) segments of property lines which encroach into this minimum separation standard requirement. #1: A reduction from 300 feet to 45 feet along the property line north of 102 Ward Road, shown as area A on the map. #2: A reduction from 300 feet to 40 feet along the property line from the eastern boundary of 100 R1 Ward Road to the property's southeastern corner, shown as area B on the map. #3: A reduction from 300 feet to 80 feet along the property line adjacent to Murraylane Road (which is the western-most line of the entire property), shown as area C on the map. Section 30-8-10.5(F)3, Present Zoning-HI (Heavy Industrial), Cross Street-Burlington Road. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance from a standard that an existing salvage yard must be separated from any residential use by at least 300 feet. There are 3 (three) segments of property lines which encroach into this minimum separation standard requirement. #1: A reduction from 300 feet to 45 feet along the property line north of 102 Ward Road, shown as Area A on the map. #2: A reduction from 300 feet to 40 feet along the property line from the eastern boundary of 100 R1 Ward Road to the property's southeastern corner, shown as Area B on the map. #3: A reduction from 300 feet to 80 feet along the property line adjacent to Murraylane Road (which is the western-most line of the entire property), shown as Area C on the map. The property is located south of Burlington Road and west of Ward Road. The tract contains a total of 3 lots consisting of approximately 19.04 acres. A portion of the property (12.15 acres) was recently annexed into the City on December 4, 2012. The western tract was already in the City limits. All three tracts are zoned HI (Heavy Industrial and the land use is an existing auto salvage yard. The use requires a Special Use Permit and must meet certain development standards. This request is for the separation standard from residential uses as described above. The predominant use in this area is heavy and light industrial with a few scattered single-family dwellings, especially along the railway tracks. The existing facility and its operations have existed for numerous years under County jurisdiction. The HI, Heavy Industrial is primarily intended to accommodate a wide range of assembling, fabricating, and manufacturing activities. The district is established for the purpose of providing appropriate locations and development regulations for uses which may have significant environmental impacts or require special measures to ensure compatibility with adjoining properties.

Vice Chair Huffman asked if Counsel Carruthers would explain about properties being grandfathered. Counsel Carruthers stated that it is not the name or the owner of the property, but rather, it is the use of the property. If the property were to stop functioning, there would be 12 months to resume that same activity and maintain the grandfathered use. A grandfathered use, however, cannot be expanded upon and in this situation, the applicant is seeking to put in a new building with water and sewer facilities on-site, which is prohibited as an expansion from the existing nonconforming use.

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

Thomas Terrell, attorney representing the applicant, 300 N. Greene Street, was sworn in and stated that he represents LKQ Corporation and Tom Bigham Holdings. He asked that the Board member refer to the maps presented for their use and pointed out that there are 3 separate buffers related to this property. There are 3 lots involved; the left lot has been in the City for decades. The lot in the middle and on the right has been in the County for decades, but have now been annexed into the City as of this past December. All of these lots have been under the ownership of various companies, controlled by the Bingham family and has had an auto recycling operation on these properties since 1958. The business has been sold to LKQ Corporation, which is the world's largest recycler of auto salvage parts. LKQ now wishes to make substantial improvements to the property, but they cannot and will not be able to do so without the variance approval. In order to obtain water for service to a new building, they want to construct on the lot that has always been in the City, they could not get City water unless they annexed the two County properties. That triggered a series of required public hearing processes which required approvals prior to LKQ being able to complete the project.

Counsel Terrell stated the useable area of the property would be reduced from 19 acres to approximately 5 acres, if all the setback standards were complied with. This is a 74% reduction in the useable area of the property. This property has gone through the Planning Board for review and comments and received a unanimous vote of that Board. The Zoning Commission has also reviewed and approved their annexation original zoning request and they have also received annexation approval from City Council with no opposition. He presented a map which illustrates what they are trying to do for the Board members' review. The property is currently very heavily buffered with a fence and natural vegetation between the subject property and the residential uses.

Tony Bigham, 2119 Ledford Road, was sworn in and stated that his grandfather stated the salvage business in 1944 on Burlington Road and expanded the business in 1954 to use adjacent properties. This has been a good operation and they have been friends with the neighborhood residents for many years. This is not a loud operation and is a very clean operation. LKQ has high standards for the industry in regard to cleanliness and environmental and pollution protection.

Kent Keebler, representing LKQ, Corporation, was sworn in and stated that he is the Project Manager and has worked closely on this project. LKQ has identified this property as being very scattered and not easily negotiated for those looking for replacement car parts. Also, all contaminants and fluids are removed from the vehicles prior to storage so they can avoid any contaminants on the property. The proposed new building brings all that type of storage under one roof for ease of elimination of these fluids.

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

After a short discussion, Ms. Eckard moved to re-open the Public Hearing for more questions of the applicants, seconded by Mr. Nimmer. The Board voted unanimously in favor of the motion.



Ms. Eckard asked about the residential houses that abut the property and when they were built. Mr. Bigham stated that he does not know when those houses were constructed. He stated that there were some houses along Murraylane Road that have been there for many, many years, and some have been constructed in the past 10 years. He is unsure if some of the houses were built more recently. With the existing trees and undergrowth, he is unable to see those houses clearly from this property.

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

**Board Discussion:** Ms. Hayworth stated that this property would be enhanced with the proposed up-fits and the proposed additional building will be a plus for the property and the community. The proposed changes for this land use will be a positive project to everyone involved and she will support the request.

Mr. Nimmer stated that he feels this would be a perfect example of being able to do something positive to help a company move forward and invest in the local economy and he would support the request.

Mr. Forde moved that in regard to BOA-13-04, 100 and 100 R1 Ward Road, 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 ordinance, he could make no reasonable use of the property because if the strict application of the ordinance is carried out, the property would be unusable for the existing use in the current zoning district. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because the use existed on the property in conformity with the County ordinance and the adjoining uses which would violate the ordinance were brought into play after the use was originally established. The hardship results from the application of this ordinance to the property because portions of the existing residential uses were added after the current use was in place. The hardship is not the result of the applicant's own action because the adjoining properties were developed after the applicant's property was developed. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows a continued use of an existing business and is in conformity with the surrounding community. The granting of the variance assures the public safety and welfare and does substantial justice because it allows the continuation of the existing business and does substantial justice to its current owner and the property, seconded by Mr. Nimmer. The Board voted 7-0-1 in favor of the motion. (Ayes: Forde, Hayworth, Hampton, Eckard, Nimmer, Huffman and Wood. Nays: None. Abstained: Jones)

- (e) BOA-13-05: **100 and 100 R1 WARD ROAD** Thomas Terrell Jr., Attorney for Bigham Inc., and Tom Bigham Holdings, LLC requests variances from a standard that a salvage yard (existing) must provide opaque fencing, at least 8 feet in height. The existing fence is chain link and 7 feet in height; thus the applicant is requesting two variances concerning this development standard: #1: Instead of providing opaque fencing, the applicant is requesting to substitute opaque fencing with additional vegetation to be approved in a detailed landscape plan by the City's Urban Forester. #2: The existing fence is 7 feet in height and the standard requires a minimum of 8 feet, thus the applicant is requesting a one-foot decrease from the minimum height. Section 30-8-10.5-(F)2), Present Zoning-HI (Heavy Industrial), Cross Street-Burlington Road. **(CONDITIONALLY GRANTED)**

Loray Averett stated that the applicant is requesting a variance from a standard that an existing salvage yard must provide opaque fencing, at least 8 feet in height. The existing fence is chain link and 7 feet in height; thus the applicant is requesting variances concerning both standard requirements. #1: Instead of providing opaque fencing, the applicant is requesting to substitute opaque fencing with additional vegetation to be approved in a detailed landscape plan by the City's Urban Forester. #2: The existing fence is 7 feet in height and the standard requires a minimum of 8 feet, thus the applicant is requesting a one-foot decrease from the minimum height. The property is located south of Burlington Road and west of Ward Rd. The tract contains a total of 3 lots consisting of approximately 19.04 acres. A portion of the property (12.15 acres) was recently annexed into the City on December 4, 2012. The western tract was already in the City limits. All three tracts are zoned HI (Heavy Industrial and the land use is an existing auto salvage yard. That use requires a Special Use Permit and must meet certain development standards. This request is for variances from the fence standards as described above. The predominant use in this area is heavy and light industrial with a few scattered single-family dwellings, especially along the railway tracks. The existing facility and its operations have existed for numerous years under County jurisdiction. The HI, Heavy Industrial is primarily intended to accommodate a wide range of assembling, fabricating, and manufacturing activities. The district is established for the purpose of providing appropriate locations and development regulations for uses which may have significant environmental impacts or require special measures to ensure compatibility with adjoining properties.

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

Thomas Terrell, attorney representing LKQ and Bingham Holdings, stated that this request is for the same property with the same information as the previous request. This request provides a common sense relief to the cookie-cutter ordinance. This is a unique situation where the applicant wishes to develop the property to a modern auto salvage recycling facility. He pointed out that this was the first use on the property and many of the other uses in the surrounding area came afterwards. It is felt that the proposed changes to this facility will create a tremendous improvement to this property.

Kent Keebler, representing LKQ Corporation, stated that they plan to construct a new section of eight foot metal chain link fencing within the interior of the property for the new building. He also stated that they plan to plant additional trees along varying portions of the existing fence to help buffer this property from the neighboring residential properties. In response to a question about the noise level coming from the property, he stated that the train going along the railroad tracks is much louder than noises emitted from this property. Ms. Hayworth asked who would monitor the planting of the additional trees and Counsel Carruthers stated that the City Urban Forrester would follow-up to make sure that the proposed plantings are in compliance. Ms. Averett stated that could be offered as a condition on the variance.

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

### **Board Discussion:**

Mr. Forde stated that he would incorporate all the findings in BOA-13-04 and further stated that the granting of the variance will enhance the current condition of the property. Also incorporated would be as a condition of the variance that vegetation be planted and properly maintained at all times, seconded by Ms. Wood. The Board voted 7-0-1 in favor of the motion. (Ayes: Forde, Hayworth, Hampton, Eckard, Huffman and Wood. Nays: None. Abstained: Jones)

Mr. Nimmer left the meeting at 8:15 p.m.

Chair Jones returned to the dias as Chair.

## **2. APPEAL OF ZONING ADMINISTRATIVE DECISION**

- (a) BOA-13-06: **754 CHESTNUT STREET** John Mandrano requests an interpretation to be allowed to expand a non-conforming use. The property contains a legal nonconforming use which is a duplex in a single family zoning district. The applicant is requesting to be allowed to expand an attached second story landing (3 feet x 5 feet) to become a deck which will be 5 feet by 9 feet. The increase coverage of land will be an additional 30 square feet. Sections 30-2-3.2(C), 30-2-3.2(D) and 30-4-27, Present Zoning-R-5 (Residential Single-family), Cross Street-East Hendrix Street.  
**(DISMISSED)**

There was no one in attendance to speak on this matter.

Ms. Huffman moved to dismiss BOA-13-06, seconded by Ms. Hayworth. The Board voted 7-0 in favor of the motion. (Ayes: Jones, Forde, Hayworth, Hampton, Eckard, Huffman and Wood. Nays: None.)

- II. **OTHER BUSINESS:** Amendment to update page 7 of the Board of Adjustment Rules and Regulations to update presiding Chairman of the Board of Adjustment and current Secretary to the Board.

Ms. Averett stated that staff will provide the update on this matter at the next meeting.

- III. **ACKNOWLEDGEMENT OF ABSENCES**

None.

**ADJOURNMENT**

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There being no further business before the Board, the meeting was adjourned at 8:20 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd

**GREENSBORO BOARD OF ADJUSTMENT****MEETING HELD****FEBRUARY 25, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, January 25, 2013 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 Sarah Wood. 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**

Ms. Huffman moved approval of the minutes from the January 28, 2013 meeting, as submitted, seconded by Mr. Nimmer. The Board voted unanimously in favor of the motion

**SWEARING IN OF STAFF**

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

**CONTINUANCES/WITHDRAWALS**

Counsel Carruthers stated that on January 28, 2013, in regard to BOA-13-06, 754 Chestnut Street, which was dismissed at the January meeting because there was no one present to represent the request. The applicant, John Mandrano, would like for the Board to consider hearing this case. The Rules and Procedures that were adopted in 2009, permit a request for a re-hearing to be made within ninety (90) days to the Board. This is not an appeal to Superior Court, but is a request for re-hearing. The Board would hear why the applicant was not able to present evidence. Typically, re-hearings would be after there had been a hearing on the variance, but in this case there has not been a hearing, so the exact procedural rules are a little harder to fit in. However, pursuant to the Land Development Ordinance, 30-3-7.5, it is the opinion of the City Attorney that an affirmative four-fifths majority of members present and voting are required to decide on any other matter upon which the Board of Adjustment is required to pass. The four-fifths vote applies to variances and the four vote requirement is applicable to appeals from decisions of Zoning Officers. However, the catch-all phrase in sub-part 2A, "any other matter which the Board of Adjustment requires a passing of applying the

circumstances and it is appropriate that this is at the four-fifths majority. Counsel Carruthers asked the applicant, Mr. Mandrano to approach the microphone.

John Mandrano, the applicant, 411-A East Hendrix Street, was sworn in and stated that he had called Mike Cowhig in the Planning Department, who is the staff person for the Historic Preservation Commission. He asked Mr. Cowhig if this matter could be placed on the agenda for the HPC for their January meeting. During that time he was moving, and also had the flu and was unable to attend the January meeting. He wanted to go to the HPC meeting before coming to the Board of Adjustment with this request. He did not realize that he still needed to go to the January Board of Adjustment meeting to ask for a continuance. He feels there was just a miscommunication and asked that the Board now consider hearing the case at the March meeting. He has not been before the HPC yet and that is why he would like to postpone the hearing before this Board. He has tried on several occasions to go before the HPC, but kept getting bumped from that meeting. On one occasion, there were too many items on their agenda, so they asked him to come back the next month, then the next month's meeting, there was no quorum present so a meeting could not be held, and then the next meeting there was another problem and he could not have a hearing. So he has attempted to follow the procedures, but matters that were beyond his control have interrupted his attempts. He thought he was doing the right thing and asked that the Board consider a re-opening his case for a hearing next month.

Mr. Jones moved that this matter be re-opened and heard at the March meeting, seconded by Ms. Hayworth. The Board voted 5-1 in favor of the motion. (Ayes: Jones, Hayworth, Eckard, Nimmer, Wood. Nays: Huffman.)

Mr. Forde arrived at 5:53 for the remainder of the meeting.

## **NEW BUSINESS**

### **VARIANCE**

- (a) **BOA-13-01: 4517 HOLLAND ROAD** Natanael Salomon requests a variance from the minimum side setback requirement. Variance: An existing deck attached to a single family dwelling encroaches 2.8 feet into a 10-foot side setback. This case was continued from the January 28, 2013 meeting. Section 30-7-3.2-Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-Summit. **(GRANTED)**

Loray Averett stated that this case was continued from the January 28, 2013 meeting. The applicant requested an interpreter to help him with communications concerning his request. The applicant is requesting a variance for an existing attached deck, of which a corner portion encroaches 2.8 feet into a 10-foot side setback. The property is located on the western side of Holland Road south of Summit Avenue and is currently zoned R-3 (Residential Single-family). The applicant applied for a building permit in 2008 to construct a 2-story attached garage on the northern side of the existing single family dwelling. The addition met the 10 foot side setback. After construction and completion of the addition, the applicant added the attached deck. A portion of the northern most rear corner of the deck encroaches 2.8 feet into the 10-foot

side setback. The deck dimensions are 8 feet x 15 feet for a total of 120 square feet. The portion that encroaches is 20 square feet or approximately 17 percent of the deck area. In December 2012, the building inspections division made a site visit and had a discussion with the applicant concerning the encroachment area and the requirement to obtain a building permit. On December 17, 2012, the applicant filed for a variance request for the northern rear portion of the deck that encroaches into the side setback. The applicant's lot is described as a parallelogram shape, which is a unique shape, based on the situation that both side lot lines are severely angled and almost equal in length to each other. The house is constructed perpendicular to the street. 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. Ms. Averett provided an e-mail that had been received by Sue Schwartz, the Planning Director, as a complaint about the encroachment.

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

Natanael Solomon, the applicant, was sworn in, as well as the interpreter, Carolina Escudero. Ms. Escudero translated comments and questions by the Board member for Mr. Solomon. He stated that the garage structure is a two-story building and to be able to gain entry to the upper level, you have to go up the steps to the door on the second level. The footprint of the landing or deck area of the second floor encroaches slightly into the side setback. He was unaware that any of his neighbors had a problem with the outside access to the upper level. Mr. Solomon answered questions by Board members for clarification on the encroachment of the steps and deck area. Mr. Solomon presented a drawing of the property and deck/landing, which Board members already had in their packets.

There being no other speakers for or against the variance request, the public hearing was closed.

### **Board Comments**

Ms. Huffman stated that this lot is really difficult to build on because of the serious slanting of the lot lines. She does not feel that the applicant intended to intrude, but because of the configuration of the lot, there was nowhere else to put the steps to the upper level of the garage.

Ms. Wood stated that she visited the property and there is ample space between the applicant's property and the nearest house; therefore she does not feel that the stairway and deck area are an intrusion into that area. She supports that the variance would be in keeping with the ordinance.

Chair Jones stated that the deck is in line with the existing landscaping and that makes for cleaner lines on the property.

Mr. Forde stated that he feels the e-mail that was sent to the Planning Director, Ms. Schwartz, seems to be a personal friend of her and there is personal language in it, which he feels is inappropriate. He is not comfortable with the Board considering that as evidence. Ms. Huffman stated that she does not feel that any evidence should be filtered and any evidence submitted

should be considered and a decision by each Board member made on how much impact that evidence would have on a particular case.

Ms. Huffman moved that in regard to BOA-13-01, 4517 Holland Road, the findings of fact be incorporated and the Enforcement Officer be overruled and the variance granted based on the fact that there are practical difficulties or unnecessary hardships resulting from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he or she can make no reasonable use of the property due to the unequal length of the lot. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property due to the parallelogram shape of the property. The hardship results from the application of the ordinance to the property because of the lot lines. The hardship is not the result of the applicant's own actions because the deck is necessary in order to access the upper level of the structure. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the manner in which the deck stairs are built is uniform with the shape and positioning of the property. The granting of the variance assures the public safety and welfare and does substantial justice because it is in compliance with the average homes in the neighborhood, seconded by Ms. Hayworth. The Board voted 7-0 in favor of the motion to grant the variance. (Ayes: Jones, Hayworth, Huffman, Eckard, Wood, Forde, Nimmer. Nays: None)

- (b) **BOA-13-07: 2306 LAFAYETTE AVENUE** Margaret McNairy Chase Family Trust request variances from the minimum side and rear setback requirements. Variance: A proposed detached garage will encroach 7 feet into a 10-foot side setback and 5 feet into a 10-foot rear setback. Section 30-8-11.1(C)2, Present Zoning-R-3 (Residential Single-family), Cross Street-West Cornwallis Drive. **(CONTINUED TO MARCH MEETING)**

Loray Averett stated that the applicant is requesting variances for a proposed detached garage that will encroach 7 feet into a 10-foot side setback and 5 feet into a 10-foot rear setback. The property is located on the eastern side of Lafayette Avenue north of West Cornwallis Drive and is zoned R-3 (Residential Single Family). The applicant is proposing to construct a detached one-story garage at the end of an existing driveway. The garage dimensions are proposed to be approximately 24 feet by 28 feet and will contain 672 square feet. The applicant's lot is described as a parallelogram shape, which is a unique shape, based on the situation that both side lot lines are severely angled and almost equal in length to each other. The house is constructed perpendicular to the street. The lot is developed with existing infrastructure consisting of the dwelling, driveway, landscape features, fencing, vegetative growth and trees. There are two significant trees identified on the site plan which are located behind the house in the northeastern portion of the rear yard. The proposed building location appears that it will be approximately 25 feet from the trees. The City Urban Forester is available to the applicant for consultation concerning protecting the tree's critical root zones, if the applicant is interested. The R-3, Residential Single-Family District is primarily intended to accommodate low-density density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Mr. Hampton arrived at 6:43 p.m. for the remainder of the meeting.



Homer Wade, representing the applicants, 621 Eugene Court, was sworn in and stated that he represents James and Margaret McNairy Chase who are the current owners of the property. They would like to construct a garage, shown on the Exhibit for cars and storage. It was determined that due to the existing improvements and site constraints on the property, the location as shown, is the most ideal. The existing well, the driveway and turn-around, landscaping, trees, a retaining wall and the sloping lot prohibit placement of the proposed garage in any other location on the property. It is felt that these constraints go to the matter of practical difficulties and unnecessary hardships related to the property. The well was installed in 2007 for irrigation purposes during the drought that year. The health department requires a certain setback criteria for well placement and the well shown was one of only two locations that was available behind the house. A setback waiver has also been applied for from the health department, which is required. At this time, the waiver has been denied by the health department lower level staff and his client has appealed that decision to the Director of the health department. If the 25-foot radius from the well is held, there is practically no location in the rear yard of the house where the proposed garage could be placed. If the Board of Adjustment does not grant the variance, as shown, there will be no choice other than to eliminate the building of the garage or the abandonment of the well. If the variance is granted, there is a likelihood that the health department will grant the waiver. The existing house has an existing driveway and turn-around and they terminate where the garage is proposed. Moving the garage southward, in addition to the well conflict, would make it more difficult to utilize the turn-around. The ordinance allows for structures within 3 feet of the property line, just not over 15 feet tall. The applicant has spoken with all the neighbors in the area and there has been no objections raised. There are no apparent safety issues related to this request.

In response to questions, Mr. Wade stated that the proposed garage is not for RV storage, but just for regular vehicular and lawn equipment storage. There will be no plumbing or sewer connected to the garage, that he knows of. Chair Jones asked if there are other detached garages in this neighborhood. Mr. Wade stated that there are and most of them are over 15 feet in height.

Ms. Hayworth pointed out that if there were neighbors who objected to this request, they would certainly attend the meeting to make their objections known. Ms. Wood stated that she drove around the neighborhood and there are a lot of large garages in this area. She is concerned that there are no drawings or some kind of site plan for the Board members to review. She feels that more information is needed to make a decision. Chair Jones pointed out that conditions could be added to any variance in order to protect the neighborhood.

Ms. Averett responded to a question concerning the maximum building height allowed in residential zoning districts is 50 feet. Ms. Hayworth asked if the applicants would be willing to put a restriction on the height of the garage.

Mr. Wade stated that he would like to speak to the applicants and possibly continue this matter to the March meeting. He would hesitate to accept that kind of condition without knowing what the applicants' design intentions are. Ms. Wood stated that she would like to see some kind of sketch showing what the applicants intend to do on the property. Ms. Eckard stated that it would also be nice to have something from the neighbors indicating their support of the variance.

Mr. Nimmer moved that this request be continued to the March meeting, to allow Mr. Wade time to gather more information from the applicants, seconded by Ms. Eckard.  
The Board voted 5-1-1 in favor of the motion. (Ayes: Jones, Eckard, Hayworth, Forde, Wood.  
Nays: Huffman. Abstained: Hampton)

### **OTHER BUSINESS:**

Amendment to update page 7 of the Board of Adjustment Rules and Regulations to update presiding Chairman of the Board of Adjustment and current Secretary to the Board. **(APPROVED)**

Loray Averett stated that Board members have pertinent information regarding the proposed Amendment to update page 7 of the Board of Adjustment Rules and Regulation. The amendment for the adoption of the current Rules under the present Chair and Secretary to the Board of Adjustment occurred on February 25, 2013.

Chair Jones moved to approve the Amendment as submitted by staff, seconded by Ms. Huffman. The Board voted 7-0 in favor of the motion. (Ayes: Jones, Huffman, Hayworth, Eckard, Nimmer, Forde, Hampton. Nays: None.)

### **ITEMS FROM BOARD MEMBERS:**

Mr. Forde asked that someone please inform building Security personnel that doors should be unlocked to allow late attendees to enter the building for the meeting. He has been told to come in the Greene Street entrance, and that entrance was locked and no Security was available to let him in. He had a difficult time getting into the building today and if there were applicants who were running late, they would have a problem getting in the building also.

### **ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 6:55 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman

Greensboro Board of Adjustment

FJ/jd

**GREENSBORO BOARD OF ADJUSTMENT****MEETING HELD****MARCH 25, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, March 25, 2013 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, Cyndy Hayworth, Frank Forde, Sarah Wood and Joseph Hampton (arrived at 6:07 p.m.) Staff present were: Loray Averett, Zoning Services Coordinator, Jeff McClintock, Code Enforcement Officer 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 February 25, 2013 meeting, as submitted, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion

**SWEARING IN OF STAFF**

Loray Averett and Jeff McClintock were sworn in for their testimony during the meeting.

**CONTINUANCES AND WITHDRAWALS**

None

**OLD BUSINESS****VARIANCE**

- (a) BOA-13-07: **2306 LAFAYETTE AVENUE** Margaret McNairy Chase Family Trust request variances from the minimum side and rear setback requirements. **Variance:** A proposed detached garage will encroach 7 feet into a 10-foot side setback and 5 feet into a 10-foot rear setback. The public hearing for this item was continued to the March 25, 2013 meeting. Section 30-8-11.1(C)2, Present Zoning-R-3 (Residential Single-family), Cross Street-West Cornwallis Drive. **(GRANTED)**

Loray Averett stated that the facts were the same as in the request as presented at last month's meeting.

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

Homer Wade, Borum Wade Associates, 621 Eugene Court, was sworn in and stated that he represents James and Margaret Chase. Margaret is the trustee of the Margaret McNairy Chase Family Trust and they are the owners of the property at 2306 Lafayette Avenue. This matter was continued last month because of three issues; 1) there was some concern about the height of the garage since the proposed garage will encroach into the side yard setback. At the time he did not know that the client's intentions were in regard to height. 2) There were members of the Board that wanted confirmation that there were no objections by adjoining neighbors. 3) There has now been resolution on the well variance, which also plays heavily into this matter.

The height of the garage has been determined to be no greater than 21 feet in height. There are four signed and notarized affidavits from the immediate neighbors, stating that they have no objection to the planned project. They have also received the notice of the well variance from the Guilford County Health Department which was received the latter part of last week. There has also been confirmation from the City of Greensboro that a baiting system for termite protection would be acceptable in order to grant a variance within the 25 foot setback.

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

Ms. Huffman moved that in regard to BOA-13-07, 2306 Lafayette Avenue, that the Enforcement Officer be overruled and the variance granted, and the findings of fact incorporated, based on the following: there are practical difficulties and unnecessary hardships that result from carrying out the strict letter of this ordinance. If the applicant complies with the provisions of the ordinance, they can make no reasonable use of the property because of the placement of the well on the land. The hardship of which the applicant complains result from unique circumstances related to the applicant's property because of the shape of the lot as well as the existing trees on the property. The hardship results from the application of the ordinance to the property because of the position of the well. The hardship is not the result of the applicant's own actions because the well is required by the family trust taking over the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the neighborhood generally does have garages in that area. The granting of the variance assures the public safety and welfare and does substantial justice because it complies with the general overall standards within the neighborhood, seconded by Ms. Eckard. The Board voted 6-0 in favor of the motion. (Ayes: Jones, Huffman, Eckard, Forde, Hayworth and Wood. Nays: None.)

## **NEW BUSINESS**

### **SPECIAL EXCEPTION**

- (a) BOA-13-08: **518 FIFTH AVENUE** Camilla Cornelius and Stephen Ruzicka requests Special Exceptions as authorized by Section 30-4-12(1)2) to allow the following requests: **Special Exception Request A:** A proposed attached addition to a single family dwelling will encroach 1-foot into a 5-foot side setback. The Historic Preservation Commission has recommended this Special Exception. Present Zoning-R-5, Charles B. Aycock Historic District, Cross Street-Charter Place. **Special Exception Request B:** A proposed portion of a brick fence/wall will exceed the maximum height of 4 feet by 2 feet within 15 feet of the public right-of-way adjacent to Charter Place. Sections 30-4-12(1)2 and 30-9-4.6 The Historic Preservation Commission has recommended this Special Exception. Present Zoning-R-5, Charles B. Aycock Historic District, Cross Street-Charter Place. **(GRANTED)**

Loray Averett stated that the applicant requests Special Exceptions for a proposed attached addition to a single family dwelling that will encroach 1-foot into a 5-foot side setback and for a portion of a fence/wall which will exceed the maximum height of 4 feet by 2 feet within 15 feet of the public right-of-way adjacent to Charter Place. The property is located east of Percy Street at the southwestern intersection of Fifth Avenue and Charter place. The lot is zoned R-5 (Residential Single-family) and is located in the Charles B. Aycock Historic District Overlay. The property contains a single family dwelling with a detached garage. The applicant has two requests for the property as described in the beginning of this report. Special Exception Request A: The proposed addition will encroach one-foot into a five-foot minimum side setback. The site drawing illustrates that a portion of the existing house along the same interior side line already encroaches approximately 3 feet into the five foot setback. The proposed addition will encroach less than the existing dwelling. The applicant has submitted elevations with his request. At their January 30, 2013 meeting, the Historic Preservation Commission approved recommendation for a Special Exception because the proposed addition will meet the historic district guidelines.

Special Exception Request B: A portion of a propose fence/wall will exceed the maximum height of 4 feet by 2 feet within 6 feet of the Charter Place right of way. The property is a corner lot and the applicant would like the taller brick fence for privacy in the rear yard. The fence/wall area will be approximately 9 feet from the property line adjacent to Charter Place. The applicant has included elevations of the proposed privacy fence with his request. Once again, at their January 30, 2013 meeting, the Historic Preservation Commission approved recommendation for this Special Exception request because the proposed fence/wall design will meet the historic district guidelines. Based on the permitting process, the applicant is aware that he will need building permits and inspections for the construction of these items. 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 if there was anyone wishing to speak on this matter.

Steven Ruzicka, 517 Fifth Avenue, was sworn in and stated that there are two parts to this request. This is an old house and old neighborhood situations. The house was built in 1912 and most of the original houses in the neighborhood date from 1900 to the early 1920s and this predates any of the ordinances or requirements that now exist. The existing property has a portion of the house that is closer to the property line and they are asking to be able to construct a small sun porch addition off the rear corner and to follow the line that already exists, so they are not moving any closer to the property line than that portion of the house already is, and another portion of the house is even closer than that and has been since the house was originally built. They have been renovating this property from foundation upward and this would be the last bit of that process to be completed. The design is in complete conformity with the house and has been approved by the Historic Preservation Commission. With regard to the wall, they plan to follow the line of the corner at the garage toward the rear of the house to a concrete walk that already exists. There will be two wrought iron walk-in gates for access accommodations. There is an existing brick wall on the other side of the property on the property line and they will copy the design of that existing brick wall.

Ms. Huffman thanked the applicant for restoring this property and mentioned that it was a wonderful project for the neighborhood. She asked is there are any elevation issues where the land slopes. Mr. Ruzicka stated that the land does slope probably 18 inches to 2 feet. Ms. Huffman asked if the proposed fence/wall would be an issue with traffic. Mr. Ruzicka stated that GDOT has already been out and looked at the property and it was determined that there would be no sight issues involved with the fence.

Ms. Wood stated that the brick wall will provide an aesthetic value and privacy and security. She feels it will be a great addition to that entry.

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

Mr. Forde moved that in regard to BOA-13-05, 518 Fifth Avenue, that the findings of fact be incorporated and the Enforcement Officer overruled for both Special Exceptions based on the following: the Special Exceptions are in harmony with the general purpose and intent of the ordinance and preserves its spirit because the proposed construction of the sunroom along with the proposed construction of the wall height, will be in harmony with the historic and aesthetic nature of the neighborhood. The granting of these Special Exceptions assures the public safety and welfare and does substantial justice because, as approved these additions will enhance this property's value and appearance, as well as the surrounding properties, seconded by Ms. Eckard. The Board voted 6-0 in favor of the motion. (Ayes: Jones, Huffman, Eckard, Forde, Hayworth and Wood. Nays: None.)

Mr. Hampton arrived at 6:07 p.m. for the remainder of the meeting.

- (b) BOA-13-09 **4200-10 MAYBROOK DRIVE (Maybrook Mobile Home Park)** Young Bryant 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 (9 or less persons) will be 2,403 feet from an existing family care home (6 or less persons) located at 3951 Eastland Avenue when 2,640 feet is required. Present Zoning-RM-12, Cross Street-Burlington Road. **(DENIED)**

Loray Averett stated that 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 (9 or less persons) will be 2,403 feet from another family care home, located at 3951 Eastland Avenue, (6 or less persons) when 2,640 feet is required. This proposed home will be 237 feet too close. The lot is located on the southern portion of the Maybrook Village Mobile Home park which is located south of Burlington Road and west of O'Ferrell Street. The applicant is proposing to locate a family care home (9 or less persons) at 4200-10 Maybrook Drive. It is 237 feet too close to an existing family care home located at 3951 Eastland Avenue. Privilege license records reflect the existing family care home at 3951 Eastland Avenue is in operation, along with required privilege license renewals. The proposed family care home and the existing family care home are separated by several streets, institutional uses (elementary and secondary schools), industrial and multi-family uses. The RM-12, Residential Multi-Family District is primarily intended to accommodate multi-family and similar residential uses at a density of 12.0 units per acre or less.

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

Ron Marshall, #6 Holmeswood Court, was sworn in and stated that he has discovered that there is a distance problem with his proposed use and another family care home in close proximity. He stated that there is a school in the area, a wooded area with a stream going through that property. He feels that this would provide a natural buffer between the two homes. In response to a question by Chair Jones Mr. Marshall stated that the proposed family care home would provide services to the elderly. He is unsure what the clients are of the other home nearby.

Ms. Hayworth asked if this was a skilled care or day care facility. Mr. Marshall stated that it would provide the client with a place to live and also provide assisted care for the clients. He pointed out that there would 1 to 3 clients in the facility. Staff workers will be at the facility at all times, and they will provide transportation for the clients to go to the doctor, hospital and other locations, as necessary.

Ms. Huffman stated that the request shows that the applicant would be able to have as many as up to 9 people living in the trailer and she has concerns about the number of sleeping areas available in the trailer. Mr. Marshall pointed out that this is a trailer park and he has several different trailers. There are 32 trailers in this park.

Ms. Averett pointed out that the request is for Lot #10 only, with no other mobile home included in the request.

Jessie Bryant, 5502 Brandy Drive, stated that he does have 32 separate lots in the park, but they are only trying to use one for this request.

Ms. Huffman again asked how they would be able to facilitate living space for up to 9 residents in the mobile home. Mr. Marshall stated that he will not be putting 9 residents in this trailer. Ms. Huffman stated that there was the possibility that 9 residents could be facilitated unless the request is limited.

Mr. Bryant stated that there are 3 bedrooms, plus one for a caretaker.

Ms. Huffman stated that she is also concerned about transportation and extra vehicles at the trailer. The overall map does not show adequate parking and asked if there is other additional spaces not shown on the aerial map. Mr. Marshall stated that this lot has its own parking facilities for each lot and 2 cars could be parked there. Ms. Huffman asked where visitors would park. Mr. Marshall stated that they could park in the extended driveway yard area. Ms. Huffman pointed out that parking in the yard is not allowed by the City.

In response to questions, Mr. Marshall stated the State governs and monitors the care of the clients. Ms. Eckard stated that she feels there are a lot of unanswered questions about this facility. Mr. Marshall asked if this could be continued to obtain answers to some of the Board members' questions.

In response to a question by Ms. Hayworth concerning monitoring and square footage regulations, Ms. Averett stated that the City Inspection Department would inspect the facility and they would have to meet State guidelines and regulations. The zoning would allow up to 9 residents in a family care home in a multi-family district.

Ms. Huffman stated that she is also concerned about the use of wheelchairs because of the gravel and she knows how difficult that is and that concrete walkways and driveways would provide safer accessibility for occupants living in this proposed family care home. Mr. Marshall stated that they would build all the required ramps and have the pavement that they are required to provide by State standards.

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

### **Board Comments:**

Ms. Eckard stated that this request poses too many problems and unanswered questions and she would not be able to support the request. She feels the applicant should have gotten more information from the State before coming to the Board. Ms. Huffman stated that she also would not support the request.

Mr., Forde stated that he feels that the issue before the Board today is whether the proposed family care home is too close to another family care home, and it is his understanding that an ordinance was developed so that these facilities cannot cluster throughout the City and that individual neighborhoods are not overburdened with family care homes. He does not think the proposed family care home is too close to the currently existing family care home.

Ms. Eckard stated that she is going to use the distance as a reason to vote against it. Ms. Hayworth stated that the distance between these types of homes used to be greater and it was changed and made smaller. The distance requirements were made to keep neighborhoods safe from having too many family care homes within, and she would be voting against the request. Chair Jones stated that he agrees with the comments made by the other Board members in regard to distance, and he has to defer to the State of North Carolina and if the State is willing to issue a license for the plans, as submitted, then he would have to agree with them.

Ms. Wood stated that she does not feel that the distance would be that much of a problem because of the natural buffer between the proposed facility and the existing facility. She will support the request.



Ms. Huffman moved that in regard to BOA-13-09, 4300-10 Maybrook Drive, that the finding of fact be incorporated and the Code Enforcement Officer be upheld and the Special Exception denied because of the following: The Special Exception is not in harmony with the general purpose and intent of the ordinance and does not preserve its spirit because the distance does not meet the minimum requirements set forth by the City, seconded by Ms. Hayworth. The Board voted 3-4 and the request was denied. (Ayes: Eckard, Hayworth and Huffman. Nays: Forde, Jones, Wood and Hampton.)

## **APPEAL OF ZONING ADMINISTRATIVE DECISION**

- (a) BOA-13-06: **754 CHESTNUT STREET** John Mandrano requests an interpretation to be allowed to expand a non-conforming use. The property contains a legal nonconforming use which is a duplex in a single family zoning district. The applicant is requesting to be allowed to expand an attached second story landing (3 feet x 5 feet) to become a deck which will be 5 feet by 9 feet. The increase coverage of land will be an additional 30 square feet. At the February 25, 2013 meeting, this case was approved to be placed back on the March 25, 2013 agenda. Sections 30-2-3.2(C), 30-2-3.2(D) and 30-4-27, Present Zoning-R-5 (Residential Single-family), Cross Street-East Hendrix Street. **(CODE ENFORCEMENT OVERTURNED – APPEAL GRANTED)**

Ms. Averett stated that the applicant is requesting an interpretation for expansion of a nonconforming use, for an existing attached deck. The applicant appeared at the February 25, 2013 meeting and requested for his case to be calendared to the March 25, 2013 meeting. The vote was to allow the applicant's case to be heard at the March 25, 2013 meeting. The property is located on the eastern side of Chestnut Street south of East Hendrix Street. The lot is zoned R-5 (Residential Single-family) and is located in the Charles B. Aycock Historic District Overlay. The property contains a legal nonconforming duplex which is constructed with a dwelling unit at grade and another dwelling unit upstairs. The applicant recently added a deck onto a landing for the upstairs unit. He did not obtain a Certificate of Appropriateness from the Historic Preservation Commission or a Building Permit for the new construction. The existing landing was 3 feet wide and 5 feet in length. The owner added and enlarged the landing to create a deck which is 9 feet by 9 feet. This enlargement also placed the deck in violation of a side setback requirement, which is a minimum of 5 feet. The deck is currently approximately one-foot from the side lot line. The applicant, Mr. Mandrano met with staff in late November and offered to reduce the size of the deck to 9 feet by 5 feet, which corrects the encroachment issue. At that width, the deck will be 5 feet from the side property line. The determination of the expansion of the nonconforming use still needed to be resolved.

On December 4, 2012, the applicant filed for interpretation to the Board of Adjustment to be allowed to expand the landing area from 5 feet x 3 feet to 5 feet x 9 feet. The landing was 15 square feet and is now proposed and requested to be 45 square feet. The existing deck that is already built is 9 feet by 9 feet which is 81 square feet. The applicant will also need to apply for and obtain a Building Permit and a Certificate of Appropriateness from the Historic Preservation Commission for the deck construction. Based on process, the decision concerning the expansion of a non-conforming use was the first step because other permits cannot be approved until a decision is rendered on this request. 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. She stated that the Zoning Enforcement Official that works that area, Jeff McClintock is in attendance and available to answer any questions the Board may have.

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

John Mandrano, 411-A East Hendrix Street, was sworn in and stated that he is the owner of this property. In 1975, his father purchased 713 Chestnut Street, which is 2 doors down and across the street from this property and it is a duplex. He purchased this subject property, which at that time was a duplex also, and he and his brother lived in the upstairs unit and a landing was added and the downstairs portion was rented out. Since 1981 he has purchased and renovated 18 properties in the Aycok Historic neighborhood and 2 in the Fisher Park neighborhood. Today he has approximately 31 units consisting of triplex, duplex rental units. He feels that safety is the main issue with this particular unit. The landing was not wide enough to offer safe access to this unit and that is why there is a need for expansion. Originally the landing was a 3' x 5' area. The door, when opened, would hit against the outer railing. He demonstrated how the door and landing were located. He expanded the landing to offer more room for residents to be able to get into the unit. This caused a setback violation. He wished to point out that if there were a medical emergency at this unit, the EMS responders would have a very difficult time getting into the unit with their emergency equipment. After his demonstration and clarification of issues with the smaller landing, he asked that the Board give favorable consideration of his request and grant the request to allow the larger landing.

Carolyn DuBerry, 758 Chestnut Street, was sworn in and stated that her property is next door to the property in question. She wished to convey that the applicant is a very good landlord and cares about his properties and safety issues. She has been to this unit and after climbing the stairs found it difficult to get into the upstairs unit. She also feels that it created a safety issue for the resident.

Sherry Fritz, 411-C East Hendrix Street, was sworn in and stated that she has enjoyed living in this neighborhood. She supports the applicant's request.

Erin Booth, 754-D Chestnut Street, was sworn in and stated that she currently lives in this unit and it helps a lot having the extra space on the landing, especially when bringing in groceries and other items. When moving into this unit it was still difficult for the movers to get the furniture into the unit because of the space restrictions at the property.

James Realms, 604 Park Avenue, was sworn in and stated that he has lived in units owned by Mr. Mandrano for several years. He asked that the Board members view this application as a health and safety issue. He does not feel that this is an expansion of a nonconforming use, but is no different than installing a larger patio. It is not adding extra space to the building, because it is only outside. The expansion allows a person to swing the door fully open without having to step back on the steps. This is an older neighbor and there are many side yard restrictions throughout the area. He urged the Board to grant this request.

Mike Cowhig, representing the Department of Housing and Community Development, was sworn in and stated that a Certificate of Appropriateness was not obtained from the Historic Preservation Commission, as they felt that the applicant should come before this body first and his application was denied. The applicant will appeal that denial after obtaining a positive recommendation from the Board of Adjustment.

In response to questions by Ms. Huffman, Jeff McClintock, Zoning Enforcement Officer, was sworn in and stated that the applicant would need to obtain a building permit through the City. Currently, it does not meet the building code and the applicant would have to have a Certificate of Appropriateness from the HPC. He would also have to have the zoning sign off on the building permit. The expansion of the nonconforming use in the Board's determination will help determine as to whether or not the applicant can succeed in his required processes. It seems that the applicant is willing to reduce the size of the deck to provide setback compliance with his zoning. Once he achieves approval of this request and the other procedural requirements, it is certainly a project worth doing.

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

**Board Comments:**

Ms. Eckard stated that she thanked the applicant for renovating this property, as well as all the other properties he owns. She would support this Appeal application and she is concerned about safety issues surrounding the application and feels that the applicant tries to do the right thing. Ms. Huffman stated that she feels the applicant did not prove to her that there were good reasons for not obtaining proper building permit and going through the proper steps required and the help available through the Design Review Committee. She feels that the applicant has been afforded several opportunities and has failed to work with the City to get this resolved. She stated that she would not support this request. Ms. Hayworth stated that she certainly understands that the applicant was going through several different obstacles in going through the proper processes with his health issues, plus the issues with the health issues of his father. She feels that the Board should show some compassion for the applicant. She admires the work the applicant has done to this property and other historical properties and appreciates his efforts.

Mr. Forde moved that in regard to BOA-13-06, 754 Chestnut Street, the findings of fact are to be incorporated as presented and the Code Enforcement officer is to be overturned and the appeal granted, based on the following: the expansion should not be considered an expansion because it does not occupy a greater floor area and is not an expansion of the property and/or its nonconformity. The property is located within the City and is subject to its jurisdiction. At the time the determination was made he does not feel that a site plan was necessary in this case. Section 30-2-3.2 applies because the floor area of the house is not expanded and the Board accepts all the testimony, as given, is true. The greater weight of the evidence presented does not show the interpretation of the Zoning Administrator complies with Section 30-2-3.2, expansion of a nonconforming use because the nonconforming use deals specifically with the fact that this is a two-family home and the size of the deck was not the nonconforming that is being expanded. Furthermore, for the health and safety of both the tenants and those surrounding, the expansion of the landing would be in the public interest and the public safety.

Chair Jones offered a friendly amendment. The request is for the expansion as reduced to fit within the zoning setback, and he suggested that the motion should deal with that verbiage. He also added that this is for the benefit of the tenants of the property.

Mr. Forde agreed to the friendly amendment.

Ms. Hayworth seconded the motion and the friendly amendment. The Board voted 6-1 in favor of the motion. (Ayes: Jones, Hayworth, Eckard, Forde, Hampton, Wood. Nays: Huffman.)

**OTHER BUSINESS**

Loray Averett stated that each member present has been provided a copy of the latest update of the Board of Adjustment Rules and Regulations with the current signatures.

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Mr. Nimmer was acknowledged.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 7:30 p.m.  
Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd

**GREENSBORO BOARD OF ADJUSTMENT****MEETING HELD****APRIL 22, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, April 22, 2013 at 5:30 p.m. in the Council Chamber, Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair, Cheryl Huffman, Patti Eckard, Cyndy Hayworth, Frank Forde, Sarah Wood, Joseph Hampton, and Jeff Nimmer. Staff present were: Loray Averett, Zoning 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**

Ms. Huffman moved approval of the minutes from the March 25, 2013 meeting, as submitted, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

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

**CONTINUANCES AND WITHDRAWALS**

Loray Averett stated that she has received a request for continuance for Case Item BOA-13-12, an Appeal of a Historic Preservation Commission decision of College Place, north of West McGee Street. Jason Combs is present today and would like to ask for this continuance.

Jason Combs, representing Duke Energy, was sworn in and stated that this matter has been added to the April HPC meeting agenda. He would like to present additional evidence to them at that meeting.

There being no questions, the public hearing was closed.

Ms. Huffman moved to continue the matter, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion. (Ayes: Jones, Huffman, Hayworth, Eckard, Forde, Nimmer and Wood. Nays: None.)

Joseph Hampton arrived at 5:34 p.m. and stated that he would step down and allow Mr. Nimmer to participate in today's hearings.

## NEW BUSINESS

### VARIANCE

- (a) BOA-13-11: **610 and 708 PEMBROKE ROAD** CBL & Associates, Inc. requests variances from the maximum sign height requirement. **Variance:** Two proposed freestanding monument signs will exceed the maximum height (which is 6 feet) by 16.4 feet, for a total height of 22.4 feet for each sign. Table 14-2, Present Zoning-C-H (Commercial Heavy), Cross Streets-Kathleen Avenue and Northline Avenue. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for two proposed freestanding monument signs to be 22.4 feet tall, exceeding the allowable height of 6 feet by 16.4 feet. The property areas for the signs are located internal to the existing Friendly Shopping Center. The internal travel areas include public and private streets. The rights-of-way nearest these two proposed sign locations include Pembroke Road (public right-of-way), Kathleen Avenue (public right of way) and Northline Avenue (this portion of Northline is a private travel-way).

The property is zoned C-H (Commercial-High). This zoning allows for primary freestanding Identification signs and monument signs for outparcels in accordance to Table 14-2. The applicant is proposing to upfit external areas of the shopping center including coordinating new freestanding signs. This request is for two of the proposed signs which will exceed maximum allowable heights. The applicant's exhibit "D" is a sign illustration that shows the emblem "FC" near the top of the sign. This emblem is considered to be an identifying symbol for Friendly Shopping Center which deems the structure a sign.

The areas for these two signs are both on Pembroke Road at intersecting public and private rights-of-way. Each sign is proposed to be 22.4 feet tall instead of 6 feet which is the maximum height permitted for these outparcel areas. The C-H (Commercial High) zoning district allows freestanding development identification signs to be up to 30 feet tall. The applicant will be using those sign allotments in other locations. In addition to the allowable freestanding development signs, the applicant is proposing these two signs as well, which are required to have variance approvals prior to installation.

The applicant has been made aware of the additional sign requirements relative to square footage, design, and verifying that signs are not located in sight easements. These items are reviewed for compliance when the applicant submits a request for the sign permit(s) through a sign permit application process. C-H-Commercial High: Primarily intended to accommodate a wide range of high intensity retail and service developments meeting the shopping and distributive needs of the community and the region, and some residential uses. The district is established on large sites which are typically located along thoroughfares to provide locations for major developments which contain multiple uses, shared parking and drives, and coordinated signs and landscaping.

Brian Rogers, 3711 Hobbs Road, was sworn in and stated that they wish to create a common signage element theme throughout the shopping center, both Friendly and Shops at Friendly Center and Pembroke Road bisects those two centers. They are asking for a variance to use those common graphical elements and signage elements to be continued throughout both shopping centers. In response to questions from Board members, Mr. Rogers stated that there are several signs that will be 22' in height, but none at the 30' height and there would probably be about 6 of those signs. These signs would be internal to the centers and not on the street frontage. Ms. Hayworth asked about the traffic current count. Loray Averett stated that she does not have any traffic counts.

Chair Jones asked if there was a Master Plan that shows signs throughout the entire development. Ms. Averett stated that she does not have a copy of a Master Plan for this property and development. Ms. Wood asked if the larger signs would be illuminated. Mr. Rogers stated that they would be illuminated. The smaller signs would be 6' or smaller and there would be some that are a little higher. He also responded to Mr. Nimmer that there would be no tenant identification on these signs.

There being no other speakers for this item, the public hearing was closed.

### **Board Discussion**

Ms. Huffman stated that she does not really have any problems with the request, but she does have issues with trying go through the motion, itself. How is this through no fault of their own? That is what she is having a problem with. Counsel Carruthers stated that this application asserted that it was not their own fault because Pembroke was a public street at the time the original development was initiated.

Mr. Nimmer stated that he felt, as a general thought, that it is helpful to be able to identify this area and make traffic flow easier.

Ms. Eckard stated that she also does not have a problem but she does not really see a need for the signs. She feels that sometimes areas like this can get too busy. This is a very busy area, especially in this particular location near the Post Office and Chic-Fil-A restaurant.

Mr. Forde pointed out where it says, "that the hardship results from the unique circumstances because..." it seems to him that staff has made the determination of what kind of sign this is. Counsel Carruthers stated that staff is assisting the applicant in fitting into the pegs and the City Code. Loray Averett stated that if there is any kind of name or logo on the sign, it becomes a sign; however, if you leave the name or the logo off, the proposed structures could be considered art objects.

Chair Jones moved that in regard to BOA-13-11, Pembroke Road, that the Enforcement Officer be overruled, the findings of fact be incorporated and the variance granted due to 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 they can make no reasonable use of the property because they would be unable to properly identify the shopping center. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because it involves a public street running through a private shopping center development. The hardship results from the application of the ordinance to the property because of the classification of signs contained within the ordinance. The hardship is not the result of the applicant's own actions because the public street was constructed prior to their ownership. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows the shopping center to properly identify itself to customers. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for more efficient identification of areas within the shopping center, seconded by Mr. Forde. The Board voted 6-1 in favor of the motion. (Ayes: Jones, Huffman, Hayworth, Forde, Nimmer and Wood. Nays: Eckard.)

- (a) BOA-13-12: **WEST SIDE APPEAL OF A HISTORIC PRESERVATION COMMISSION DECISION OF COLLEGE PLACE, NORTH OF WEST MCGEE STREET** Jason Combs on behalf of Duke Energy appeals the decision and conditions of Application #1611 that was ruled upon by the Historic Preservation Commission at their February 27, 2013 meeting. After the removal of three trees without a Certificate of Appropriateness, the Commission imposed conditions for Duke Energy to remove the tree stumps, re-plant three trees that were removed on the western side of College Place and to plant three additional trees on the eastern side of College Place. Sections 30-4-12.4(K) and 30-4-1.6, Present Zoning-PI (Public Institutional), College Hill Historic District, Cross Street-West McGee Street. **(CONTINUANCE TO MAY MEETING GRANTED)**

## **OTHER BUSINESS**

None.

## **ACKNOWLEDGEMENT OF ABSENCES**

None.



## ADJOURNMENT

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 6:05 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd

**GREENSBORO BOARD OF ADJUSTMENT****May 20, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, May 20, 2013 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, Cyndy Hayworth, Frank Forde and Sarah Wood. Staff present were: Loray Averett and Nicole Dreibelbis, Planning & Community Development, Michael Lewis, Building Inspections Manager 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 of the April 22, 2013 meeting minutes as submitted, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett and Michael Lewis were sworn in for their testimony during the hearing process.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated the case from the Historic Preservation Commission was withdrawn because it went back to the April 24, 2013 HPC meeting for reconsideration and the applicant obtained resolution to his request at that meeting.

Loray Averett introduced a new staff member, Nicole Dreibelbis and explained a portion of her role will be working with the public hearing processes. She also stated that Michael Lewis, Manager for Building Inspections Division is present with reference to Case BOA-13-15 and other matters.

**NEW BUSINESS****VARIANCES**

- (a) BOA-13-13: **4915 FOX CHASE ROAD** Benjamin and Martha Smith request a variance from the minimum rear setback requirement. **Variance:** A proposed covered porch over an existing brick patio attached to a single family dwelling will encroach 4.2 feet into a 20-foot rear setback. Section 30-7-3.2(A)(2) and Table 7-2, Present Zoning-R-3(CL) (Residential Single-family), Cross Street-Fleming Road. **(GRANTED)**

Loray Averett stated that the applicant is proposing to construct a covered porch over an existing brick patio area attached to a single family dwelling. A portion of the screened porch will encroach 4.2 feet into a 20-foot rear setback. The property is located on the north side of Fox Chase Road, 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 covered porch over an existing brick patio/deck. Records reflect the lot is recorded as Fleming Meadows Phase 2, Lot # 93. It is rectangular shaped and the existing house is centered on the property. The lot is approximately 70 feet wide and 112.5 feet deep. The properties located adjacent to and north of the applicant's rear and side lot lines are developed with similar single-family homes. 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. The CL (Cluster development standards) allows more lot coverage with the structures and smaller lots with the same density, however the rear setback remains at a 20-foot minimum.

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

Ben Smith, the property owner, was sworn in and stated that they are asking for this variance to the rear setback requirement in order to cover an existing raised brick and concrete patio. They would like to put a roof and columns over the existing patio, but do not intend to screen it. Their deck is fairly small and does not exceed 4 feet in height and is located 15.3 feet from the rear property line, which is an encroachment of 4.9 feet. Pictures were provided to better illustrate their property and show what their request is related to. The current deck is in the direct sunlight and is too hot to enjoy comfortably. That is the main reason they are making the request, so they can enjoy their property. They have tried to use a deck umbrella but it is not sufficient to be effective in protecting them from the sun and heat.

Al Crawford, 5817 Fleming Terrace Road, was sworn in and stated that his property is immediately adjacent to the subject property. He is in favor of this request and feels that the proposed roof over the patio area would not have a negative impact on the neighbors and it would be compatible with the surrounding area.

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

#### **Discussion:**

Ms. Wood stated that she feels that this request is compatible with the rest of the neighborhood. Ms. Huffman stated that she agrees and would support the request.

Mr. Forde moved that in regard to BOA-13-13, 4915 Fox Chase Road, the findings of fact be incorporated and the Enforcement Officer overruled and the variance granted due to the following: there are practical difficulties and unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance they can make no reasonable use of the property because due to the constraints, the patio will become unusable. The hardship of which the applicant complains results from unique circumstances related to the property because of the location where the patio is established on the lot and also the way that the house was constructed on the lot. The hardship results from the application of the ordinance to the property because the patio, as it exists, extends into the applicable rear setback. The hardship is not a result of the applicant's own actions because the patio existed prior to their acquisition of the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it does substantial justice for the applicant and provides for a better use of the applicant's property and the granting of the variance assures the public safety and welfare and does substantial justice because the applicant and its neighbors all agree that this addition will advance the aesthetics of the neighborhood and the neighborhood property values, seconded by Ms. Hayworth. The Board voted 6-0 in favor of the motion. (Ayes: Jones, Forde, Eckard, Hayworth, Huffman, Wood. Nays: None)

- (b) BOA-13-14: **215 WEST ERSKINE DRIVE** Henry Nelson Gusler 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-3, Cross Street-West Friendly Avenue. **(AMENDED AND GRANTED)**

Loray Averett stated that the applicant is requesting a variance from the requirement that utilities to detached accessory buildings be provided by branching services from the principal building. The applicant is proposing to locate a separate electrical meter on a recently constructed detached accessory garage. The property is located on the western side of West Esrkine Drive south of West Friendly Avenue and is zoned R-3 (Residential Single Family). The lot is approximately 0.54 acres containing approximately 23,522 square feet. The property contains a single family dwelling. The applicant recently obtained a building permit and constructed a detached accessory garage. The garage was constructed approximately 40 feet from the back corner of the existing house, 3 feet from the side property line and 55 feet from the rear property line. The applicant's pictures show power lines beside and behind the building. The applicant has stated there is an existing power pole supply directly adjacent to his newly constructed building. The distance to supply the power from the garage to the existing service on the house would be a much greater distance than the location of the adjacent power supply pole that is close to the building. The applicant has landscaping, pavement, and trees in the areas between the building and the existing house where the main meter is located. The applicant is aware that the detached garage is for accessory personal use only. 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 or in opposition to this request.

Sherry George, #9 Clubview Court, was sworn in and stated that the applicant is her father and that her parents are out of town and could not be at today's meeting. She is part-owner of the house. She presented a letter from one of the neighbors showing support of the request. This would be an unreasonable financial burden for her parents to dig a trench for additional amps for the electricity on the garage. Her father is elderly and likes to do woodworking hobbies in the garage. Currently he is using an extension cord running from the main house out to the garage to supply electricity.

Ms. Huffman asked why the house would not support any more amps coming off of it and when was the house built. Ms. George stated that her parents moved into the house within the past year and built the garage. The house was built 60 years ago. In response to another question by Ms. Huffman, Ms. George stated that her father has a band saw, air compressor, and other electrical tools that he uses.

Chair Jones stated that there was another letter sent to Ms. Averett and presented to him from Dean Chapman, 213 Erskine Drive, another neighbor, who stated he is in favor of the request.

Ms. Eckard asked if Mr. Gusler had any intentions of adding any water or making this a small apartment. Ms. George stated that this is a basic garage and is unfinished on the inside and they do not have plans to make it into an apartment or living space.

Ms. Huffman stated that her concerns are, even though it is currently in her parent's name, at some point in time, the garage could easily be converted to living space and that is why City Council has adopted requirements from the Land Development Ordinance to help secure how detached accessory garages are used. Separate utilities such as electricity, water and sewer tend to influence uses that are not permitted in detached accessory structures/garages.

Chair Jones asked Ms. George if she would be opposed having limitations placed on the motion to not allow water and sewer to be run to this garage. Ms. George stated that she would have no objection to that kind of limitation.

Don Lender, #9 Clubview Court, was sworn in and stated that he is the mortgage holder on the property and he supports the variance for this request. He is sure that the Guslers would not be opposed to having some conditions upon resale of the property to restrict the use of that garage to simply a detached accessory garage.

There being no one speaking in opposition to the request, the Public Hearing was closed by unanimous vote.

Mr. Forde asked the purpose of limitations on detached garage buildings. Ms. Averett stated one of the reasons was to maintain the residential neighborhoods single family districts. There are provisions that do allow for detached accessory dwellings on lots that are large enough to accommodate them in the single family district. The other reasoning was that home occupations are limited on how those are permitted to operate in a single family district. No home occupation can be in any portion of a garage or detached building.

Ms. Huffman asked if they were to fix up the garage and were to finish it off inside, there's no restrictions as far as what they can do with that property. Ms. Averett stated that the Ordinance

does regulate how the building can be used as an accessory building to the single family dwelling. If someone now or in the future violated the use of a detached accessory building, Zoning Enforcement staff would investigate and take the corrective action through the procedure process. The normal, customary and ordinary use of the detached accessory building to the single family dwelling is for personal reasons and hobbies and storage and not for another family to live in and not for a home occupation.

Mr. Forde moved that in regard to BOA-13-14, 215 W. Erskine Drive, the findings of fact be incorporated and the Enforcement Officer overruled and the variance granted due to 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 they can make no reasonable use of their property because in order to electrify the existing detached building would be prohibitively expensive and therefore, no power to the garage could be done. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because of the improvements that exist between the existing structure and the current garage, prohibiting the reasonable use of power from one to the other. The hardship results from an application of this ordinance to the property because of the unique situation in which the ordinance prohibits separately metered detached buildings. The hardship is not a result of the applicant's own actions because the near-by power pole would provide electricity to the garage and seems to be the most reasonable connection for the electricity. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it does substantial justice to the applicant and allows them the reasonable use of their property. The variance assures the public safety and welfare and does substantial justice because it will allow the applicant to use his property in a substantial manner, seconded by Ms. Hayworth.

Chair Jones made a friendly amendment to the original motion: To provide that the detached structure shall only be limited to non-dwelling uses.

Mr. Forde stated that he would certainly accept that friendly amendment.

Ms. Averett stated that the garage is limited to functioning as an accessory use garage to the existing single-family, as it was recently approved for on the applicant's building permit. Counsel Carruthers stated that accessory buildings are permitted to have water and sewer if they branch the service from the main dwelling and based on that requirement if the Board chooses to add that no water and sewer can be connected to the detached garage is a permissible limitation.

Chair Jones stated that he did not want to prohibit them from putting a water hose on the side of the building to water their yard. He is concerned about having water and sewer within the garage structure though.

Ms. Eckard suggested that the friendly amendment state that the limitation would be only for the separate electrical box. She feels it is already covered as far as water and sewer.

Mr. Forde stated that would be his point. If they were going to add water and sewer to the garage they would have to come back to ask for an additional variance. Ms. Averett stated that was correct if they were requesting a separate water meter for the detached garage and that the

Ordinance language for the separate utilities provision requirements is marked as Exhibit 2 in the Board's case packet.

Chair Jones stated that he would accept that recommendation in regard to the separation for the electricity. Mr. Forde stated that he would also accept that.

The Board voted 4-2 and the variance failed. (Ayes: Forde, Jones, Eckard, Hayworth. Nays: Wood and Huffman.)

- (c) BOA-13-15: **1203 GRAYLAND STREET** Hugh and Nina Bennett request a variance from the minimum side setback requirement. **Variance:** An existing carport attached to a single family dwelling encroaches 3 feet into a 5-foot side setback. Section 30-7-3.2 and Table 7-2, Present Zoning-R-5 (Residential Single-family), Cross Street-West Northwood Street. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a carport addition to the side of the dwelling. The carport addition encroaches 3 feet into a 5-foot side setback. The property is located on the western side of Grayland Street north of West Northwood Street and is currently zoned RS-5. The applicant has recently added an attached carport to the side of the house. The carport addition encroaches approximately 3 feet into a 5 foot side setback. The carport dimensions are 12-feet x 20-feet. The applicant's lot is rectangular shaped. It is 62 feet wide by 168 feet deep. Records reflect the applicant applied for a permit and paid her permit fee on December 6, 2012. She was given copies of those items. The permit was reviewed by zoning staff on December 11, 2012. The zoning permit comments were entered into the plan tracking system. The permit request was not approved because the attached carport was too close to the side lot line. The applicant mentioned that she had recently begun construction on her carport and realized that no inspector had come out. She called for an inspection and was informed that her permit was not approved. On April 26, 2013, the applicant filed for a variance request. 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 if there was anyone wishing to speak in favor or in opposition to this request.

Nina Bennett, 1203 Grayland Street, was sworn in and stated that she has lived at this residence for 30 years and the house was built in 1940 and the driveway has been there since that time. There have been some circumstances over the last few years. Her neighbor's children use her driveway to ride their tricycles and big wheels and have caused damage to her husband's car. The neighbors have also planted a Red Maple tree near the driveway and it drops stains on her husband's car. Her husband has also had a stroke and is not able to get in and out of the car as he used to. They decided to put up a carport to eliminate the Maple tree stains as well as hoping the car would be better protected under a carport. She later found out that she should have obtained a building permit for the structure. She has stopped work on the construction and would now ask for a variance to complete the project. She presented a letter from the neighbor in support of the request for the variance as well as photographs.

Ms. Huffman thanked the applicant for going through the process and requesting a permit. She asked if the carport has been completed. Ms. Bennett stated that she stopped the project and the roof has not been completed and the carport is not painted and finalized. She wanted to obtain the variance before completion. Ms. Wood asked if this area could or would be used as a patio area. Ms. Bennett stated that there is a patio area at the rear of the house. This structure would only be used as a carport so that her husband would not be subjected to inclement weather conditions as well as some protection for the vehicle.

There being no one speaking in opposition to the request, the Public Hearing was closed by unanimous vote.

Mr. Forde asked if it is the poles for the carport that cause the encroachment. Ms. Huffman asked if the posts meet the requirements. Michael Lewis, Inspections Manager, stated that if the variance is granted they will issue the permit and a Building Inspector will inspect the construction to make sure that structural compliance meets the building code requirements.

Mr. Jones moved that in regard to BOA-13-15, 1203 Grayland Street, the findings of fact be incorporated and the Enforcement Officer overruled and the variance granted due to 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 they can make no reasonable use of the property because they will be unable to protect their vehicles and it will be dangerous for the applicant's husband to go in and out of the home. The hardship of which the applicant complains results from unique circumstances related to the property because the neighbor planted a Maple tree outside the property line adjacent to the applicant's driveway. The hardship results from the application of the ordinance to the property because the driveway has been in place since the applicant purchased the property and the ordinance treats the carport as a structure that requires meeting the setback limitations. The hardship is not the result of the applicant's own actions because the neighbor planted the Maple tree and that area is exposed to elements that can be disruptive to the applicant's property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it provides for the continuation of a neighborly relationship. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the safe navigation in and out of the home and it allows for protection from the elements, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Jones, Hayworth, Forde, Eckard, Wood and Huffman. Nays: None)

## **OTHER BUSINESS:**

### **Upcoming June elections for Chair and Vice-Chair**

Chair Jones asked members to be thinking of who they would like to nominate for Chair and Vice Chair at the June meeting,

Counsel Carruthers asked that the Board consider revisiting the variance request for 215 W. Erskine Street. He feels that there was possible consensus with the more restrictive condition that, in retrospect, might have allowed the variance to be granted. Even though he would not suggest this on a normal basis, but given this situation, he feels that someone who voted in the



affirmative wished to make a vote to reconsider re-opening discussions about this matter. It is an appropriate way to reconsider the request at this point if there was no objection by the Board. It is allowed under Robert's Rules of Order and allowed under the City Council rules and may be an efficient way to consider that.

Ms. Huffman stated that she felt she had made her concerns very clear as far as what City Ordinance Codes permit for separate water and separate electric and she felt that concern was not addressed during the motions. Mr. Forde stated that he would like to re-visit this matter because he feels that with the three issues that were heard today and two were granted and the other was not, the perception could be misconstrued. He feels that the decision made earlier may send the wrong message to applicants in the future. Mr. Jones stated that in terms of interpretation, he feels that case should be re-opened and discussed again and entertain other motions. Counsel Carruthers stated that one of the persons who voted with the prevailing party has the discretion to move to reconsider. With a second to that and a majority vote, the reconsideration could go forward and an additional amendment can be made that can be voted on.

Chair Jones moved to reconsider the matter of BOA-13-14, 215 W. Erskine Street, seconded by Ms. Hayworth.

Chair Jones stated that the concerns seem to be the water and sewer connection to the garage structure.

Ms. Wood stated that she wondered if there is some way the applicant can add more power or more breakers to the main structure to be able to supply power to the garage structure.

Ms. Eckard stated that in selling a lot of older houses, a lot of times that is a problem that comes up because there is not as much electricity coming into the house and there are smaller circuits and breaker boxes in these older homes. Ms. Hayworth pointed out that the applicant had stated it would be a financial burden to run the lines from the house to the garage to update the power box and it would a lot less expensive to have a separate power box. She pointed out that they would have to go through the process of permitting and inspections to be able to add power to the garage structure. This would cover any safety issues and concerns. The water and sewer would also be addressed by the ordinance.

Chair Jones stated that one of the additional features he has seen in adding a condition to a variance, it makes it more difficult for an applicant to come back in the future if they agree to specific original conditions.

Ms. Huffman stated that was why she wanted a condition that water and sewer would be prohibited for this detached accessory building and it should be clearly stated in the motion.

Mr. Forde stated that he felt that it was addressed when the Board said that if they wanted to add water and sewer to this particular garage, they would have to come back to the Board again, if that water and sewer were to be separately metered.

Loray Averett stated that they could run water and sewer by branching from the principal dwelling, but if they wanted to do a detached water meter on this garage that would need a separate variance.

Mr. Forde felt that what the Board previously voted on today was just simply to allow them to have separate electricity to this garage, and if they wanted anything else separate, they would have to come before the Board again for that.

Michael Lewis, Building Inspections Manager, stated that they would have to have a permit to be able to run water and sewer to the garage. The main concern is the electricity.

Chair Jones asked if there was Board support to make a friendly amendment to the previous motion to restrict all water and sewer to the detached garage. The consensus of the Board was that would be acceptable.

Mr. Forde moved that in regard to BOA-13-13, 215 W. Erskine Street, acceptance of the friendly amendments previously made, as well as the amendment to restrict any water and sewer connection to the garage structure, seconded by Ms. Eckard. The Board voted 6-0 in favor of the motion and the variance was granted with the condition to restrict water and sewer, (Jones, Eckard, Hayworth, Forde, Huffman, Wood. Nays: None.)

Loray Averett stated that she would contact the applicant and take quick action on advising them of the Board’s final decision.

Ms. Eckard thanked Counsel Carruthers for bringing that matter back up before the Board for reconsideration.

Counsel Carruthers stated that he hesitates to interfere with governmental matters but he felt that he understood a consensus on this particular case and felt it was pertinent.

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Mr. Nimmer and Mr. Hampton was acknowledged.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 6:42 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman

Greensboro Board of Adjustment

FJ/jd

**GREENSBORO BOARD OF ADJUSTMENT**  
**JUNE 24, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, June 24, 2013 at 5:30 p.m. in the Plaza Level Conference Room, Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair; Patti Eckard; Cyndy Hayworth; Sara Wood and Joseph Hampton. Staff present were: Loray Averett, Zoning Coordinator; Nicole Dreibelbis, Planning and Community Development; 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 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. Eckard moved approval of the minutes of the May 20, 2013 meeting minutes as submitted, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett and Nicole Dreibelbis were sworn in for their testimony during the hearing process.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that there were none.

**NEW BUSINESS****1. VARIANCE**

- (a) **BOA-13-16: 2240 MARTIN LUTHER KING, JR. DRIVE** Burger King Corporation requests a variance from the maximum sign height requirement. **Variance:** A proposed freestanding identification sign will exceed the maximum height (which is 30 feet) by 15 feet, for a total height of 45 feet. Table 14-2, Present Zoning-C-M (Commercial-Medium), Cross Street-Patton Avenue. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for an existing freestanding sign to be increased from the maximum height of 30 feet to 45 feet, exceeding the allowable height of 30 feet by 15 feet. The property is located at the northwest intersection of Martin Luther King Jr., Drive and Patton Avenue and is currently zoned C-M. The sign is located along the Patton Avenue street frontage. The C-M zoning district allows for a freestanding sign, not to exceed 30 feet in height, along each street frontage. The applicant has not requested a sign permit for any freestanding signs along the Martin Luther King Jr. Drive street frontage. In January 2013, a plan for construction remodeling for this Burger King was submitted for review. At that time, the property had a free standing identification sign which was approximately 69 feet tall. The applicant was informed that the property could not change or add any existing signage until the non-conforming freestanding sign

was brought into compliance. On February 4, 2013, the applicant applied for the wall sign permits and city staff could not approve them until the freestanding sign was brought into compliance. The Land Development Ordinance Section 30-2-5.4 (C) states: Change of Conditions Except as outlined in Section 2 below, all nonconforming signs, except outdoor advertising signs, which are subject to Sec. 30-2-5.5, must be brought into compliance or removed if any or all of the following occurs:

- a. if the damage to the sign exceeds 50% of its original value or replacement value, whichever is less;
- b. if the business or activity on the premises is discontinued for a continuous period of 90 days or more;
- c. if additions or expansions of buildings, parking areas, or uses of open land occur that are greater than 3,000 square feet;
- d. if any change in the existing use of the property occurs; or
- e. if an application for a sign permit is made to add new or additional signs to a property containing a nonconforming sign.

Within the time frame of the month of February, 2013, Burger King complied and lowered their freestanding sign to 30 feet in height. Sign permit records reflect that on February 26, 2013, the exterior wall sign permits were approved. If the freestanding sign was located within 400 feet of an interstate ramp or right-of-way, the sign could be up to 50 feet tall. The closet property line to the interstate ramp for this subject property is approximately 900 feet.

There are no applicable overlays or plans for the property. The existing use of the restaurant is drive-through services. Properties located to the north are Conditional-District (C-D)/Commercial-High (C-H) and contains a restaurant. The property to the east is also zoned Commercial-High (C-H) and the properties to the west and south are zoned Heavy Industrial (H-I). The Commercial-Medium (C-M) district is intended to accommodate a wide range of retail services and office uses. The district is typically located along thoroughfares and areas which have developed minimal front setbacks.

Dan Bond, 1517 Kenilworth Avenue, Charlotte, North Carolina, is with Land Lease Construction, Inc., agent for the site operator for Burger King. He explained that Burger King is experiencing a sign visibility hardship due to the current sign height of 30 feet. Patrons to the restaurant travel north along Martin Luther King, Jr. Drive as well as south from Interstate 40. There is reduced visibility with the 30-foot sign and they are requesting a variance for a 45-foot sign to address reduced store performance resulting from reduced sign visibility. He explained circumstances unique to the property that deter placing a second sign in other locations.

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

**Discussion:**

There was a discussion about the possibility of offering a condition that would restrict the applicant to only one freestanding sign on the lot provided the variance was granted. Members commented that they would feel uncomfortable restricting the applicant to one freestanding sign given the current market, high degree of competitiveness, and uncertainty regarding future development of the area. It was noted that the adjacent McDonalds currently has two signs on their property. Chair Jones indicated the applicant could return at a later date to request another variance for an additional sign. Members determined that conditions should not be offered with this case. Mr. Hampton pointed out that if a sign was placed on the front side of the property next to Martin Luther King, Jr. Drive, parking allocations would be lost. He stated his support of the variance as presented. Ms. Eckard indicated that she also plans to support the variance request.

Chair Jones moved that in regard to BOA-13-16, 2240 Martin Luther King, Jr. Drive, that the Enforcement Officer be overruled, the findings of fact be incorporated and the variance granted due to 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 they can make no reasonable use of the property because they would be unable to properly identify the restaurant location. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because it involves an intersection with an existing building where the signage cannot be viewed from the public right-of-way until the vehicles have approached the development. The hardship results from the application of the ordinance to the property because of the classification of signs contained within the ordinance. The hardship is not the result of the applicant's own actions because the design of the public streets were constructed prior to their ownership. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows the restaurant property to properly identify itself to customers. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for more efficient identification of the area and the retail locations along this major thoroughfare, seconded by Ms. Hayworth. The Board voted 5-0 in favor of the motion. (Ayes: Jones, Hayworth, Eckard, Hampton and Wood. Nays: None.)

### **SPECIAL EXCEPTIONS**

- (a) BOA-13-17: **3212 PRESLEY WAY** Traci Martin requests a Special Exception as authorize by Section 30-8-10.1(B) to allow a separation of 2,475 feet from one family care home (6 or less persons) to another family care home (6 or less persons) located at 2007 Blair-Khazan Drive when 2,640 feet is required. Present Zoning-R-5, Cross Street-McKnight Mill Road. **(GRANTED WITH CONDITIONS)**

Nicole Dreibelbis stated that the applicant is proposing to locate a family care home which is too close to an existing family care home. A proposed family care home (6 or less persons) will be 2,475 feet from another family care home, located at 2007 Blair-Khazan Drive (6 or less persons) when 2,640 feet is required. This proposed home will be 165 feet too close. The lot is located at the southwestern intersection of Presley Way and St. Charles Lane, west of Highway 29 North and about 1,500 feet north of McKnight Mill Road and is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at 3212 Presley Way. It is 165 feet too close to an existing family care home located at 2007 Blair-Khazan Drive. Privilege license records reflect that the location at 2007 Blair Khazan Drive is in operation is in operation and required renewals are in compliance. The properties are separated by other single family homes, multi-family dwellings, industrial and commercial properties and major and minor thoroughfares. 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.

Traci Martin Jones, 2 Loxwood Court, described the subject property. If the special exception is granted, she plans to convert the property into a family care home. The home will address the needs of adults with developmental delays helping them to live on their own in a family setting and progress to higher levels of independent care. She plans to employ at least 15 people over three shifts at the location including a Program Manager.

Ms. Haywood pointed out the potential for disruption to the neighborhood posed by a family care home.

Chair Jones asked the applicant if she was amenable to limiting the family care home residence to developmentally delayed individuals through a condition, if the request is approved. Ms. Jones replied in the affirmative.

Ms. Averett stated that a family care home is allowed in a residential neighborhood with a maximum of six residents along with the spacing requirement. She questioned if conditioning age or type of disability was enforceable. Counsel Carruthers referenced the local Land Development Ordinance (LDO) and stated that the LDO was much broader than the state law. He felt there would not be a problem attaching conditions to the request.

Responding to a question, Ms. Averett confirmed that notices went out to 19 neighbors residing within 150 feet of the subject property.

There being no one speaking in opposition, the Public Hearing was closed.

**Discussion:**

Ms. Hayworth said that she does not plan to support the request due to the potential for disruption in the neighborhood. She stated that regulations governing the distance between family care homes in residential neighborhoods are put in place to maintain continuity in the neighborhood.

Mr. Hampton pointed out that the neighborhood appears to be in support of the family care home as 19 neighbors were notified and there was no one present to contest the Special Exemption request. He plans to support the request.

Ms. Wood plans to support the request. She noted that more controls would be attached to a family care home versus a rental property.

Chair Jones pointed out that the City has made the determination that family care homes can be located in residential neighborhoods. Furthermore, there would be no issue if the other family care home was not located within the restricted limit. He felt the question was whether the proposed family care home created a cluster by being within 165 feet. Chair Jones stated his support of the request only with a condition that limits residency to the developmentally delayed.

Ms. Eckard felt that the highway served as a strong barrier to clustering. Her concern was disruption in the neighborhood, particularly because the home is located in a cul-de-sac. In addition, she was concerned with the need for additional parking on Presley Way.

Ms. Wood moved that in regard to BOA-13-17, 3212 Presley Way, based on the stated findings of fact, that the Enforcement Officer be overruled and a Special Exception be granted by the Board of Adjustment as evidenced with 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 the only need for this Special Exception is the spacing requirement, the other facility is across Highway 29 and there is no way to drive or walk to that facility without traveling more than the spacing requirement and therefore, it also assures public safety. The conditions are as follows: (1) that there is no expansion of approved parking surface on Presley Street, and (2) that residence be limited to developmentally delayed residents, seconded by Chair Jones. The Board voted 4-1 in favor of the motion. (Ayes: Jones, Eckard, Hampton and Wood. Nays: Hayworth.)

- (b) BOA-13-18: **2006 OLD JONES ROAD** Deloris Johnson requests a Special Exception as authorized by Section 30-8-10.1(B) to allow family care home separation encroachments from the current one-half mile development spacing standard.  
Special Exception Request #1: The proposed family care home will be 1,908 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2318 Juliet Place when 2,640 feet is required.

Special Exception Request #2: The family care home will also be 2,565 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2322 Newton Street when 2,640 feet is required. Present Zoning-R-5, Cross Street-Freeman Mill Road. **(CONTINUED UNTIL AUGUST, 2013 MEETING)**

After some discussion, the Board determined to continue this item to the August meeting.

A recess was taken from 7:17 p.m. until 7:25 p.m.

**OTHER BUSINESS**

**Board Members Terms and Elections**

Ms. Hayworth nominated Frankie T. Jones to continue to serve as Chair, seconded by Ms. Eckard. Mr. Jones accepted the nomination.

Ms. Eckard nominated Frank Forde to serve as Vice Chair, seconded by Ms. Hayworth. Chair Jones stated that Mr. Forde has indicated his acceptance of the nomination.

**ACKNOWLEDGEMENT OF ABSENCES**

The absences of Ms. Huffman, Mr. Forde, and Mr. Nimmer were acknowledged and excused.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 7:36 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
JULY 22, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, July 22, 2013 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair; Patti Eckard; Frank Forde, Cheryl Huffman, Cyndy Hayworth; Sara Wood and Joseph Hampton. Staff present were: Loray Averett, Zoning Coordinator; Nicole Dreibelbis, Planning and Community Development; Mark Stewart, Building Inspector; 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 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 of the June 24, 2013 meeting minutes as submitted, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion.

#### **SWEARING IN OF STAFF**

Loray Averett, Nicole Dreibelbis and Mark Stewart were sworn in for their testimony during the hearing process.

#### **CONTINUANCES/WITHDRAWALS**

Loray Averett stated that there were none.

#### **NEW BUSINESS**

##### **VARIANCE**

- (a) **BOA-13-19: 4678 CHAPEL RIDGE DRIVE** Wade Journey Homes, Inc. requests a variance from the minimum front setback requirement. **Variance:** A recently constructed single-family dwelling encroaches 2.8 feet into a 20-foot front setback. Section 30-7-3.2 and Table 7-3, Present Zoning-R-5 (Residential Single-family), Cross Street-Byers Ridge Drive. **(CONTINUED TO AUGUST MEETING)**

Loray Averett stated that the applicant is requesting a variance for a recently constructed single family dwelling which encroaches 2.8 feet into a 20-foot front setback. The property is located on the eastern side of Chapel Ridge west of Byers Ridge Drive and



south of Lees Chapel Road. The property is zoned R-5 and the subdivision was approved for cluster development. The house was recently constructed and has an attached garage. The applicant has mentioned that through a recent closing survey, it was discovered that a small portion of the front line of the garage is encroaching into the front setback and into a portion of an established 20-foot utility easement. The Planning Board will hear the easement release request at their July 17, 2103 meeting and if that portion of the easement is released, the Board of Adjustment can move forward with hearing this case. If the easement release is not approved, then the Board of Adjustment cannot hear the request. (An update concerning this item will be provided at the beginning of the case). (Update: The easement release request was granted at the July 17, 2013 Planning Board meeting).

The permit request and site drawings that were submitted for review as shown in Exhibits identified as number 4 were approved by staff and the house was shown to be setback 21 feet from the front property line and out of the 20-foot utility easement area. The rear lot line has a severe angle and the side lot line is slightly angled. The house was slightly rotated from the original approved permit which placed it a little closer to the side and rear portion of the lot, but still meeting those minimum setback requirements. The slight rotation of the house appears to have shifted the house forward creating the front encroachment. When the applicant discovered the foundation encroachment error, they filed for the easement release and for a variance request. A typical 90 degree parking space would be 18 feet in length. It is possible to park a vehicle in the driveway with 17.4 feet remaining on the applicant's property. Also the garage width shown at 20 feet will accommodate 2 vehicles, along with available parking on the street. The R-5 (CL), Residential Single-Family District (Cluster) is primarily intended to accommodate single-family detached dwellings the same as R-7 developments where public water and sewer services are required. The overall gross density on R-5 (CL) will typically be 5.0 units per acre or less.

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

Timothy Benbow, 2736 Veeder-Files Road, Franklinville, NC, representing the applicant, was sworn in and stated they did the stake-out of this property on January 2, 2013. There was an angular error made when the house was staked. There were no other checks on the house until the final land survey was done and they found the error at that time. He emphasized that the error was made at the time of stake-out. There is appropriate parking in the garage area. He asked that the request for this variance be approved.

#### Questions by Board Members

Ms. Wood stated that she is very concerned about the length of the driveway and the matter of the driveway entering the roadway in a severe curve in the road, making for an unsafe exit into the street. She pointed out that the house is at a peculiar angle and the slope of the driveway appears to also be unsafe, causing this unsafe location of the driveway, as a whole. She asked about the grading of this particular property.

Mr. Benbow stated that the property was graded per the plans, which was approved by the City. He stated he did not have the elevations with him. In response to other questions, Mr. Benbow stated that he did not know how many times Wade Journey Homes has been before the Board for other errors. Ms. Hayworth stated that she felt that there had been other staking errors on projects, prior to this one. Loray Averett stated that, to her knowledge, Wade Journey Homes has been before the Board two other times in the past, however, each case is specific on its own request and stands unique to its facts and circumstances, as the case before the Board would be this evening. Mr. Benbow stated that he is not with Wade Journey Homes, but is with Borum Wade and Associates, who did the stake out of the home and who made the error.

Ms. Wood stated that she is looking at the best interest of the buyer of the property and this house is already closer to the street and she really has a problem with the length of the driveway, plus it is located on a curve in the street and the slope of the driveway. She would feel more comfortable if someone from Wade Journey Homes was available to answer questions posed by Board members.

Counsel Carruthers stated that it appears that the Board has some very serious questions for Wade Journey Homes and the applicant may want to consider a motion to continue and the Board could request that Wade Journey come in to answer those questions.

Mr. Benbow added that in regard to the slope, the house is higher than the house to the right. As far as moving the house back a foot or so, he does not feel that will change the slope on the driveway.

There being no other speakers the public hearing was closed by unanimous vote.

Chair Jones moved that this matter be continued to the August meeting so that a representative from Wade Journey Homes could provide additional information, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion to continue.

Mark Stewart, Building Inspector, left for the remainder of the meeting.

- (b) **BOA-13-20: 1016 BATTLEGROUND AVENUE** Michael S. Fox, Attorney for Hill Street Holdings, requests a variance from the re-location spacing requirement for a billboard on this property to a new location on the same property. **Variance:** An existing billboard is proposed to be relocated 400 feet from its existing location, when it is allowed to be relocated up to 200 feet from its existing location, thus the variance request is to exceed the allowed spacing requirement by 200 feet. Section 30-2-5.5(B)(1), Present Zoning-LI (Light Industrial), Cross Street-Hill Street. **(GRANTED)**

Mr. Hampton arrived at 6:08 for the remainder of the meeting.

Loray Averett stated that the variance is for relocation of an existing billboard sign that will exceed the maximum relocation distance of 200 feet on the property by an additional 200 feet. The sign is proposed to be relocated 400 feet from its existing location. The property is located at the northeastern corner of Battleground Avenue and Hill Street east of West Smith Street and is zoned LI (Light Industrial). The property is also in the CBO (Central Business Overlay). Billboard signs are permitted in the LI zoning district.

The property contains two billboards which are nonconforming because they are too close to one another and too close to residential zoning. The current minimum spacing requirement between the outdoor advertising signs is 500 feet. The minimum spacing requirement from the residential zoning district is 300 feet. The applicant is proposing to remove both of the signs and relocate only one of the signs. The relocation for the sign is proposed to be moved 400 feet north of its current location along the Battleground Avenue street frontage. The applicant is aware they will have design standards to meet and will be required to apply for and obtain a new sign permit. The applicant recently submitted a sketch drawing to redevelop the property with Light industrial uses and to also develop using the IMUD (Integrated Multiple Use Development) option. This style of development treats the property as a "zone lot" which benefits the property development with shared access, shared parking spaces, and perimeter landscaping. The total area of the property is 4.483 acres. This proposed sketch development included the request to be allowed to relocate the Billboard more than 200 feet from its current location.

The LI zoning 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

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

Michael S. Fox, Attorney for Hill Street Holdings, LLC, was sworn in and presented booklets for the Board members' review. He stated that the reason for the request is that there is a section in the ordinance that says you can relocate an existing billboard within 200 feet of the current location and that can be done through staff. If it is over 200 feet, it must come before the Board for a decision. He explained the photographs contained in the handout, in detail. He emphasized the fact that there would be no left turn from the property onto Battleground as that is a one-way street and only a right hand turn would be allowed. The proposed use for the site is a multi-story, enclosed self-storage unit so there will be a lot of traffic going in and out of the property. The adjacent property owner is in support of the request. There is a significant tree buffer between Battleground and Smith Street and there is some residential in the immediate area. It is felt that the proposed relocation of the signs will not have a detrimental impact on the surrounding properties. He asked that the Board make a favorable decision on this variance request.

In response to questions by the Board members, Mr. Fox stated again, that there would only be right-turn only out of the property. He also stated that the business located on the property would not be able to advertise on this particular sign as that would be considered additional advertising for that business. The only advertising allowed on the sign would be for other business located in other locations. Ms. Hayworth pointed out that the proposed new location and angle of the new digital sign would not be toward any residential uses and should have no impacts on the residential properties.

There being no other speakers the public hearing was closed by unanimous vote.

Board Discussion:

The Board members had no additional questions or comments.

Mr. Forde moved in regard to BOA-13-20, 1016 Battleground Avenue, that the findings of fact be incorporated and the Code 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 can make no reasonable use of the property because of the safety concerns associated with the current location of the existing billboards. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because the current billboards are an existing traffic hazard and the resulting moving of the billboards will result in better traffic safety. The hardship results from the application of this ordinance to the property because the applicant did not locate the billboards in their current location. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it enhances the aesthetic of the neighborhood and traffic safety and the granting of this variance assures the public safety and welfare and does substantial justice because it allows the improved traffic flow for the applicant's current intended use, seconded by Ms. Hayworth. The Board voted 7-0, unanimously, in favor of the motion to grant the variance. (Ayes: Jones, Hayworth, Eckard, Huffman, Wood, Hampton, and Forde. Nays: None)

A break was taken from 6:35 until 6:47 p.m.

- (c) **BOA-13-21: 212 ELMWOOD DRIVE** Sriyesh and Anne Krishnan request a variance from the minimum side setback requirement. **Variance:** A proposed attached garage addition will encroach 2 feet into a 5-foot side setback. Table 7-3, Present Zoning-R-5 (Residential Single-family), Cross Street-St. Andrews Road. **(GRANTED)**

Nicole Dreibelbis stated that the applicant is requesting a variance for a proposed attached garage addition with a mudroom to an existing house. The garage addition will encroach 2 feet into a 5-foot side setback. The property is located on the eastern side of Elmwood Drive east of St. Andrews Road. The applicant is requesting to build an attached garage with a mud-room to the existing single family dwelling. There is an existing detached shed which is located north of the driveway and 3 feet from the side lot line. Detached buildings less than 15-feet tall may be located 3 feet from a side lot line. The applicant is proposing to remove the existing shed and use this location to rebuild an attached garage/mud-room. The garage is proposed to be 22 feet by 24 feet (528 square feet) and the mud room will be 8 feet by 10 feet (80 square feet) for a total of 608 square feet. The applicant's lot is rectangular shaped. It is approximately 80 feet wide by 150 feet deep. The existing house, driveway and brick patio are infrastructure in place that the applicant is trying to maintain. In maintaining that infrastructure, the applicant has made mention the most reasonable place to locate a garage would be in the area where the shed currently exists. There is a partial retaining wall along the side of the applicant's western property line that will be in close proximity to the proposed garage, along with existing white wooden fencing and heavy landscaping on the remaining sides and rear portions of the property. 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 if there was anyone wishing to speak on this matter.

Sriyesh Krishnan, the property owner, was sworn in and stated that he would like to place an attached garage within 3 feet of the side setback. He stated that staff had mentioned a walkway connection. For clarity the connection would be the proposed mud room area between the garage and the house, along with the access through the proposed mud room addition. He presented the plans for the property on the screen and explained the location of the proposed addition. There is no other reasonable location to fit the two-car garage on the property other than removing the existing shed. Mr. Krishnan stated that by removing the shed and replacing it with a garage it would add to the property value and would be an improvement to the neighborhood.

In response to questions, Mr. Krishnan stated that the height of the garage would be approximately 15 feet high, 22 feet wide by 24 feet deep. He has contacted his neighbors and they are in support of the request. Ms. Hayworth pointed out that there probably is not a house on this street that has not been added on to, as these were originally smaller homes.

There being no other speakers the public hearing was closed by unanimous vote.

Ms. Huffman moved that in regard to BOA-13-21, 212 Elmwood Drive, that the findings of fact be incorporated and the Zoning Enforcement Officer be overruled and the variance granted because of the following: There are practical difficulties or unnecessary hardships resulting from the carrying out of 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 existing shed will not provide adequate storage. The hardship of which the applicant complains results from unique circumstances related to the applicant's property because of the current location of the shed, as well as the shape of the property itself. The hardship results from the application of the ordinance to the property because of the existing elevations on the eastern side of the property which are contained by retaining walls. The hardship is not the result of the applicant's own actions because the shed was already in place prior to the applicant's purchase of the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it will improve the property value and the overall appearance of the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because it improves the aesthetics of the neighborhood, seconded by Ms. Eckard. The Board voted 7-0, unanimously, in favor of the motion to grant the variance. (Ayes: Jones, Hayworth, Eckard, Huffman, Wood, Hampton, and Forde. Nays: None)

- (d) **BOA-13-22: 1819 NEW GARDEN ROAD** Marck and Lisa Medder request a variance from a standard that prohibits a detached accessory building to be located in front of the front building line of the principal structure. **Variance:** A proposed detached carport will be located in front of the front building line of the existing house. Section 30-8-11.1(B), Present Zoning-R-3 (Residential Single-family), Cross Street-Timber Oak Drive. **(GRANTED)**

Nicole Dreibelbis stated that the applicant is requesting a variance from a standard that prohibits a detached carport in front of the front building line of the principal dwelling. The property is located on the western side of New Garden Road south of Timberoak Drive. The lot is zoned R-3 (Residential Single-family). The applicant is proposing to construct a detached carport in front of the front building line of the existing house. Records reflect the lot contains approximately 2.97 acres. The property is oddly shaped and has property line characteristics that resemble a combination of triangular and trapezoid shapes. The applicant has 529 feet of street frontage along New Garden Road. The house is approximately 160 feet from the front property line and the proposed carport will be 114 feet from the front property line. The property does not contain any other garages or carports. There are two small detached buildings in the rear that combined contain 260 square feet. A portion of the property located north of the applicant's house contains easement areas that run from east to west across the entire property. There is an existing driveway in front of the house that has been raised and graded higher than the elevation of the remaining property to the north. The applicant made mention this was done several years ago to protect the root zones of the tree line for the significant trees that are located immediately north of the existing driveway. There is ample area to turn the vehicles around within this driveway area. This option helps to prevent vehicles from backing into New Garden Road. The applicant has also made mention that he needs a carport to protect their vehicles from tree stains and other natural causes that can create damages. Based on the location of the existing house, driveway, and the ability to protect an area of significant trees, the applicant considers this location to be the most reasonable location for the carport. The City Urban Forester is planning to visit the site and by the meeting date, staff plans to have a report concerning the significance of the trees that are located just north of the existing driveway location. 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.

At this time, the report written by the City Urban Forester, Mike Cusimano, was read into the record. The report supported the proposed location for the detached carport based on the location of the existing heavily wooded area. The proposed location would support the likely longevity survival rate of those trees, more so than if the disturbance occurred in line with the front building line of the house.

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

Marck Medder, the property owner, was sworn in and stated that he really did not have a lot to add to what staff has already stated. They want to install a carport to help protect their vehicles. The parking area was installed in the 1950s and this seems to be the best location for the parking area. If they comply with the ordinance they would have to take out a lot of trees and he would prefer not to remove any trees. He has lived on the property for 13 years.

Ms. Wood asked what the retaining wall is made of. Mr. Medder stated that it is brick and landscaping blocks.

There being no other speakers the public hearing was closed by unanimous vote.

Mr. Forde moved in regard to BOA-13-22, 1819 New Garden Road, that the findings be incorporated and the Zoning Enforcement Officer be overruled and the variance granted due to the following: There are practical difficulties or unnecessary hardships that result in 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 they would be unable to conveniently park the vehicles without the removal of a significant number of existing trees. The hardship of which the applicant complains results from the unique circumstance related to the applicant's property because the trees on the property which, if complying with the ordinance, would be impacted by removal and possible damage to critical root zones. The mature trees existed on the lot prior to the applicant's acquisition. The hardship results from the application of the ordinance to the property because if the carport were placed where allowed by the ordinance, over 40 significant trees would have to be removed. The hardship is not the result of the applicant's own actions because once tree canopies are established, forces of nature often preserve longevity for trees. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it maintains the City's tree canopy and aesthetic and the granting of the variance assures the public health, safety and welfare and does substantial justice because it preserves one of the City's most valuable resources and allows for substantial justice for the applicant, seconded by Ms. Huffman. The Board voted 7-0, unanimously, in favor of the motion to grant the variance. (Ayes: Jones, Hayworth, Eckard, Huffman, Wood, Hampton, and Forde. Nays: None)

## **OTHER BUSINESS**

Ms. Huffman asked staff to please share with the City Urban Forrester, Mike Cusimano, the importance of his report and to thank him for the report, which based on the factual content supported a favorable motion for this property.

There was no additional business.

## **ACKNOWLEDGEMENT OF ABSENCES**

The absences of Mr. Nimmer was acknowledged and excused.

## **ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 7:23 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman

Greensboro Board of Adjustment

FJ/jd

**MINUTES OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
AUGUST 26, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, August 26, 2013 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair; Patti Eckard, Frank Forde, Cheryl Huffman, Cyndy Hayworth, Jeff Nimmer and Sarah Wood. Planning Department staff present were: Loray Averett, Nicole Dreibelbis, Mike Kirkman, and Tom Carruthers, City Attorney's Office.

**APPROVAL OF MINUTES**

Ms. Hayworth moved approval of the minutes of the July 22, 2013 meeting as submitted, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett, Nicole Dreibelbis and Mike Kirkman were sworn in for their testimony during the hearing process.

**CONTINUANCES/WITHDRAWALS**

**BOA-13-26: 708 WEST MARKET STREET**

Loray Averett stated that a continuance is requested for Item BOA-13-26: 708 W. Market St.

Tom Carruthers stated that due to an oversight this appeal was placed on this month's agenda. Ms. Snow was contacted on August 23 and her attorney on August 26 and they are requesting a 90-day continuance. In general the case needs to be continued because training will take place in September for the new statutory amendments to the Board of Adjustment Authority, along with training for the recent Ordinance amendment concerning Entertainment Use Facilities and a ruling now would be viewed as inconsistent with rulings made in the future. Considering several witnesses would need to be present for the appeal, Ms. Snow and her attorney were told they would not need to be present to be granted the continuance.

Cheryl Huffman moved to continue the item until November, seconded by Patti Eckard. The Board voted 7-0, unanimously, in favor of the continuance.



**BOA-13-18: 2006 OLD JONES ROAD**

Loray Averett stated that a continuance is requested for Item BOA-13-18: 2006 Old Jones Rd. due to a proposed legislative change concerning the voting process which will become effective on October 1st.

Tom Carruthers stated that the legislature has made clear of how it wants Boards of Adjustment to handle these situations beginning October 1st and the continuance should be considered.

Deloris Johnson was sworn in and confirmed her request for a continuance.

Frank Forde moved to continue the item until the October meeting, seconded by Cheryl Huffman. The Board voted 6-1 in favor of the continuance. (Ayes: Frankie T. Jones, Jr., Patti Eckard, Frank Forde, Cheryl Huffman, Jeff Nimmer and Sarah Wood. Nays: Cyndy Hayworth.)

**BOA-13-25: 514 HICKORY RIDGE DRIVE**

Loray Averett stated that a continuance has been requested on this item.

Tom Carruthers stated that due to a conflict in this case he would not be able to represent the city and another attorney will be retained for the case. It is recommended that the case be continued until September.

Cheryl Huffman moved to continue the item until September, seconded by Frank Forde. The Board voted unanimously in favor of the continuance.

**OLD BUSINESS****SPECIAL EXCEPTION**

- (a) **BOA-13-18: 2006 OLD JONES ROAD** Deloris Johnson 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 will be 2,565 feet from a family care home (6 or less persons) located at 2322 Newton Street when 2,640 feet is required. This request was continued from the June 24, 2013 meeting. Present Zoning-R-5, Cross Street-Freeman Mill Road. **(CONTINUED TO OCTOBER MEETING)**

**VARIANCE**

- (a) **BOA-13-19: 4678 CHAPEL RIDGE DRIVE** Wade Journey Homes, Inc. requests a variance from the minimum front setback requirement. Variance: A recently constructed single-family dwelling encroaches 2.6 feet into a 20-foot front setback. This case was continued from the July 22, 2013 meeting. Section 30-7-3.2 and Table 7-3, Present Zoning-R-5 (Residential Single-family), Cross Street-Byers Ridge Drive. **(CONDITIONALLY GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a recently constructed single family dwelling which encroaches 2.6 feet into a 20-foot front setback. This case was continued from the July 22, 2013 meeting. The Board voted to continue the case because they had questions for the applicant, who was not present. The property is located on the eastern side of Chapel Ridge west of Bryers Ridge Drive and south of Lees Chapel Road. The property is zoned R-5 (Residential-5) and the subdivision was approved for cluster development. The house was recently constructed and has an attached garage. The applicant has mentioned that through a recent closing survey, it was discovered that a small portion of the front line of the garage is encroaching into the front setback and into a portion of an established 20-foot utility easement. The Planning Board will hear the easement release request at their July 17, 2103 meeting and if that portion of the easement is released, the Board of Adjustment can move forward with hearing this case. If the easement release is not approved, then the Board of Adjustment cannot hear the request. Update Note: The Planning Board did approve the easement release request at their July 17, 2013 meeting.

The permit request and site drawings that were submitted for review as shown in Exhibits identified as number 4 were approved by staff and the house was shown to be setback 21 feet from the front property line and out of the 20-foot utility easement area. The rear lot line has a severe angle and the side lot line is slightly angled. The house was slightly rotated from the original approved permit which placed it a little closer to the side and rear portion of the lot, but still meeting those minimum setback requirements. The slight rotation of the house appears to have shifted the house forward creating the front encroachment. When the applicant discovered the foundation encroachment error, they filed for the easement release and for a variance request. A typical 90 degree parking space would be 18 feet in length. It is possible to park a vehicle in the driveway with 17.4 feet remaining on the applicant's property. Also the garage width shown at 20 feet will accommodate 2 vehicles, along with available parking on the street. The R-5 (CL), Residential Single-Family District (Cluster) is primarily intended to accommodate single-family detached dwellings the same as R-7 developments where public water and sewer services are required. The overall gross density on R-5 (CL) will typically be 5.0 units per acre or less.

Chair Jones asked if anyone wished to speak on the matter.

Homer Wade, 601 Eugene St, Greensboro, NC stated that he was here to discuss a variance request for Lot 41 Chapel Ridge Subdivision, 4678 Chapel Ridge Drive for Wade Journey Homes. At the time of construction, the survey crew made a staking error which resulted in the house being rotated counter-clockwise and creating the encroachment into the front yard setback as well as into the 20 ft. utility easement. The crew did not do the customary check before leaving the job site. At the time of the final survey the error was discovered and the buyer was notified. A BOA variance was filed as well as a 5 ft. reduction in utility easement. The Planning Board has released the 5 ft. portion of the easement. Wade Journey Homes relied on Borum, Wade and Associates to provide an accurate survey. The moving or relocating of this house is believed to be an unnecessary hardship on both Borum, Wade and Associates and Wade Journey Homes. He believes the error is not noticeable and is not a threat to public safety.

Paul Olston, Vice President of Wade Journey Homes stated that they have built hundreds of homes and appeared before this Board a minimal amount of times. The stairway for this house is right behind the garage, so to move the garage the stairway would have to be moved which changes the framing.

Ms. Huffman stated that she is concerned by the statement by Mr. Wade that "this has happened before and it will happen again" and wanted to know how it will not happen again.

Mr. Wade stated that the customary follow-up to the staking was not done. He offered the suggestion to re-record the lot with the appropriate set-backs and notations on plat notifying it had been modified.

Sarah Wood stated that her concern is that the slope of the driveway is too steep possibly allowing a car to pop out of gear. She also mentioned concern for the safety of people walking on the sidewalk in front of the house or a car driving by and questioned Mr. Wade about the number of houses on the street and the amount of estimated traffic.

Mr. Wade stated that he has staked driveways that are far more severe than the driveway in question. He cited an example that in Woodland Hills subdivision, some of the houses are 8 to 9 ft. above street level making the driveways extremely severe. He stated that moving the house would not affect the slope of the driveway.

Tom Carruthers stated that the issue is not the slope of the driveway but the 2.6 ft. encroachment and encouraged the Board to focus on that.

Patti Eckard stated that she would be comfortable granting the variance if the company was willing to re-record the lot and get the correct set-backs so that in a title search it would be obvious there was a problem and let the buyer make the decision if they wanted to purchase the home.

Frank Forde moved that the variance be granted with the condition the applicant record a new plat that contains the variance encroachment approval information for this lot, seconded by Patti Eckard. The Board voted 6-1 in favor of the variance. (Ayes: Frankie T. Jones, Jr., Patti Eckard, Frank Forde, Cheryl Huffman, Cyndy Hayworth and Jeff Nimmer. Nays: Sarah Wood)

A break was taken from 6:40 until 6:50

## **NEW BUSINESS**

### **VARIANCE**

- (a) **BOA-13-23: 2212 CARLISLE ROAD** John Clinton Eudy, Jr. requests a variance from the minimum rear setback requirement. Variance: A proposed attached garage to a single family dwelling will encroach 10 feet into a 30-foot rear setback. Section 30-7-3.2 -Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-Rockford Road.  
**(GRANTED)**

Loray Averett stated that the applicant is proposing to construct an attached garage to the rear of an existing single family dwelling. A 10-foot portion of the garage will encroach 10 feet into a 30-foot rear setback. The property is located at the southeastern intersection of Rockford Road and Carlisle Road. The lot is zoned R-3 (Residential-Single-family). The applicant is proposing to construct an attached garage to the rear of the house. The garage will be attached by an enclosed covered walkway. The garage dimensions are proposed to be 24 feet by 28 feet for a total of 672 square feet. The lot is rectangular shaped and is a corner lot. The driveway access is located on the Rockford Road frontage. The proposed garage will be located at the end of the existing driveway attached to the rear of the dwelling. There is no driveway access on Carlisle Road. The lot is heavily wooded and landscaped. The properties located adjacent to the south and east of the applicant's rear and side lot lines are developed with similar single-family homes. 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 on this matter.

John Clinton Eudy Jr., 2212 Carlisle Rd., Greensboro, NC stated that he proposed to build a garage behind the house and the entrance to the garage would be on Rockford Road. The residents that would be most significantly affected would be the house owned by Hank and Sarah Holden, which is right behind his house. They were shown the plans and thought the addition would improve the neighborhood.

There being no other speakers the public hearing was closed by unanimous vote.

**Board Discussion:**

Jeff Nimmer asked staff to clarify or confirm comments made that if it was a detached garage it would have a different set-back.

Ms. Averett stated that detached garages that are less than 15 ft. tall can go within 3 ft. of a rear or side property line and if the detached building is taller than 15 ft. different set-back requirements are applicable.

Cheryl Huffman moved in regard to BOA-13-23, that the zoning enforcement officer be overruled and the variance granted. There are practical difficulties or unnecessary hardships that result in the carrying out of the ordinance due to the lot design as well as the corner lot. If the applicant complies with the provision of the ordinance he and she can make no reasonable use of this property because there is no other place to place a garage of this nature. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property because it is on a corner lot. The hardship results from the application of this ordinance to the property because there is no other place to put the garage due to the lot configuration being rectangular. The hardship is not the result of the applicants own action because the placement of the home was done prior to the applicant purchasing the same. The granting of the variance assures public safety and welfare and does substantial justice because it improves the value of the property as well as stays in harmony with other like properties and maintains the trees in the area, seconded by Mr. Jones. The Board voted 7-0,

unanimously, in favor of the motion to grant the variance. (Ayes: Frankie T. Jones, Jr., Patti Eckard, Frank Forde, Cheryl Huffman, Cyndy Hayworth, Jeff Nimmer and Sarah Wood. Nays: None.)

- (b) BOA-13-24: 5404 COURTFIELD DRIVE** Tony Leonard requests a variance from the minimum side setback requirement. Variance: A proposed attached sunroom addition to a single family dwelling will encroach 4.7 feet into a 10-foot side setback. Section 30-7-3.2 -Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-Beaconwood Drive. **(GRANTED)**

Nicole Dreibelbis stated that the applicant is requesting a variance to attach a proposed sunroom addition to the side of the dwelling. The addition will encroach 4.7 feet into a 10-foot side setback.

The property is located on the eastern side of Courtfield Drive, south of Beaconwood Drive and west of Lake Brandt Rd. The lot contains approximately 12,196 square feet. The R-3 zoning district requires a minimum of 12,000 square feet for the R-3 zoning district. The lot is in compliance with lot width and area for the R-3 zoning district. The applicant is proposing to construct an attached sunroom to the side of the house. The sunroom addition is proposed to be 5.3 feet from a side property line and will encroach 4.7 feet. It is proposed to align behind the front building line of the existing house and to be located at the end of an existing driveway. The site plan reflects there will be approximately 55 feet of length left for the driveway to accommodate vehicles. The applicant has made mention that they are trying to work around existing infrastructure such as ingress/egress for reasonable use to the existing house, along with existing exterior utility locations. 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 on this matter.

Tony Leonard, 5404 Courtfield Dr., Greensboro, NC stated that he has lived in the house over 20 years and it would be hard to add on to the back due to the way the house is situated. He has talked to his neighbors and they don't have a problem with the addition and it would be in harmony with the neighborhood.

Gray Clark, 2602 Beaconwood Dr., Greensboro NC stated that he was contacted by Mr. Leonard and asked to build a sunroom and thought there might be a problem but this is the only reasonable place to put an addition onto his house. They are simply trying to add to the value, convenience and comfort of the house and comply as best possible.

Mr. Nimmer asked the applicant to talk about the easements and utilities in the back of the house or the layout of the house that make it difficult in building onto the back. Mr. Leonard stated that the drain for the central air conditioning system is in the way plus the gas meter location would have to be moved along with the gas lines in the ground. Also, he doesn't want to build a room behind his bedroom.

Mr. Forde asked if the neighbor on the side of the house of the proposed addition had a problem with their plan. Mr. Leonard stated that he didn't and he had just spoken with him today. Mr. Clark stated that it would be over 21 ft. from his house.

Ms. Huffman expressed concern about the distance of the addition to the fence in the neighbor's back yard. Mr. Clark stated that it would be over ten ft. from the rear of the addition to the fence.

There being no other speakers the public hearing was closed by unanimous vote.

#### **Board Discussion:**

Mr. Ford inquired to staff about what type of notification was done for immediate adjacent owners when their neighbor is requesting a variance. Loray Averett explained what the letter that notifies the adjacent property owners and all property owners within 150 feet of the property contains. Mr. Forde suggested that in the future the applicant bring with them a copy of any support letters from the adjacent property owners.

Mr. Forde moved that based on the finding of the facts that the Zoning Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result in 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 based on the configuration of the house and its interior configuration the sunroom cannot be located in any other practical area. The hardship of which the applicant complains results from the unique circumstances relating to the applicant's property because the interior configuration of the home would not permit the sunroom to be located in any other location on the lot in any practical fashion. The hardship results from the application of this ordinance to the property because the setback on the side is greater than the area to which it would be if the sunroom was constructed in its proposed depth. The hardship did not result in the applicant's action because the home's placement on the lot was done prior to the applicant's acquisition of the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because and does substantial justice to the neighborhood by increasing the aesthetics of that neighborhood and the granting of the variance assures the public health, safety and welfare and does substantial justice because it allows the applicant to use his property in the manner in which he sees fit, seconded by Ms. Huffman. The Board voted 7-0, unanimously, in favor of the motion to grant the variance. (Ayes: Frankie T. Jones, Jr., Patti Eckard, Frank Forde, Cheryl Huffman, Cyndy Hayworth, Jeff Nimmer and Sarah Wood. Nays: None.)

#### **APPEAL OF ZONING ADMINISTRATIVE DECISION**

- (a) **BOA-13-25: 514 HICKORY RIDGE DRIVE** Mark York of Carruthers and Roth, Attorney at Law, on behalf of Carlisle Corporation, appeals the authority of the Zoning Administrator concerning his decision to grant legal nonconforming status to a freestanding sign. A sign permit for 514 Hickory Ridge Drive was approved by city staff for a free-standing sign to be taller than permitted by the Land Development Ordinance. Land Development

Ordinance Sections 30-4-27 and 30-7-8.10, Present Zoning-CD-C-M (Conditional District-Commercial-Medium), Cross Street-NC 68 Highway North. **(CONTINUED TO SEPTMBER MEETING)**

#### **APPEAL OF NOTICE OF INCIDENT**

- (b) **BOA-13-26: 708 WEST MARKET STREET** Michelle Snow, owner of the Q Lounge, appeals a Notice of Incident for a business which is regulated by the Entertainment Facility Use Ordinance. Land Development Ordinance Section 30-8-13, Present Zoning-CB (Central Business), Cross Street-North Cedar Street. **(CONTINUED TO NOVEMBER MEEETING)**

#### **OTHER BUSINESS**

Loray Averett requested feedback on the matter of the training session for the Quasi-judicial legislative changes. There are very few matters to be heard at the September 23rd meeting, so she is suggesting that members stay after the meeting for a short training session on that day. A box dinner will be provided for members. After a short discussion, it was the consensus of the Board to hold the training session immediately following adjournment of the September meeting.

Ms. Eckard suggested that it may help Board members locate a property if there is some kind of signage on the subject property and it would also give the neighbors near the property additional notice that something is going on at that property.

Loray Averett stated that in the past the City was not required to post signs on properties, but that will change effective October 1, 2103 and will also be part of the training and education at the September meeting.

Ms. Huffman stated that she feels there should be an increase in cost fees to appeal to the Board of Adjustment to cover expenses incurred by the City. She asked that any information that will be covered during the training session be provided to Board members in printed form so they can refer back to it at a later date.

#### **ACKNOWLEDGEMENT OF ABSENCES**

Chair Jones stated that no absences were noted and also shared with the other Members that Mr. Nimmer was now a permanent member of the Board.

#### **ADJOURNMENT**

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There being no further business before the Board, the meeting was adjourned at 7:30 p.m.

Respectfully submitted,

Frankie T. Jones, Jr. Chairman

Greensboro Board of Adjustment

FJ/gm;jd



**GREENSBORO BOARD OF ADJUSTMENT  
SEPTEMBER 23, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, September 23, 2013 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair; Patti Eckard; Sara Wood; Cheryl Huffman; and Frank Forde. Planning Department staff were: Loray Averett; Mike Kirkman; Nicole Dreibelbis; 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 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 August 26, 2013 meeting minutes as submitted, seconded by Mr. Forde. The Board voted unanimously in favor of the motion.

**CONTINUANCES/WITHDRAWALS**

**OLD BUSINESS**

**BOA-13-25: 514 HICKORY RIDGE DRIVE**

Tom Carruthers stated that he has been in contact with attorneys for Carlisle Corporation, representing Wendy's, and the attorney for Bojangles as well. Both have agreed with the City to continue this case until the November 25, 2013 meeting. He noted that as previously determined, these continuances can be agreed to without requiring the parties to come before the Board with a request.

Mr. Forde and Chair Jones disclosed that they had previously worked with the law firm of Carruthers and Roth. They felt there were no conflicts and therefore, would not be seeking recusal from this case.

Mr. Carruthers introduced Mike Fox who has been retained by the City Attorney to act as Counsel for the Board of Adjustment in this deliberation.

Due to the number of voting members anticipated at this meeting and the possibility of a resolution, Mr. Carruthers recommended that this case be continued.

Mr. Forde moved to continue Item BOA-13-25 until the November 25, 2013 meeting, seconded by Ms. Huffman. The Board voted 5-0 in favor of the continuance. (Ayes: Jones, Eckard, Wood, Huffman, Forde. Nays: None.)

Ms. Averett stated that a quasi-judicial training session will be held in the Plaza Level Training Room following adjournment of the meeting.

**ACKNOWLEDGEMENT OF ABSENCES**

The absences of Ms. Hayworth and Mr. Nimmer were acknowledged.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 5:45 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/sm:jd

**MINUTES OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
OCTOBER 28, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, October 28, 2013 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair; Patti Eckard; Sara Wood; Adam Marshall; Cyndi Hayworth; Cheryl Huffman; and Frank Forde. Planning Department staff were: Loray Averett; Nicole Dreibelbis; Ron Fields; 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 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 September 23, 2013 meeting minutes as submitted, seconded by Mr. Forde. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett, Nicole Dreibelbis and Ron Fields were sworn in for their testimony during the hearing process.

**CONTINUANCES/WITHDRAWALS**

**BOA-13-28: 3006 East Market Street LML, INC., Cesar Castellero, d/b/a The Mint**

Jim Clark stated that there has been a request from one of the witnesses who is a witness in the case has had a death in the family and will be unable to appear. There has been agreement to continue this case until the November 25, 2013 meeting.

Mr. Forde moved to continue Item BOA-13-28 until the November 25, 2013 meeting, seconded by Ms. Huffman. The Board voted 7-0 in favor of the continuance. (Ayes: Jones, Eckard, Wood, Hayworth, Marshall, Huffman, Forde. Nays: None.)

**NEW BUSINESS**

**APPEAL OF NOTICE OF INCIDENT**

**BOA-13-27 113 SOUTH ELM STREET** Richard L. Pinto, Attorney for Elevated Investments, LLC d/b/a Syn Nightclub appeals a Notice of Incident for a nightclub business which is regulated the Entertainment Facility Use Ordinance. Land Development Ordinance Section 30-8-13. Present Zoning – CB (Central Business), Cross Street-East February One Place.  
**(APPEAL OVERTURNED)**

Ms. Averett stated that the property is located south of West Market Street on the east side of South Elm Street and is zoned CB (Central Business). On or around June 13, 2013 an aggravated assault record was established for this location and the Planning Department was notified that an incident occurred at this location related to the Entertainment Facility Use Standards. On or around, June 18,

2013 the City Code Compliance Officer, Ron Fields issued a Notice of First Incident to the business owner of the Syn Club located at 113 South Elm Street. On August 6, 2013, the manager for Elevated Investments, Mike Carter appealed the Notice of First Incident. In his appeal, the applicant mentions the validity of "Assault" as a serious violent crime and video evidence that did not include the assault on the victim. The CB, Central Business District, is solely intended for application in the central core of the city. The district is established to encourage high intensity, compact urban development. The district is intended to accommodate a wide range of uses including office, retail, service, institutional, and high density residential developments in a pedestrian-oriented mixed-use setting (often, multiple uses may be located in the same building).

Chair Jones stated that this matter is quasi-judicial and would be handled in that manner with Direct, Cross, Re-Direct and Re-Cross examination of witnesses.

Counsel Jim Clark informed the Board that his intern Patrick Ward would begin with the examinations. The first witness called was Officer Stafford, who was previously sworn in. Officer K.F. Stafford, Central Center of Greensboro Team, responded to questions asked by Counsel Ward and stated that he was working in that position the night of this particular incident. He and several officers were on the sidewalk in front of the venue. One of the patrons came out and told them that there had been a fight and a subject was unconscious on the third floor. Three officers proceeded upstairs to the scene and determined that there was a person lying on the floor who appeared to be unconscious. Officer Stafford determined that the person was breathing and noted a pulse in the person's neck. EMS was on the way and the officers cleared a path for EMS and made sure that no one else was there, thereby, protecting the scene. Once EMS arrived, he assisted them with their equipment and getting the patient down the steps for transport to the hospital. He does not recall seeing any blood or bruising on the victim. EMS placed the aid to assist the victim's ventilation in his nose, which goes down to the back of the throat. That normally causes a gag reflex and EMS also used ammonia caplets and a sternum rub to get a response from the victim. There was no response to any of these procedures.

In response to questions posed by Counsel Pinto, Officer Stafford stated that he did not know when the violation was served on the property owner. June 13<sup>th</sup>, 2013 is when a report was submitted, some time that morning. He did not submit the initial report and he did not type out the original report. His was not around for the video and did not identify the subject. He was basically there to provide security for the people riding in the transport vehicle. Another officer, Officer Stanley investigated the incident for the Police Department. Counsel Pinto asked what levels a person might be charged with. Officer Stafford stated that would depend on the nature of the injuries. Levels of charges could be from misdemeanor simple assault all the way to felony assault. Counsel Pinto then read from the statute for aggravated assault, "Someone commits an aggravated assault which is a Class I misdemeanor if he or she inflicts serious injury upon another person or uses a deadly weapon. Serious injury is defined as a bodily injury that creates a substantial risk or death, or causes serious permanent disfigurement, coma, permanent or protracted condition that causes extreme pain, or permanent or protracted loss of impairment of the function of any bodily member or organ, or results in a prolonged hospitalization." Upon questioning, Officer Stafford stated that the victim was only in the hospital for a few hours, but he is unaware of the details of the time limits of the hospitalization or the diagnosed injuries of the victim.

Counsel Jim Clark then posed questions to Officer Stafford, who stated that if the attacker can be identified, that person is questioned and possibly taken into custody.

Chair Jones asked if the Board members had questions for Officer Stafford.

Ms. Huffman asked if Officer Stafford could give an estimated time of how long he witnessed the patient in an unconscious condition. Officer Stafford stated it would be his guess that it was about ten minutes, and again, he saw no blood and no bruising on the patient. His general observations

were to view a pulse and respirations. At that point, securing the scene was his priority, to make sure that no further assaults were made on the victim.

Officer J.B. Stanley, III was sworn in and questioned by Counsel Ward, who stated, in response to questions, that he observed the victim laying on the ground on the east end of the third floor. One of the victim's friends was attempting to pick him up from the ground and Officer Stanley informed the friend to leave him lying there to avoid further injury. He feels the victim was unconscious for about 20 minutes.

Counsel Jim Clark presented several photos to Officer Stanley and asked if those photographs appeared to be those of the victim, to which Officer Stanley stated that they did.

Counsel Rick Pinto asked if there were any weapons involved with the altercation and Officer Stanley stated that he could find no evidence of any weapons other than another individual's foot.

Detective A.M. Deal was sworn in and questions were posed by Counsels Ward and Clark. He stated that there was a supplemental report from the other officers who were on the scene. He was not at the scene of the incident but he has viewed the video from different angles. It appears that the most serious part of the assault is when the victim is stomped by another black male with facial hair.

Counsel Clark presented a video recording to the Board members of the alleged assault. He then presented photographs and asked Detective Deal to identify them. Detective Deal stated that they photographs appear to have been taken by the Police Crime Scene Investigator at the hospital after the victim was assaulted. These photos were also shown to Counsel Pinto and the Board members.

Counsel Pinto stated that the Court of Appeals has stated that: "the elements of assault inflicting serious injury require proof of two elements; 1) the commission of an assault and, 2) the infliction of serious bodily injury as defined under 1432.4." Serious bodily injury has previously been defined. Counsel Pinto presented documents to the Board and Counsel Carruthers and asked that they be marked as Exhibits for the record. It is their position that the charges on the Notice of Violation were filed and are unconstitutional. However, he only wishes to address the incident at hand. It is their position that the ordinance was not violated.

Counsel Ward stated that the ordinance does not require that a charge be brought, but only that an aggravated assault occurs on the property. Someone getting stomped in the head with another person's foot is the type of behavior that this ordinance is designed for. He presented a copy of the State v. Hedgepeth for the Board members' review. It is their position that this was an aggravated assault and they type that they are trying to prevent.

Counsel Pinto stated that the City has to prove that the person who was injured was at substantial risk of death, or that caused serious permanent disfigurement, permanent or protracted conditions causing extreme pain or permanent protracted loss or impairment of a function of the body or organs, results in prolonged hospitalization and it is their belief that this incident did not come under any section of the definition of bodily injury. Therefore, they feel that they did not violate the statute because this was not an assault that resulted in a serious bodily injury.

There being no other speakers, the public hearing was closed by unanimous vote.

Mr. Forde stated that In regard to BOA-13-27, 113 N. Elm Street, he moved that the Board should overturn the Notice of First Incident because of the following facts: The property located at 113 N. Elm Street is within the corporate City of Greensboro and is subject to its jurisdiction and the application of its ordinances. At the time the Notice of Incident was issued the use of the property did meet the definition for an entertainment facility as defined in Section 30-813 and therefore, is subject to the entertainment facilities use ordinance provision. For the purposes of this ordinance, the occurrence of a serious violent crime shall mean and refer to criminal acts that occur, whether

wholly or in part at the premises of the entertainment facility. The serious violent crime did not occur wholly in part on the premises or upon the privilege of the premises. The Code Enforcement official did not correctly interpret and imply the terms of the ordinance to determine that the nature of the incident concerning serious violent crime occurred at the appellant's entertainment facility. The Board accepts the following testimony as evidence as true. Nothing in the video shows that the purported stomp actually ever made contact with the alleged victim, nor does it show that any of the victim's purported injuries occurred as a result of the actions put forth by the City. Furthermore, the Incident Report cites Case 20130613-023, which is not an incident which would show a crime of which is not a violation of the ordinance. The greater weight of the evidence presented does not show that the appellant's property does not comply with the entertainment facility use standards as stated in the Land Development Ordinance, seconded by Chair Jones. The Board voted 6-1 in favor of the motion to overturn the Appeal of Notice of Incident. (Ayes: Jones, Eckard, Hayworth, Marshall, Huffman, Forde. Nays: Wood.)

A 10-minute break was taken from 7:25 until 7:35 p.m.

## **OLD BUSINESS**

### **SPECIAL EXCEPTION**

**BOA-13-18 2006 OLD JONES ROAD** Deloris Johnson 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 will be 2,565 feet from a family care home (6 or less persons) located at 2322 Newton Street, when 2,640 feet is required. This request was continued from the June 24, and August 28, 2013 meetings. Present Zoning- R-5 (Residential Single family), Cross Street – Freeman Mill Road. **(GRANTED)**

Nicole Dreibelbis stated that the applicant is proposing to locate a family care home which is too close to an existing family care home. The proposed family care home will be 2,565 feet from an existing family care home located at 2322 Newton Street (6 or less persons) when 2,640 feet is required. This proposed home will be 75 feet too close.

This case was continued from the June 24, and August 26, 2013 meetings.

The June continuance request was granted to give staff an opportunity to determine if a family care home located at 2318 Juliet Place was still in operation. The home was determined to be non-operational for family care home purposes. The August continuance request was granted due to a voting change from 4/5 of majority to a minimum of 4 that would be effective October 1, 2013. The lot is located on the north side of Old Jones Road and east of Freeman Mill Road and is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at 2006 Old Jones Road. It is 75 feet too close to an existing family care home located at 2322 Newton Street. Privilege license records reflect that the location at 2322 Newton Street is in operation and required renewals are in compliance. The properties are separated by other single family homes, multi-family dwellings, industrial and commercial properties and a major thoroughfare. 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 if there was anyone wishing to speak in favor of this matter.

Deloris Johnson stated that she is only asking that she be allowed to operate a home for three young men with disabilities. She asked that her daughter be able to speak on this.

Ms. Huffman asked how many vehicles would be on the property at the same time.

Tracy Martin Jones, the applicant's daughter was sworn in and stated that there would only be one staff person at the home. There would be a vehicle that is used to take the clients on errands, and the clients would not be allowed to have a vehicle of their own. She further stated that she is the owner of a Residential Level Three and she has been doing this for the last 7 - 8 years. This particular facility would house young men under the N.C. Innovations Program and is for only three male residents. The other facilities are for women. These residents are developmentally delayed. There would only be one staff member on the premises on a full-time basis.

There being no one to speak in opposition to the request, the Public Hearing was closed by unanimous vote.

Ms. Hayworth stated that these types of home have been known to be very disruptive to the neighborhoods in which they are located. The distance requirements are in the ordinance for a reason and that is to keep there from being too many of these types of homes clustered in a particular area.

Mr. Forde stated that even though there is a restriction in the ordinance, he feels that the reason for the restrictions in the ordinance keep a neighborhood from being inundated with family care facilities. In this instance, the neighborhood is very far from the other home.

Mr. Forde moved that in regard to BOA-13-18, 2006 Old Jones Road, that the findings of fact be incorporated by reference and the Enforcement Officer be overruled and the Special Exception granted for the following reasons: A Special Exception may be granted by the Board if the evidence presented by the applicant persuades it to reach of the following conclusions; the Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the purpose of the spacing requirement was to discourage multiple family care facilities to be located in one neighborhood. The distance between this family care home and the nearest other home is separated by physical characteristics which allow for the necessary non-clustering of family care facilities in one neighborhood. The granting of the Special Exception assures the public safety and welfare and does substantial justice because the neighborhood will not have an overabundance of family care facilities, seconded by Ms. Huffman. The Board voted 6-1 in favor of the motion to grant the Special Exception. (Ayes: Jones, Eckard, Wood, Marshall, Huffman, Forde. Nays: Hayworth.)

## **NEW BUSINESS**

### **VARIANCE**

**BOA-13-29 8 ST. FRANCIS COURT** Marc Isaacson, Attorney for Orton and Marsha Jones requests a variance from the minimum rear setback requirement. **Variance:** A proposed bedroom/bath addition will encroach 4.4 feet into a 30-foot rear setback. Section 30-7-3.2 and Table 7.1, Present Zoning – R-3 (Residential Single Family), Cross Street- Greenbrook Drive. **(GRANTED)**

Nicole Dreibelbis stated that the applicant is proposing to construct an attached bedroom/bath addition to the rear of an existing single family dwelling. The addition will encroach 4.4 feet into a 30-foot rear setback. The lot is a corner lot located at the northeastern intersection of St. Francis Court and Greenbrook Drive and is zoned R-3 (Residential-Single-family). Guilford County tax records indicate the one-story house was originally constructed in 1972 and contains 2,397 square feet of heated space. The lot is described as Sec 25 Irving Park and the Plat reference is Plat Book 45-Page 32. The applicant is proposing to construct an attached bedroom/bath addition to the northeastern rear of the lot. The proposed size is approximately 20 feet by 16 feet for a total square footage of approximately 320 square feet. The front property line for the existing house is determined to be St. Francis Court and the definition for the rear property line is described as always opposite the front property line. The proposed addition will be located to flow with the existing

footprint of the house. The properties located adjacent to the north and east of the applicant's rear and interior side lot lines are developed with similar single-family homes. 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 this matter.

Henry Isaacson, attorney representing the property owners, was sworn in and presented handouts for the Board members' review. He stated that the home was built in 1972 and the property owners would like to have an updated and enlarged master bedroom and bathroom addition. The most logical, reasonable and efficient way to do that is to extend the existing master bedroom area at the rear of the house. The strict application of the ordinance would prevent doing so, due to a 4' 4" encroachment into the 30' setback required from the rear property line. This method of constructing the requested addition enables a balancing of the architectural design of the home and offers the least impact on the neighborhood because it is at the rear of the home, as well as at the furthest point from both street views. The site plan presented shows the proposed new addition as it relates to the property. If placed in the proposed location, no trees will be lost due to the new construction.

Charles Hamilton, 3102 Greenbrook Drive, was sworn in and stated that he has no objection to the proposed addition by the applicant. He feels it would be a good addition to the neighborhood.

There being no one to speak in opposition to the request, the Public Hearing was closed by unanimous vote.

Mr. Forde moved that in regard to BOA-13-29, 8 St. Francis Court, that the findings of fact be incorporated by reference and the Enforcement Officer be overruled and the variance granted for the following reasons: 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 unnecessary hardship will result to the property by applying strict application of the ordinance because it will deny the enjoyment and use of the new addition and will deny the ability to improve the property. The hardship of which the applicant complains results from the conditions that are peculiar to the property and unique circumstances related to the applicant's property because of the irregular shape of the lot, and the rear line narrows at its east side, causing a slight encroachment into the rear setback. The hardship results from the application of the ordinance to the property because of the manner in which the rear setback line is set as it relates to the northern property line. The hardship is not a result of the applicant's own actions because the home was purchase in 1982 and at the time, the setback was less than the current 30 feet. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the encroachment does not interfere with the quiet enjoyment of any of the neighbors and would improve the overall neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because the owner and all the neighbors are in favor of the granting of the variance and it will improve the overall quality of Greensboro real estate, seconded by Ms. Hayworth. The Board voted 7-0 in favor of the motion to grant the variance. (Ayes: Jones, Eckard, Wood, Hayworth, Marshall, Huffman, Forde. Nays: None.)

**BOA-13-30 1618 WEST FRIENDLY AVENUE** Marc Isaacson, Attorney for Gourmet Development, LLC requests a variance from the minimum street setback. **Variance:** A proposed cover over an existing restaurant patio will encroach 5 feet into a 15-foot street setback adjacent to Smyres Place. Section 30-7-5.1 and Table 7-14, Present Zoning – C-L (Commercial –Low), Cross Street-Smyres Place **(GRANTED)**

Loray Averett stated that the applicant is proposing to construct a cover over an existing brick patio area attached to an existing restaurant. The structure will encroach 5 feet into a 15-foot street setback adjacent to Smyres Place. The property is located on the north side of West Friendly



Avenue, west of Smyres Place and east of West Radiance Drive. The property is surrounded by three streets. The property contains a commercial building. The tenants that are currently licensed for this location are a restaurant and beauty salon. There is an existing patio for the restaurant on the side of the building adjacent to Smyres Place. The applicant is requesting to cover the patio with a structure which will encroach 5 feet into a 15-foot street setback. The plan also shows a proposed fence for privacy for the patio. This northern portion of Smyres Place is a circular collector street which currently serves as an access for a total of 3 properties. The C-L, Commercial - Low District is primarily intended to accommodate low intensity shopping and services close to residential areas. The district is established to provide locations for businesses which serve nearby neighborhoods. The district is typically located near the intersection of collectors or thoroughfares in areas which are otherwise developed with residences.

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

Marc Isaacson, attorney representing the property owner, was sworn in and presented handouts for the Board members' review. He stated that this case arises because the owners of the restaurant wish to place a pergola or cover, over an existing outdoor patio area adjacent to the public street where the existing patio is closer to the street than the ordinance allows, if the patio is considered a part of the building structure. The patio as it now exists, is not a violation of the ordinance, but if a cover is installed, it is considered by the City's staff, to be an expansion of a legally non-conforming use, thus, requiring a variance from the Board. The proposed cover will allow the restaurant to provide more comfortable outdoor seating for their customers. Photographs and drawing within the handout were discussed. There would be no adverse impact to the surrounding area.

Nick Wyatt, representing Leon's Salon, the adjacent property, was sworn in and stated that they have no objection to the request and feel it would improve the area.

There being no one to speak in opposition to the request, the Public Hearing was closed by unanimous vote.

Ms. Eckard moved that in regard to BOA-13-30, 1818 W. Friendly Avenue, that the findings of fact be incorporated by reference and the Enforcement Officer be overruled and the variance granted for the following reasons: There are practical difficulties or unnecessary hardship that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, a necessary hardship would result to the property by applying strict application of the ordinance because it would be unable to enhance the property with the addition of the cover over the patio area. The hardship of which the applicant complains results from the conditions that are peculiar to the property and unique circumstances related to the applicant's property because the original structure was built as a fire station and is still currently the same structure with the same patio. This is considered a pre-existing condition regarding the current property. The hardship results from the application of the ordinance to the property because the required setback of 15 feet would not allow for the enhancement. The hardship is not the result of the applicant's own actions because the original structure was a fire house. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it does enhance the ambience of the restaurant and makes more accessible restaurants for the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because it does secure public safety and welfare, keeps customers dry and in turn, increases the value of the property, seconded by Mr. Jones. The Board voted 7-0 in favor of the motion to grant the variance. (Ayes: Jones, Eckard, Wood, Hayworth, Marshall, Huffman, Forde. Nays: None.)

**BOA-13-31 1200 FORREST HILL DRIVE** John and Lisa Saari request a variance from the minimum 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-3 (Residential Single Family) Cross Street – Tresant Terrace. **(DENIED)**

Loray Averett stated that the applicant is requesting a variance from the requirement that utilities to detached accessory buildings be provided by branching services from the principal building. The applicant is proposing to locate a separate electrical meter on a recently constructed detached accessory garage. The property is located at the northeastern intersection of Forest Hill Drive and Tresant Terrace and is zoned R-3 (Residential Single Family). The lot is a corner lot and contains a two-story single family dwelling and a recently constructed two-story detached garage with a personal accessory shop located above the garage. The access for this building, along with the existing house is taken from Tresant Terrace. The applicant is requesting a detached meter for the detached garage. The pictures show a power pole located approximately 35 to 40 feet from the location of the detached accessory garage. The space between the house and the detached building contains existing poured patio material, ac/heat condenser and retaining walls. The power lines are established overhead and not underground. The owner/applicant is aware that the detached garage is for accessory personal use only. 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 this matter.

John Saari, the property owner, was sworn in and presented statements and letters from his neighbors showing their support of the request. He stated that he purchased the property in 2003 and there was an existing 1955 residential home. The unique hardship that exists is the downhill sloping of the grade of the lot. The lower two-story detached garage is essentially 2.6 feet lower than the house in terms of extending the overhead lines from one to the other. He has spoken with other neighbors and came up with a design that was compatible with the neighborhood. He has also spoken with Duke Energy and found that it would be best to connect electricity to the existing pole.

In response to several questions, the applicant stated that he may wish to add water to the building at some time in the future, but not immediately. He will be using the building as a studio for his art work and sculpting. He will not be using it as a residence of any kind. According to staff, the height of the building is in compliance. Also, all building permits are in compliance.

There being no one to speak in opposition to the request, the Public Hearing was closed by unanimous vote.

Ms. Huffman stated that she has concerns about this particular variance. She is also concerned that construction is taking so long. Ms. Eckard stated that she has concerns that the applicant may at some time, use this as a residence and she is concerned about the height of the building. Loray Averett stated that in the residential district, the principal dwellings and detached accessory buildings are allowed to be up to 50 feet high. There is a section in the ordinance that requires that building to be compatible to the height of the existing house. Ms. Huffman stated that she cannot fill in the blank of how this is through no fault of the applicant.

Mr. Forde moved that in regard to BOA-13-31, 1200 Forrest Hill Drive, that the findings of fact be incorporated by reference and the Enforcement Officer be overruled and the Varaince granted for the following reasons: There are practical difficulties or unnecessary hardships that results from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property by applying strict application of the ordinance because in order to provide electrical service to the proposed structure, extraordinary expense and additional safety concerns would exist. The hardship of which the applicant complains results from the conditions that are peculiar to the property and unique circumstances related to the applicant's property because of the slope of the land. The hardship results from the application of the ordinance to the property because of the unique slope conditions and the requirement of separately metered electrical service to single family residences. The hardship is not a result of the applicant's own actions because the slope existed prior to the purchase of the property by the

applicant. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it will allow the applicant to reasonably improve his property. The granting of the variance assures the public safety and welfare and does substantial justice because the neighbors voiced no opposition and the addition will enhance the neighborhood, seconded by Ms. Hayworth. The Board voted 5-2 in favor of the motion to grant the variance. The vote failed and the request was denied. (Ayes: Jones, Wood, Hayworth, Marshall and Forde. Nays: Huffman and Eckard.)

A break was taken from 9:23 until 9:33 p.m.

**BOA-13-32 4903 ADAMS RIDGE DRIVE** Matthew Andrejco requests a variance from the minimum rear setback requirement. **Variance:** A proposed screened porch over an existing deck will encroach 9.5 feet into a 25-foot rear setback. Section 30-7-7.2 and 30-4-6.6, Present Zoning – PUD (Planned Unit Development), Cross Street – Creekstone Court **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed screened porch over an existing deck which will encroach 9.5 feet into a 25-foot rear setback. The property is located on the south side of Adams Ridge Drive west of Sanderling Place and is zoned PUD (Planned Unit Development). The property is described as Adams Ridge, Lot 57, Plat Book 100, Page 122. Common area and open space shown hereon is expressly not for use by the general public, but is typically conveyed to the Association. The common area located behind the applicant's rear lot line is 15 feet in width. Building permit records indicate that a building permit for the deck was issued on or around September 18, 2013. The applicant is proposing to cover and enclose the deck to a screened porch. (Decks less than four feet in height may encroach 50 percent of the rear setback requirement). The applicant has submitted two notarized support letters. One is from the adjacent property owner to the east and the other from the adjacent owner to the south of the common area. There is also a third support letter included from the owner adjacent to the western lot line. That letter is not notarized. The deck construction has begun on the site. 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 Jones asked if there was anyone wishing to speak in favor of this matter.

Matt Andrejco, the property owner, was sworn in and stated that he purchased the house when it was new in 1991. The rear portion of the property is the most reasonable place to build a screened porch with the least deviation from the ordinance. He hopes to improve the use of the deck. During the summer months it is too hot to be out on the deck. He feels that by screening the deck to make an enclosed porch area they will have much more use of the rear area of the house. The proposed screened porch will be built in the same style as the existing house which will add value to the house and the neighborhood as a whole.

There being no one to speak in opposition to the request, the Public Hearing was closed by unanimous vote.

Mr. Forde moved that in regard to BOA-13-32, 4903 Adams Ridge Drive, that the findings of fact be incorporated by reference and the Enforcement Officer be overruled and the variance granted for the following reasons: There are practical difficulties and/or unreasonable hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, unnecessary hardships will result to the property by applying strict application of the ordinance because if they comply with the provisions of the ordinance they cannot build a roof over the existing deck nor screen in the walls, which would limit the use of that deck. The hardship of which the applicant complains results from the provisions that are peculiar to the property and unique circumstances related to the applicant's property because a portion of the rear yard is common area, which was considered part of the yard and would allow for the structure to be built. The hardship results from the application of the ordinance to the property because there is simply

not enough room in the back yard for the covering of the deck. The hardship is not a result of the applicant's own actions because the common area designation to the land behind his yard was done prior to his purchase of the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the screened porch would be built in the same style as the existing house and will be an attractive and compatible addition to the house and the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because there is no harm to the public safety or welfare due to the building of the screened porch and their neighbors agree to its location, seconded by Ms. Hayworth. The Board voted 7-0 in favor of the motion to grant the Variance. (Ayes: Jones, Eckard, Wood, Hayworth, Marshall, Huffman, Forde. Nays: None.)

**BOA-13-33 1707-1729 WALKER AVENUE** Jennifer Fountain, Attorney for University Village Greensboro LLC requests a variance from the maximum fence height. **Variance:** A proposed residential fence will exceed the maximum height of 4 feet by 2 feet with 15 feet of the public right-of-way adjacent to Cobb Street. Section 30-9-4.6(A), Present Zoning-RM-18 (Residential Multi-family), Cross Street- Cobb Street. **(GRANTED)**

Nicole Dreibelbis stated that The applicant is requesting to construct a 6-foot fence which exceeds the maximum height of 4 feet by 2-feet within 15-feet of the Cobb Street right-of-way. The lot is located south of Walker Avenue, west of Cobb Street, east of Warren Street and north of Spring Garden Street. The property has frontage on Walker Avenue, Warren Street and Cobb Street. The fence height variance request is only for the area of property adjacent to the Cobb Street cul-de-sac area. The total property is approximately 11.2 acres and is zoned RM-18. The property contains 11 multi-family buildings with accessory use clubhouse and amenities. Tax records reflect the project was constructed in 2006. The applicant is requesting to locate a section of security fencing along the Cobb Street cul-de-sac area. This section of fencing is proposed to be within 15 feet of the Cobb Street right-of-way. It is planned for this section of fencing to connect to the existing fence that is already established along the subject property's perimeter. The access for the multi-family development from Cobb Street is planned to be changed to a one-way exit only and is planned to be gated. The property will retain its full access from Walker Avenue. Exhibit 3 is an email from the City's Urban Forester, Mike Cusimano. He has noted that a short section of the fence will pass through a tree conservation area and has suggested that section be installed by hand as no motorized equipment is allowed in a Tree Conservation Area. Urban Forester, Mike Cusimano is supportive of the fence location provided that the Board would entertain his recommendation as a condition concerning the request to protect the Tree Conservation Area. 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 Jones asked if there was anyone wishing to speak in favor of this matter.

Jennifer Fountain, attorney representing the property owners, was sworn in and presented a handout for the Board members' review. She stated that, as a history of this property, University Village is a 600-bed, 11-building apartment complex located on Walker Avenue, less than 2 miles from UNCG. This apartment complex has been there since 2007. Prior to that time it was known as College Park Apartments, which was a 96-unit facility with 24 buildings. College Park Apartments was on the property from the 60's until the buildings were removed and replaced with the current University Village Apartments. These apartments were built in compliance with the laws and ordinance of the City in 2006. This created a higher density use of the property and is surrounded by single family homes, most of which are leased to students. Some of these residences are owner-occupied. One home that is situated particularly close to University Village and more likely to feel any effect of the increased density is on Cobb Street. The owner of this property is Mr. Ronald McIrvine, who leased the property to tenants until his son began living there in 2006. In 2010, both of the McIrvins sued University Village and another property owner with property on Mayflower Drive alleging claims of nuisance and negligence. The complaint focused on people traveling on Cobb

Street to Mayflower and then out to Walker Avenue. The complaints focused on vehicular and pedestrian traffic on Cobb Street that dead-ends into University Village and some behavior that the McIrvins found annoying; loud cars, loud voices, etc. The complaint was dismissed and re-filed in 2012, with similar allegations. Recently, that case was resolved with Mr. McIrvine without trial by way of a settlement agreement, which consists of installing a fence on the property around the Cobb Street cul-de-sac to meet the existing 6 foot fences on the property. An excerpt from the settlement agreement is attached to the handout for review. The agreement is to install a fence around Cobb Street. There is a 6 foot wooden fence on the property and the additional fence would be consistent with the height already in place. The Cobb Street entrance will become an “exit only” for vehicular traffic with a carriage style gate that will open into the property. There will also be two pedestrian gates which will be limited by card access during the evening hours of 7:00 p.m. until 7:00 a.m. and the gates will be closed, but remain unlocked from 7:00 a.m. until 7:00 p.m. There are specific requirements on what the McIrvins wanted and what her client would agree to. The goal is that the fence and gates will reduce traffic and noise and provide security for the residents. To be effective the fence and gates need to be 6 feet high, rather than the required 4 feet high.

There being no one to speak in opposition to the request, the Public Hearing was closed by unanimous vote.

Ms. Eckard stated that she has reservations about the closing to traffic on Cobb Street. She will support the variance in order to help the residents.

Ms. Huffman moved that in regard to BOA-13-33, 1707-1729 Walker Avenue, that the findings of fact be incorporated by reference and the Enforcement Officer be overruled and the variance granted for the following reasons: There are practical difficulties or unnecessary hardships resulting from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property by applying strict application to the ordinance because the neighbors have claimed negligence and nuisance status due to the overwhelming amount of traffic within the multifamily dwelling area. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant’s property because it was unforeseen that the higher density for University Village Apartments would pose a future problem. Additionally, the applicant has agreed to the recommendations of the City Forester Office, to save and protect the tree conservation area. The hardship result from the application of the ordinance to the property because the lawsuit was filed and subsequently settled, outlining the requirement of a 6 foot fence and limiting vehicular and pedestrian traffic. The hardship is not the result of the applicant’s own actions because the property was built prior to current ownership and was not constructed to accommodate a fence line. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the variance will significantly improve the harmony of the neighborhood and allow neighbors to co-exist quietly. The granting of the variance assures the public safety and welfare and does substantial justice because the on-going traffic in this area will be controlled by changing the area vehicular travel flow two-way to one-way for exit only from the University Apartments access, seconded by Mr. Forde. The Board voted 7-0 in favor of the motion to grant the variance. (Ayes: Jones, Eckard, Wood, Hayworth, Marshall, Huffman, Forde. Nays: None.)

**BOA-13-34 2824 EAST MARKET STREET** Maurice Wray requests a variance from a minimum thoroughfare street setback. **Variance:** A proposed minor automotive repair service and motor vehicle inspections building will encroach 16 feet into a 30-foot setback adjacent to East Market Street. Section 30-7-6.1 and Table 7-15, Present Zoning-LI (Light Industrial), Cross Street-Lowdermilk Street. **(GRANTED)**

Loray Averett stated that A proposed motor vehicle inspections building will encroach 16 feet into a 30-foot setback requirement. The property is located on the south side of East Market Street and west of Lowdermilk Street. The lot is undeveloped. The applicant is proposing to construct a motor vehicle inspection/auto service building on the lot. LI zoning district requires parcels to have a

minimum of 20,000 square feet per lot. This lot has approximately 16,552 square feet. The lot is legal nonconforming in reference to lot area. East Market Streets runs west to east along the applicant's lot frontage. It is classified as a thoroughfare street. In the LI zoning district, buildings adjacent to thoroughfares are required to be setback 30 feet while buildings that are adjacent to collector streets are only required to be setback 25 feet. The property also has a railroad right-of-way across the rear portion of the lot. The railroad right-of-way for this property is measured 100 feet from the centerline of the tracks back across the property. This right-of-way area is clearly shown in Exhibit C. The combination of the 30 foot setback and the railroad right-of-way greatly reduces the building envelope for this property. 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.

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

Johnny Kelly, speaking on behalf of the property owner, was sworn in and stated that the property owner would like to build an auto service building on his lot, which is zoned Light Industrial. The setback will create a hardship as he would not be able to build on this lot. The railroad claims a hundred foot right-of-way and with the 30 foot setback from the City, the building would not fit on the property. The proposed new building is planned to be 45' X 64'. Mr. Wray has talked with most of the surrounding neighbors and they do not have objections. With approval of the variance, Mr. Wray would be able to move forward with his plans to construct this business and provide needed services to the community. He stated that the railroad has given permission for them to park in the right-of-way area but his client cannot build structures within the railroad easement.

Maurice Wray, the property owner was sworn in and stated that he purchased this property about 8 months ago with plans to establish an auto service business. The railroad right-of-way is causing a problem for the property at the rear.

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

Angela A. Williamson, is the property owner at 2818 E. Market Street, which is a rental property. Her mother purchased the property for her many years ago. Her mother knows the applicant but she has not met him until today. The reason that his property is only 16,000 square feet is because a home previously existed there. She pointed out that there are several auto repair shops and other types of auto services in the immediate area. She does not feel that there is a need for another shop of this kind in this area. She may possibly use her home for a business of her own. She has concerns about how Mr. Wray will handle oil, gas and other toxins that would permeate the ground on the lot beside her. She opposes the plans Mr. Wray has for this property because of these reasons.

Mr. Wray returned to the podium and stated that on this side of the railroad tracks there is only one residential property, which belongs to Ms. Williamson and is presently empty. On the other side of the railroad tracks it is all business and commercial properties.

There being no one other speakers, the Public Hearing was closed by unanimous vote.

Mr. Forde moved that in regard to BOA-13-34, 2824 E. Market Street, that the findings of fact be incorporated by reference and the Enforcement Officer be overruled and the variance granted for the following reasons: There are practical difficulties and unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance unnecessary hardship will result in the property by applying the strict application of the ordinance because due to the existing railroad right-of-way requirements, the applicant is forced to violate the City setback requirements. The hardship of which the applicant complains results from the conditions that are peculiar to the property and unique circumstances related to the applicants

property because the railroad tracks existed prior to the purchase of the property and the railroad right-of-way makes the property virtually unusable with current setback conditions. The hardship results from the application of this ordinance to the property because the ordinance does not account for the burden of the adjoining railroad right-of-way. The hardship is not a result of the applicant's own actions because the railroad tracks and the right-of-way existed prior to the acquisition of the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows the reasonable development and use of the property. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the reasonable development of the property in conformance with the surrounding neighborhood, seconded by Ms. Huffman. The Board voted 6-1 in favor of the motion to grant the variance as proposed. (Ayes: Jones, Eckard, Hayworth, Marshall, Huffman, Forde. Nays: Wood.)

**ACKNOWLEDGEMENT OF ABSENCES**

The absences of Mr. Nimmer was acknowledged.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 10:50 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/sm:jd

**GREENSBORO BOARD OF ADJUSTMENT  
REGULAR MEETING HELD  
NOVEMBER 25, 2013**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, November 25, 2013 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Frankie T. Jones, Jr., Chair, Patti Eckard, Sarah Wood, Jeff Nimmer, Cyndi Hayworth, Cheryl Huffman, Frank Forde and Alternate Member Adam Marshall. Planning Department staff were: Loray Averett, Nicole Dreibelbis, Mike Cowhig and Mike Kirkman; 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 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 pointed out that on page 11, third paragraph from the bottom, the sentence in question should read, "vehicular traffic" instead of "vehicular travel." With that change, Ms. Huffman moved approval of the minutes, seconded by Mr. Forde. The Board voted unanimously in favor of the motion

**SWEARING IN OF STAFF**

Loray Averett, Mike Kirkman, Mike Cowhig and Nicole Delbriebeis were sworn in.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that there were two continuance requests. The City is requesting a continuance for Case # 13-25 located at 514 Hickory Ridge Drive and the Attorney for Case # 13-37 located at 619 South Mendenhall Street has indicated that he will be requesting a continuance for that case.

Counsel Carruthers stated that in regard to 514 Hickory Ridge Drive, in this matter the city attorney's office has retained the services of attorney Mike Fox to represent the board when the Hickory Ridge Drive zoning administrative decision appeal is heard. Counsel Carruthers will be called as a witness in that case, therefore, he will have to step down and other Counsel will be representing the Board. Attorney Fox has a conflict and is unable to attend today's meeting.



Since he cannot be present for this hearing, staff on behalf of attorney Fox is asking this case be continued until the January 2014 meeting.

Mr. Forde moved that this matter be continued to the January 27<sup>th</sup> meeting seconded by Mr. Jones. The board voted unanimously in favor of this motion.

Chair Jones asked if there was anyone wishing to speak in regard to 619 S. Mendenhall Street.

Tom Wright, attorney representing the applicant, stated that this request for continuance relates to item number 13 – 37 for the property located at 619 South Mendenhall St. and an appeal of the Historic Preservation Commission. The grounds for the appeal are that the applicant has filed an appeal of an interpretation and administrative ordinance relating to this same property as to matters which can be heard before this Board. Rather than having to go through the same set of facts twice, it would be better to have all of these matters considered in one hearing. There is a second matter related to the same property which has to do with a Special Exception, related to the setback requirements. That portion can be heard tonight because the setback requirement will be the same regardless of the Board's decision related to the appeal.

Counsel Carruthers stated that he supports the motion for continuance because the Special Exception is the last approval the city would need to allow Mr. Singh, if he chose, to go forward with the construction of his home. There was a Stop Work Order issued 90 days ago and since that time there has been no further construction on the house and the city feels that if this was considered by the Board, it provides one way for the Board to work in an efficient manner and then Mr. Singh can decide what to do next, with the advice of his attorney, Mr. Wright

Ms. Huffman stated that she does not understand how there can be separation of the two, the appeal and the Special Exception. Chair Jones stated that there are two separate issues, one being the setback, concerning the Historic Preservation Commission Special Exception recommendation of that portion. What is called into question is the design and height of the particular third-floor and that is the decision the applicant wants to appeal for further discussions. There does not seem to be any confusion or question in regard to the Special Exception request concerning the dimensional setback.

Counsel Carruthers stated that there is a valid Certificate of Appropriateness that has been granted by the Historic Preservation Commission and a recommendation that a Special Exception be granted by the Board of Adjustment that would allow a side yard setback variance even though it is framed as a Special Exception. Given that there is a valid Certificate of Appropriateness he would urge the Board to consider that portion of this discussion. It would be appropriate for the Board to consider this matter and there is a home that is not finished and exposed to the weather conditions

Mr. Forde moved that this matter be continued to the December 16, 2013 meeting, seconded by Mr. Jones. The Board voted unanimously in favor of the motion.

## OLD BUSINESS

### APPEAL OF A ZONING ADMINISTRATIVE DECISION

- (a) **BOA-13-25: 514 HICKORY RIDGE DRIVE** Mark York of Carruthers and Roth, Attorney at Law, on behalf of Carlisle Corporation, appeals the authority of the Zoning Administrator concerning his decision to grant legal nonconforming status to a freestanding sign. A sign permit for 514 Hickory Ridge Drive was approved by city staff for a free-standing sign to be taller than permitted by the Land Development Ordinance. This case was continued from the August 26, 2013 and September 23, 2013 meetings. Land Development Ordinance Sections 30-4-27 and 30-7-8.10, Present Zoning-CD-C-M (Conditional District-Commercial-Medium), Cross Street- NC 68 Highway North. **(CONTINUED TO JANUARY 27, 2014 MEETING)**

## NEW BUSINESS

### VARIANCE

- (a) **BOA-13-35: 8815 NEVILLE ROAD** Sequoia Partnership One, LLC requests a variance from a minimum street setback requirement. Variance: A proposed modular office building will encroach 9 feet into a 25-foot setback adjacent to Neville Road. Section 30-7-6.1 and Table 7-15, Present Zoning-LI (Light Industrial), Cross Street-Cider Road. **(CONDITIONALLY GRANTED)**

Loray Averett stated that the property is located on the south side of Neville Road north of Triad Drive. The lot contains an existing office/warehouse building. The applicant is proposing to locate a modular office building 16 feet from the Neville Road right-of-way. The applicant also mentions that it will be a temporary office building. If a variance is granted, the applicant is willing to condition the variance to 60 months from the date of approval. The modular office is proposed to be 10 feet wide by 40 feet long containing 400 square feet. Neville Road runs west to east along the frontage of the applicant's property. The adjacent property located to the west is vacant, the property located immediately east and south of the subject property contains a trucking sales and service company. The properties located on the north side, across Neville Road are wooded and undeveloped. Based on the existing infrastructure built upon the subject lot, the area proposed for the temporary modular unit is the area west of the existing building directly behind what appears to be a street landscape buffer. The Light Industrial zoning 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.

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

Gene Mustin, Borum Wade & Associates, representing the applicant, stated that the business is operated under the name of Eurotech ICR Mid-Atlantic, Inc. and they operate out of this facility as a specialty concrete construction business and they had been in this location since 2009. Borum Wade Engineering was retained by their company to prepare site drawings which were submitted to the city, had technical review approval, a building permit issued and constructed the facility. Since that time the business has grown quickly and is now outgrowing the existing office facility and the applicant needs to expand his office area.

A sketch plan has been submitted to the City Technical Review Committee (TRC) with an option to place a modular trailer on the site so it would not impede the operations of the existing facility. He has inquired about the possibility of purchasing the property across the street and he is currently working through negotiations for that purchase. In the meantime he still needs to place a modular office on the property for use and that is the purpose of the variance. In speaking with his neighbors no one is opposed to the variance. There is no encroachment into the city-required buffer yard. The site easements coming in and out of the driveway are in accordance with the GDOT standards.

Jim DeSpain, the managing member of the organization, stated that normally all of the equipment is on the road and not stored on the property but it comes back in periodically during the week. He hopes to finalize purchase of the property across the street because it is large enough for them to store their equipment and have turning radius to move the equipment around on the property. The current property limits the ability to make changes concerning the existing operations.

In regard to questions, Mr. Mustin stated that there is city water and a private on-site septic system. In the original construction of the on-site septic system, it was sized to allow for additional employees for future growth. They will be adding new jobs to this facility.

Chair Jones asked why the applicant wanted the five year condition on the variance? Mr. DeSpain stated that they are either going to have to purchase the land across the street and then they will have to come up with the capital to develop it. All of this will take time and that is why he decided it might be better to put a five-year limitation on variance. Chair Jones pointed out that variances run with the land and a time limitation is very unusual. He asked if the applicant would be willing to remove the five-year limitation from the request. Mr. DeSpain stated that he would be in agreement with that.

There being no further speakers the public hearing was closed.

Ms. Huffman moved that in regard to be BOA 13 – 35, 8815 Neville Road, based on the findings of fact that the Zoning Enforcement Officer be overruled and the variance granted with the following conditions of a five year time limit, based on the following: there are practical difficulties or unnecessary hardships resulted from carrying out strict letter of the ordinance. If the applicant complies with the provisions of the ordinance unnecessary hardship will result to the property by applying the strict application to the ordinance because the applicant will not

be able to continue expanding his business. The hardship of which the applicant complains results from unique circumstances peculiar to the property and unique circumstances related to the applicant's property because the use of large trailers and trucks would limit the usability of the applicant's lot. The hardship is not the result of the applicant's own actions because he has a business that is growing quicker than expected. The variance is in harmony with the general purpose and intent of the ordinance and preserves in spirit because the parking requirements will be better served, safety issues will be eliminated, and the expansion of the company will help prosperity to Greensboro as well as the applicants. The granting of the variance assures the public safety and welfare and does substantial justice because there are no sight distance issues that have been brought up at this point and the five-year time limitation will run with the modular office on the property. Chair Jones seconded the motion and the Board voted unanimously in favor of the motion. (Ayes: Jones, Huffman, Forde, Eckerd, Hayworth, Wood, Nimmer. Nays: None.)

- (b) BOA-13-36: 3 CROSS VINE COVE** Linda Pickl, requests a variance from the minimum rear setback requirement. Variance: A proposed screened porch will encroach 2.4 feet into a 15-foot rear setback. Section 30-7-7.2 and 30-4-6.6, Present Zoning-PUD, (Planned Unit Development), Cross Street-Creekstone Court. **(GRANTED)**

Nicole Delbriebe stated that the applicant is requesting a variance for a proposed screened porch which will encroach 2.6 feet into a 15-foot rear setback. The property is located on the western side of Cross Vine Cove north of Cross Vine Lane and is zoned PUD (Planned Unit Development). The property is described as Checkerberry Square At The Point, Phase Three, Lot 86 recorded in Plat Book 121, Page 050. Common area and open space shown hereon is expressly not for use by the general public, but is typically conveyed to the Association. The common area located behind the applicant's rear lot line is approximately 25 feet in width and adjacent to that common area is a Water Quality Conservation Easement that is approximately 50 to 60 feet in width. Building permit records indicate that a building permit for the porch has been applied for and is pending the approval of this request. The applicant is proposing to construct a new screened porch and will be removing a portion of the deck. The screened porch dimensions are proposed to be 10 feet wide x 17 feet long. The remaining portion of the existing deck will be retained. (Decks less than four feet in height may encroach 50 percent of the rear setback requirement). 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 Jones asked if anyone wished to speak in favor of this matter.

Linda Pickl, 3 Cross Vine Court, stated her proposal will reduce the size of the existing deck and will provide a uniform covered structure. This would provide the opportunity to enhance the views of the rear yard and to do some additional landscaping to enjoy her property. She has

spoken with her neighbors and no one has any problem with request. The homeowners association has approved her request.

There being no further speakers the public hearing was closed.

Mr. Forde moved in regards to BOA 13 – 36, #3 Cross Vine Cove, that the following findings of fact be incorporated, that the zoning enforcement officer be overruled and the variance granted based on the following: there are practical difficulties and unnecessary hardships that result from the carrying out of the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property by applying the strict application of the ordinance because the applicant will be unable to use the existing deck in all seasons. The hardship of which the applicant complains results from conditions that are peculiar to the property and the unique circumstances related to the property because the rear property setback line is adjacent to large amounts of open space, while still meeting at least 85 percent of the required setback. The hardship results from the application of the ordinance to the property because the rear setback was established prior to the property owner acquiring the property. The hardship results from the application of this ordinance to the property because the rear setback was established from the property line which is adjacent to the common area. The hardship is not a result of the applicant's own actions because the rear setback line was established prior the applicant's purchase of the property an there will be little or no impacts on the property located north of the applicant's property. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it allows for the greater enjoyment of the applicant's property. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the enhancement of the applicant's property and the surrounding community, seconded by Ms. Huffman. The Board voted unanimously in favor of the motion. ((Ayes: Jones, Huffman, Forde, Eckerd, Hayworth, Wood, Nimmer. Nays: None.)

#### **APPEAL OF HISTORIC PRESERVATION COMMISSION**

- (a) **BOA-13-37: 619 SOUTH MENDENHALL STREET** R. Thompson Wright, Attorney for Karan Singh appeals a decision of the Historic Preservation Commission to grant the applicant a Certificate of Appropriateness for an expansion and third story addition to an existing non-conforming two-story single family dwelling. Section 30-4.12(K), Present Zoning-R-7 (Residential Single-family), (College Hill Historic District Overlay), Cross Street-Lilly Avenue. **(CONTINUED TO DECEMBER 16, 2013 MEETING)**

#### **SPECIAL EXCEPTION**

- (a) **BOA-13-38: 619 SOUTH MENDENHALL STREET** R. Thompson Wright, Attorney for Karan Sin requests a Special Exception as authorized by Section 30-4-12.4(2) to allow a third floor addition over an existing non- conforming two-story single family dwelling. The third floor will encroach 7 feet into a 15-foot side street

setback adjacent to Lilly Avenue. The Historic Preservation Commission recommended this Special Exception. Table 7-3, Present Zoning-R-7 (Residential Single-family), (College Hill Historic District Overlay), Cross Street-Lilly Avenue. **(GRANTED)**

Loray Averett stated that R. Thompson Wright, Attorney for Karan Singh requests a Special Exception for a third story addition over an existing non-conforming two-story house which encroaches 7 feet into a 15-foot side street setback adjacent to Lilly Avenue. The property is located at the northeastern intersection of South Mendenhall Street and Lilly Drive. It is zoned R-7 and is located in the College Hill Historic District. The applicant applied for a permit to upfit or change the attic area to a bedroom. The plans reflect the applicant added a third floor and was proposing to increase the rear elevation from grade up to the newly designed third floor and thus was required to obtain a Certificate of Appropriateness and zoning approval.

On or around 8/26/2013 the inspector issued a stop work order. On or around 8/27/2013 the zoning officer issued a Notice of Violation for the owner to obtain a Certificate of Appropriateness. This property is a corner lot. The site plan reflected the encroachment of the existing house and the proposed encroachment of the newly added third floor. The applicant attended three Historic Preservation meetings and gained approval for a recommendation for a Special Exception at the October 30, 2013 meeting. The approval was for a revised design that lowered the third floor height by using knee wall construction as part of the design.

The recommendation from the Historic Preservation Commission was to permit this design with an encroachment adjacent to Lilly Avenue. The new construction encroaches the same as the existing house, 7 feet into a 15-foot street setback. The revised elevations that were approved and recommended for a Special Exception are shown as Exhibit E in this case report. 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.

In response to a question from Chair Jones, Mike Kirkman stated that the request before the Board is for property located within a historic district and the way the LDO is structured, properties that are located within the historic district, if there are variations from dimensional standards such as a side setback, they must go to the special exception process.

Chair Jones asked if anyone wish to speak in favor of the matter.

Tom Wright, attorney representing the applicant, 6103 Gwinnett Road, stated that the applicant is asking for a Special Exception, not a variance. He mentioned the standards for a Special Exception are more relaxed than standards to obtain a variance. The Board will need to determine if the request is in harmony with the general purpose and intent of the ordinance and preserves the spirit of the ordinance; and whether the request will assure the public safety and welfare and does substantial justice. The applicant purchased the home in November 2012, intending to live there with his wife and three children. In order to do that he needed to make

some changes to the interior. The home is located within the College Hill Historic District and that within the same area is a light industrial use and a PUD containing student housing for the University. A building permit has been issued for work on the property and he was told by the building inspector that he would have to install knee walls of at least 4 feet in the upper area of the home. The property owner was not told that a Certificate of Appropriateness was necessary under the circumstances. The applicant has been before the Historic Preservation Commission three times to obtain their approval of the plans for the third story addition of the home. The house was built in 1915 before the zoning ordinance was in place. In regard to a specific Special Exception recommendation, the evidence shows that a 15-foot setback for this nonconforming structure is not going to change regardless of the final decision of the third floor structure. The historic preservation commission has determined that the special exception is in harmony with the general purpose and intent of the ordinance. The neighborhood association has been solidly behind the request. Therefore, they respectfully request the granting of the Special Exception for setback requirements.

Karan Singh, the property owner, 2118 Ludlow Lane, Winston Salem, NC, was sworn in and stated that he purchased the property said that he and his family plan to live in this neighborhood. He went to college here and really liked this neighborhood. He was never made aware that this home was within the historic district.

There being no further speakers the public hearing was closed.

Mr. Nimmer asked if there was some process in place that when an address shows up within an historic district, that address would be flagged so that staff would be aware of its placement within an historic district so that situations like this do not occur? Loray Averett stated typically when building inspections receives a permit request and it is only for an upfit request for interior space, zoning does not review. She noted that the applicant is also planning an addition to the rear of the house along with the expansion of the third story. City procedural changes for permits in Historic District properties have been discussed and implementation will ensure that these properties are identified for their required processes.

Mr. Forde pointed out that this is a nonconforming structure and asked why the applicant was not directed to come before this Board at that time? Mike Kirkman stated that interior renovations, for the most part are not reviewed by staff unless there is a change in use.

Ms. Hayworth asked what remedy this applicant has for a mistake or a deficiency in the process? The applicant had the necessary permits and because of this deficiency, it is possible that he may not be able to use the structure as he intended. Counsel Carruthers stated that given the hypothetical nature of the question, the attorneys suggest that the remedies can be worked out.

Chair Jones stated that the issue before the Board is the side setback and that is what the Board should focus on. The most important information he heard was that the structure does not

have additional encroachment into the side setback as far as this request. Therefore he would support a motion to grant the Special Exception.

Mr. Forde stated that 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 the evidence presented by the applicant persuades it to reach each of the following conclusions: 1) the Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the required side setback came into being prior to the enactment of the current or any zoning ordinance. 2) the granting of the Special Exception assures the public safety and welfare and does substantial justice because it allows for the applicant to use their property in accordance with its current location and historic use, seconded by Ms. Huffman. The Board voted 6-1 in favor of the motion. (Ayes: Jones, Huffman, Forde, Eckerd, Wood, Nimmer. Nays: Hayworth.)

**OTHER BUSINESS**

NONE

**ACKNOWLEDGEMENT OF ABSENCES**

NONE

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 7:10 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd