

**GREENSBORO BOARD OF ADJUSTMENT  
REGULAR MEETING HELD  
JANUARY 27, 2014**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, January 27, 2014 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, Adam Marshall, Alternate, Cyndy Hayworth, Cheryl Huffman, Nimmer, and Frank Forde. Planning Department staff were: Loray Averett; Mike Kirkman; Tom Carruthers and Mike Fox, 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 a correction to the December minutes on page 5, 5<sup>TH</sup> Paragraph, the word "were" is to be deleted. With that correction, she moved approval of the minutes, seconded by Ms. Hayworth. The board voted unanimously in favor of the motion

**SWEARING IN OF STAFF**

Loray Averett and Mike Kirkman were sworn in for their testimony during the proceedings.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that there were no request continuances or withdrawals but she did note that a case from December concerning 1201 Coliseum Boulevard, which was continued to the January meeting has been withdrawn.

Ms. Huffman made a request that BOA-13-25, 514 Hickory Ridge Drive, be moved further down on the agenda, as it is related to BOA-14-03 for the same property.

Mark York, attorney representing the case stated that he has no objections to moving this case down on the agenda. The board voted unanimously in favor of the request.

**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 the 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, September 23, and November 24, 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 60 DAYS – MARCH 24, 2014)**

This matter was moved down on the agenda

**NEW BUSINESS****VARIANCE**

Mr. Nimmer stated that he is requesting recusal of himself, due to a conflict of interest as his employer is asking for this variance. The board voted unanimously to recuse Mr. Nimmer. As the alternate member, Mr. Marshall would be voting on this matter.

- (a) **BOA-14-01: 201 SMYRES PLACE** Kotis Properties, Inc. requests a variance from the minimum street setback. Variance: A recently constructed pergola covering a restaurant patio area encroaches 3.9 feet into a 15-foot street setback adjacent to West Friendly Avenue. Section 30-7-5.1 and Table 7-14, Present Zoning-C-L (Commercial-Low), Cross Street-West Friendly Avenue. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a recently constructed pergola over an existing patio area attached to an existing restaurant. The structure encroaches 3.9 feet into a 15-foot street setback adjacent to West Friendly Avenue. The property is located on the south side of West Friendly Avenue, west of Smyres Place and north of Madison Avenue. The property is surrounded by three streets and contains a restaurant building. The site was home to the former Ham's Restaurant and is now occupied by Madhatter Restaurant. The applicant submitted a plan for review to up-fit and re-model the building for restaurant use. The applicant constructed the pergola after the plan was approved. The pergola construction plan had to be reviewed and the encroachment was noted. The applicant resubmitted drawings (Exhibits 5 and 5-A) showing that the encroachment would be corrected and the plan was approved in November 2013. In mid December 2013, the applicant requested an occupancy permit. It was noted that the encroachment still existed and the applicant decided to file for a variance request. The request was filed on December 12,

2013. The property is a unique shape with three street frontages, thus requiring any proposed structure or addition to meet all required street setbacks. The western lot line is adjacent to residential zoning. The applicant chose to use the western portion of the lot for parking spaces in conjunction with a wooden privacy fence which further protects the adjacent residential zoning. The C-L, Commercial - Low District is primarily intended to accommodate low intensity shopping and services close to residential areas.

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

Carl Wrenn, Operating Partner, 201 Smyres Place, was sworn in and stated that this has been a very trying matter but has been received very well by the community. This property has been an icon for the city, but in recent years had started to decline. This is a very small property in theory, limiting seating in the restaurant and adding the patios have enabled them to expand the seating area. The pergola on the Friendly Avenue side of the patios was slightly encroaching and the plan of the patios has been reconfigured by the architect. The hardship would be to have to reduce their seating on the diagonal cut across the structure, but also it would be excessively costly. None of the easements or driveways are impaired with visibility and the setback lines remain consistent with the building that was built many years ago. He asked that the members grant the request for a variance.

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

**Board Discussion:**

There were no concerns brought forward by the Board members

Ms. Huffman moved that in regard to BOA-14-01, 201 Smyres Place, that the findings of fact be incorporated and that the zoning officer be overruled and the variance be granted based on the following conditions. There are practical difficulties or unnecessary hardships that result in carrying out the strict letter of this ordinance, because the property was built prior to the applicant's recent purchase. 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 the seating for customers will be reduced. The hardship of which the applicant complains results from conditions peculiar to the property and unique circumstances related to the applicants property, because the property is a trapezoidal shape and very unique. The hardship results from the application of this ordinance to the property because the property slab was already in existence. The hardship is not the result of the applicant's own actions because the applicant is only utilizing what was already available at the time of the purchase. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it promotes harmony by the building design and the unique lot shape. The granting of the variance ensures the public safety and welfare and does substantial justice because no line of sight or parking issues are applicable, seconded by Mr.

Forde. The Board voted 7-0 in favor of the motion. (Ayes: Jones, Hayworth, Huffman, Forde, Eckerd, Wood, Nimmer. Nays: None.)

Mr. Nimmer returned to the podium to participate in the following case.

Ms. Eckard stated that this afternoon she received a phone call from a resident or neighbor of the area under discussion. After a short discussion she realized it was a more in-depth conversation and she encouraged this person to call the Planning department, or come to the meeting this evening. She does not feel that this conversation would keep her from being able to look at the matter in a neutral position and make a decision.

- (b) BOA-14-02: 2303 LAFAYETTE AVENUE** Sun Capital, Inc. requests a variance from a minor thoroughfare street setback requirement. Variance: A proposed detached carport will encroach 25 feet into a 35-foot setback adjacent to West Cornwallis Drive. Section 30-30-8-11(B) and Table 7-2, Present Zoning-R-5 (Residential Single-family), Cross Street-West Cornwallis Drive. **(DENIED)**

Loray Averett stated that a proposed detached carport will encroach 25 feet into a 35-foot setback requirement adjacent to West Cornwallis Drive. The property is located at the northwestern intersection of West Cornwallis Drive and Lafayette Avenue and is zoned R-5, Residential Single-family. The lot is a corner lot with two adjacent street frontages. It has frontage along West Cornwallis Drive, which is classified as a thoroughfare street and frontage along Lafayette Avenue which is classified as a collector street. Setbacks adjacent to a thoroughfare street are more restrictive than setbacks adjacent to collector streets. The property formerly contained an existing dwelling, which was demolished and removed. It is now under construction with a new 2-story single-family dwelling. The applicant is proposing to also construct a detached carport. The carport is proposed to be 20 feet x 25 feet for a total of 500 square feet and less than 12 feet in height. The carport was planned to be located east of the western lot line. The applicant inquired in the zoning office about detached carport setbacks and realized that the tree would have to be removed. The applicant was interested in saving the tree. The tree is a willow oak and is classified as a significant species. The applicant met with the City Arborist and the Arborist issued his determination and findings concerning measures to protect and maintain longevity for the tree. That memo and drawing is attached as Exhibit 5. 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. Huffman asked if the carport was included in the original Building Permit. Loray Averett stated that it is her understanding that there was not a detached carport with the original Building Permit and typically would not be. Detached structures typically come under separate Building Permits.

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

Don Sutphin, the builder representing the property owner at 2302 Lafayette Avenue, was sworn in and stated that originally they planned to put the carport on the right-hand side of the house in the back corner, but the lot has been split for the development of 2 houses. The lower house has a sewer line coming across the lot, which inspired negotiations back and forth with the city, resulting in a new sewer line for the neighbor which splits the property line; Thus they cannot install a driveway in this location to the back of the property for the proposed carport. This caused a change in the site development to locate the carport on the left side. If they cannot obtain a variance for the encroachment, they will have to cut an existing contributing oak tree down to allow room for the carport behind the house. In this particular neighborhood most of the houses have detached carports or garages. They are trying to save the tree. Photographs of the subject property and the street sight distance were shown for clarification.

In response to a question, Counsel Carruthers stated that the lot was originally one lot and has now been subdivided for two houses. At closing, Mr. Sutphin was unaware of the neighbor's sewer line that crossed this property and when grading the lot, the sewer line was broken. There have been numerous discussions with the Water Department and they recommended the current placement on the property line between the two new lots. There is a 10-foot easement on each side. The Water Department does not want permanent structures erected over sewer easements in the city of Greensboro.

Mr. Nimmer asked about interruption relative to sight distance on this property. Mr. Sutphin stated that the site triangle is clear and the carport is not going to block any of the sight distance requirements.

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

Margaret Chase, 2306 Lafayette Avenue, was sworn in and stated she lives across Lafayette adjacent to the subject property. She feels that this property was subdivided by the property owner and the fact that they are having issues with placement of a detached carport are their personal circumstances. She also feels that this hardship is a direct result of the applicant's own actions. Her biggest concern is the sight distance and traffic on this busy street. There is another wall across the street and it is already a difficult corner to see oncoming traffic. Being close to Irving Park elementary school causes this to be a very busy street.

Rita Small, 1102 W. Cornwallis Drive, was sworn in and stated that she lives adjacent to the property that these two houses back up to. She has concerns about the wall/fence, because it will make it very difficult for anyone to get out her driveway onto Cornwallis. When the carport is constructed it will cause a substantial sight distance problem. There have already been several traffic accidents at this particular location. She feels it would be much safer to place the carport behind the house rather than near the street.

Don Sutphin spoke in rebuttal and stated that the GDOT Engineer provided him with a site triangle clearance approval. The proposed carport is at least 10-feet outside the site line and will not hinder anyone from pulling out of the driveway or crossing Lafayette. He again presented evidence by submitted a drawing that supported his claim of providing clearance within a required sight triangle.

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

**Board Discussion:**

Mr. Nimmer stated that he has three concerns, that the lot was subdivided by the applicant; thus the hardship is his own doing. Ms. Eckard stated that she visited the property this afternoon and pulled into Ms. Small's driveway, and it is very difficult to get out onto Cornwallis. Usually, she is the first person to want to save trees but she is more concerned about safety. She is finding it difficult to approve this request for that amount of encroachment going into the setback. She would rather see the carport placed behind the house. Ms. Hayworth stated that she lives in this area and this is sometimes a cut-through for parents taking their children to Irving Park elementary school and this is a very busy intersection. She does not feel that subdividing and placing two houses in this location is in character with the rest of the neighborhood. She concurs that a 25-foot encroachment is too much for this area. Mr. Forde stated that he feels the Board is charged with evaluating professional testimony and since there was no Traffic Engineer testifying today, but the information the applicant provided from GDOT indicates that the site triangles are correct. He feels that there will be cars parked in the driveway and he does not see anything that would cause additional difficulties. Ms. Huffman stated because of the amount of encroachment, she would be voting in opposition. Ms. Wood stated that she is also concerned about safety issues related to this case and would be voting in opposition. Mr. Jones stated that he agrees with Mr. Forde, that the City allowed the subdivision of the property, and according to a representative of GDOT, the sight distance requirements are met. Based on that information he would vote in favor of the request.

Mr. Forde moved that in regard to BOA-14-02, 2303 Lafayette Avenue, that the findings of fact be incorporated and that the zoning officer be overruled and the variance be granted based on the following: There are practical difficulties or unnecessary hardships that result in carrying out the strict letter of this 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 the proposed carport can only be constructed by significantly damaging or ultimately removing a significant, existing oak tree. 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 the carport could be located legally on the lot. The hardship results from the application of this ordinance to the property because the tree existed on the lot prior to the redevelopment of the lots, and prior to the establishment of both the UDO and the LDO. The hardship is not the result of the applicants own actions because the tree

existed on the lot prior to the lots' redevelopment. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it will allow the preservation of a significant oak tree. The granting of the variance ensures the public safety and welfare and does substantial justice because the Oak tree will be preserved on the lot and development will be allowed to continue, seconded by Mr. Jones. The Board voted 2-5 in favor of the motion and the motion was denied. (Ayes: Jones, Forde. Nays: Hayworth, Huffman, Nimmer, Eckard, Wood.)

A 10-minute break was taken from 6:30 until 6:42 p.m.

Counsel Carruthers stated that attorney Mike Fox has been retained by the City for representation on the following matters.

- (c) **BOA-14-03: 517 HICKORY RIDGE DRIVE** Mark York of Carruthers and Roth, Attorney at Law, on behalf of Carlisle Corporation requests variances from the standards for a sign to be located in the NC Highway 68 Scenic Corridor Overlay District *Variance #1:* A proposed freestanding sign will exceed the maximum height of 6 feet by 14 feet for a total height of 20 feet. *Variance #2:* The overlay district limits the sign type to monument style. The applicant is requesting to be permitted to install a single-pole (pylon) sign instead of the required monument design. *Variance #3:* The sign area will exceed the allowable size of 50 square feet by 127.69 square feet for a total sign area of 177.69 square feet. Section 30-7-8.10 NC Highway 68 Scenic Corridor Manual Item (B)(2), Present Zoning-CD-CM, Cross Street-NC Highway 68 North **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed freestanding identification signs to be 20 feet tall instead of 6 feet tall, exceeding the allowable height of 6 feet by 14 feet; for the sign design to be a pole sign instead of the required monument style; and for the area to exceed the allowable 50 square feet by 127.69 square feet for a total sign area of 177.69 square feet. The property is located at the northwestern intersection of NC Highway 68 South and Hickory Ridge Drive within the NC 68 Scenic Corridor overlay District and is subject to the signage requirements. The lot is a corner lot and contains approximately 1.19 acres. The property has approximately 160 feet of frontage along NC Highway 68 South and exceeds 400 feet of frontage along Hickory Ridge Drive. Each street frontage is permitted to have a six foot tall, 50 square feet maximum monument style sign. City records reflect that a time-line consisting of the development for this property is as described: November 2, 2000: City records reflect that effective November 2, 2000 this property was rezoned from LI (Light Industrial) to CU-HB (Conditional District-(Highway Business)). October 2, 2001: NC 68 Scenic Corridor was adopted by City Council. September 2003: City Records reflect in September 2003 a site plan was approved and a building permit was issued for the construction of Wendy's Restaurant. The architectural and sign plans were in compliance with the NC 68 Scenic Corridor Overlay design requirements. July 1, 2010: The LDO was adopted by Council

and the current zoning designation was renamed from (CU-HB to CD-C-M. (No impacts). December 26, 2013: Wendys' filed variance requests to replace their monument sign with a freestanding sign. Height Requirements: As the timeline indicates, the rezoning and applicable zoning conditions were approved prior to the adoption of the Scenic Corridor Overlay District.

As shown on Exhibit 2, Conditional District Item #11 allows a sign for this property to be 20 feet tall. The plan approval and construction for this project did not begin until September 2003, approximately three years after the rezoning and two years after the adoption of the Scenic Corridor Overlay. The applicant was held to the more restrictive of the requirements. The requirement to apply the more restrictive language is contained in Exhibit 6, Page 1 as highlighted. The sign is allowed to be six feet tall based on the street frontage for the applicant's property. The applicant has approximately 160 feet of frontage along Highway NC 68 South. Lots with less than 200 feet of frontage are allowed to have monument signs up to six feet tall. The applicant is requesting a variance to be 20-foot tall. This is the maximum height request allowed based on a zoning condition that a freestanding sign for this property will not exceed 20 feet in height.

*Sign Style:* The applicant is requesting a pole design. Exhibit 6, page 4 describes the permissible type of signs for the Scenic Corridor. This lot contains only one business and is less than 25,000 square feet, thus is limited to a monument type sign. Wendy's existing sign design is a monument design. There are several photos of the existing sign located at this site that show the monument design. They are attached as Exhibit 7.

*Sign Area:* The applicant is requesting to have a sign that measures 177.69 square feet in area. The Ordinance requires the rectangles to be closed in when measuring sign area. If the rectangles were not closed in, the actual area of the sign would be 143 square feet. The sign may contain only the name, trademark and registered logo. The location is allowed to have 50 square feet of sign area. Exhibit 4, Land Development Ordinance Section 30-14-14 contains specific language on the Board of Adjustment's authority to grant specific variances for signs. The Board of Adjustment may not grant a variance to the size of a sign.

NC Highway 68 Scenic Corridor Overlay District which is a district that supplements the underlying zoning district. The specific development requirements of a particular Scenic Corridor Overlay District shall apply uniformly to all property within said district. Airport Overlay District is established to protect uses that support airport operations and to limit residential uses to lower densities near the airport. These sign variance requests, as submitted, have no impacts on the Airport Overlay District standards. The C-M, Commercial – Medium District is primarily intended to accommodate a wide range of retail, service and office uses.

In response to a question by Mr. Jones, attorney Fox stated that the text of the Land Development Ordinance (LDO) allows for a variance request for the type of signs and height



but specifically says that the Board of Adjustment may not grant a variance for the size of the sign. He believes there is authority within the state for the Board of adjustment to consider such a request, whether or not it is granted depends on the facts and the evidence that is brought before the Board. He presented additional information for the Board members' review to support his opinion.

Mike Kirkman stated that the Board of Adjustment can grant variances under the current ordinance for height and setback. Other issues in terms of style, size and placement are not valid under the LDO.

Attorney Fox stated that he has presented the Board with a copy of NC.GS.169A-388, which is the state statute authorizing the Board of Adjustment as well as a legal case from the North Carolina Court of Appeals, Premier Plastics Surgery Center versus the Board of Adjustment for the Town of Matthews, North Carolina, which was decided in July 2011. He explained the statute, in subsection D, in detail to the Board members.

Chair Jones stated that he feels this is a matter the Board can proceed with and as the Board considers this matter, he wished to remind everyone that this matter will be judged on the merits of the case that are currently presented.

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

Mark York, Carruthers and Roth Law firm at 235 N. Edgeworth Street, stated that he, along with attorney Patrick Haywood, represent Wendy's Restaurants. He presented a notebook to each Board member for their review. He explained that the request is for three variances related to the height, style, and size of a sign to be located on the Wendy's property. He pointed out that in 2012, Bojangles built a restaurant across the street and photographs of their sign are included in the booklet. They were allowed to put up a pedestal sign that is 25 feet tall and 142 square feet. Clearly, this gives them an unfair advertising advantage and it is outside the scope of what should have been permitted. The sign was issued a legal, nonconforming status. This is the subject matter of the appeal that is on the agenda following this item. They have complied with the required plantings for the property, and now those plantings have grown up and are actually hiding their 6 foot monument sign, and not allowing it to be viewed by traveling traffic. Photographs of the current sign on their property were also included in the booklet, along with the Bojangles sign from the same distance. In response to a question by Mr. Nimmer, attorney York stated that he feels there will not be other request for the same type of variances from other residents, because of the double requirement for the vegetative growth and the requirement to block the parking lot.

Attorney Fox stated that what is being looked at today is a piece of property that was zoned in 2000, and as a part of the zoning, the Zoning Commission looked at the signage and the conditions were to limit the signage to a certain height and also require additional plantings. So the signage issue was already established by the Zoning Commission. Then the Scenic

Corridor came along and was approved by Council before any construction began on this property, so it was not grandfathered nor did it have vested rights.

Tom Terrell, attorney with Smith, Moore, Leatherwood, stated that he represents Bojangles Corporation and it may seem that they are there to oppose the granting of a variance for their next-door neighbor's competitive sign, but it is the opposite. Not only do they not oppose the granting of the variance for the sign, but asked that the Board grant the variance. He pointed out that they are in agreement that the Wendy's sign cannot be seen because of its height and placement. He feels that all of the standards have been met for the granting of the variance.

There being no one to speak in opposition to the matter, the Public Hearing was closed.

**Board Discussion:**

All of the Board members commented that they were also in favor of granting the variance for the proposed sign. Mr. Jones added that it makes a lot of sense to grant the variance especially considering the fact that the property has been rezoned and pursuant to the Conditional Use Permit, a 20 foot height was deemed appropriate by the Zoning Commission.

Mr. Forde moved that in regard to BOA-14-03, 517 Hickory Ridge Drive, that the findings of fact be incorporated and that the zoning officer be overruled and the variance be granted based on the following conditions. There are practical difficulties or unnecessary hardships that result in carrying out the strict letter of this 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 if the variance is not granted the applicant's business will be unduly burdened and is currently significantly impacted from a visual marketing perspective. The hardship of which the applicant complains results from conditions peculiar to the property and unique circumstances related to the applicant's property because the applicant's property is subject to a particular set of conditional use zoning standards which make the provisions of the overlay district detrimental to the proper and equitable use of the applicants property. The hardship results from the application of this ordinance to the property because the sign requirement provisions of the scenic overlay district, as applied to the property with the existing conditional use zoning requirements unnecessarily or unduly burden the applicant's property. The hardship is not the result of the applicant's own actions because the applicant does not interpret or enforce the provisions of the Land Development Ordinance. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it treats all the properties in the immediate area in a more consistent and equitable manner. The granting of the variance ensures the public safety and welfare and does substantial justice because it allows for the fair and equitable use of the applicant's property in close accord to those of its neighbors. Chair Jones made a friendly amendment, in terms of the findings of fact, the hardship is not the result of the applicants own actions because the property owner was granted a Conditional Use Permit, pursuant to which they were granted the 20 foot height

restriction and after receiving this conditional use permit the Scenic Overlay District was established, seconded by Mr. Jones. The Board voted 7-0 in favor of the motion. ((Ayes: Jones, Hayworth, Huffman, Forde, Eckerd, Wood, Nimmer. Nays: None.))

Attorney Fox pointed out that this motion should cover all three variances without a separate vote for each.

- (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 the 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, September 23, and November 24, 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 60 DAYS – MARCH 24, 2014)**

Attorney Mark York, with Carruthers and Roth, asked that this matter be continued for 60 days until they March 2014 meeting.

Chair Jones moved to continue this particular matter 60 days, seconded by Ms. Hayworth. The Board voted 7-0 in favor of the motion. ((Ayes: Jones, Hayworth, Huffman, Forde, Eckerd, Wood, Nimmer. Nays: None.))

## **OTHER BUSINESS**

**ACKNOWLEDGEMENT OF ABSENCES:** None

## **ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 7:50 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd



Planning Department

**GREENSBORO BOARD OF ADJUSTMENT  
REGULAR MEETING HELD  
FEBRUARY 24, 2014**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, February 24<sup>th</sup>, 2014 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, Cyndi Hayworth, Cheryl Huffman, Jeff Nimmer, and Frank Forde. Planning Department staff attending were: Loray Averett and Mike Cowhig; 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**

Mr. Forde moved approval of the minutes from the January 27<sup>th</sup>, 2014 meeting, seconded by Ms. Huffman. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett and Mike Cowhig were sworn in.

**CONTINUANCES/WITHDRAWALS**

There were no continuances or withdrawals.

**NEW BUSINESS**

**VARIANCE**

- (a) **BOA-14-03: 1005 WESTRIDGE ROAD** Martin L. Spottl requests a variance from the requirement that utilities to detached accessory buildings be provided by branching service from the principal building. *Variance:* The applicant is proposing to have a separate electrical meter for a recently constructed detached garage. Section 30-8-11.1 (G), Present Zoning-R-3 (Residential Single-family), (Westridge Neighborhood Conservation Overlay), Cross Street-Green Forest Road. **(CONDITIONALLY 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 Westridge Road north of Bearhollow Road and is zoned R-3 (Residential Single Family). The lot is a little greater than one-acre containing approximately 44,850 square feet. The property contains a dwelling. In August 2013, the applicant obtained a building permit for a detached accessory garage. The garage is under construction and is being built approximately 80 feet behind the house and 53 feet from the rear property line. The applicant's site drawing shows there is an existing transformer supply directly adjacent to his rear lot line, which is approximately 60 feet in distance. There is also a power pole located on the western lot line approximately 80 feet from the building location. The applicant has heavy landscaping and trees in the areas between the building and the power pole located on the western lot line. The existing meter for the house is located on the rear of the house which is 80 feet from the detached building. The applicant is aware that the detached garage is for accessory personal use only. The GIS aerial and recent field photos show the lot is developed with existing infrastructure and heavy landscaping. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Martin Spottl, 1605 Charlottesville Road thanked the Board for considering his application for a variance and stated that he consulted with Duke Energy and they recommended that the transformer at the rear of the property would be the ideal place to tap into the power which would require a separate meter for the garage.

Cheryl Huffman asked the applicant if the current tenants requested the construction of the garage. Mr. Spottl stated that they didn't request the construction however, they are in agreement and have access to it from their driveway. It will add to the property value and is a project he and his son have undertaken.

Ms. Huffman asked if the distance from the garage to the back of the house and the transformer is the same distance and Mr. Spottl stated that was correct.

Frankie Jones asked what the purpose of the garage is considering there is a finished room upstairs. Mr. Spottl stated that it is a garage with a bonus room to enhance the value of the property.

Mr. Jones asked the applicant if he intends to rent the upstairs room to a different tenant and Mr. Spottl stated that he did not intend to do so.

Counsel Carruthers stated that under the zoning, Mr. Spottl would not be able to legally rent to a separate tenant.

Jeff Nimmer asked if there is a cost consideration as to why the applicant would rather bring power from the back than from the primary structure. Mr. Spottl stated that Duke Power would pay the cost for the underground cable and it's also the safest approach to bringing in power service.

Ms. Huffman asked if the property currently has a garage or carport and Mr. Spottl stated that it has a one car garage attached to the house.

Joseph Goodman, 1001 Westridge Road, was sworn in and stated that he had a conversation with Mr. Spottl about the purpose of the structure and was told it would be for recreational use and would not be used as a rental apartment. Considering there would be a heat pump being powered, a separate meter would be the safest means of supplying the building with power.

Mr. Jones asked the applicant if he would agree to a condition that a kitchen could not be placed in the garage if the variance is approved and Mr. Spottl stated that he would agree to that condition.

Jeff Nimmer asked staff what the intent of the ordinance is stating that electrical is required to come from the primary building.

Loray Averett stated that the intent of limiting detached accessory meters was to help curb violations where people were doing businesses in detached accessory garages and creating secondary illegal dwelling units.

It was moved by Ms. Hayworth and seconded by Ms. Huffman to close the public hearing.

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

#### **Board Discussion:**

Sarah Wood stated that she looked at the property and there are quite a few trees between the new building and the house which may cause a great deal of interference with the roots and there are less trees between the building and the transformer. She would approve in interest of not disturbing the trees. Cheryl Huffman stated that she supports the LDO because there is a very good reason the City has this requirement in place. Also, it is already a rental property and there is equal distance between the garage and the house and transformer. Patti Eckard stated that she is on the fence because there is a reason the ordinance is in place and she is leaning towards opposing. Cyndi Hayworth stated that the overlay conditions have been met and the variance would be a cost savings and convenient for the applicant, which she will support. Jeff Nimmer asked if later a new owner attempts to add a kitchen would there be a way the City would be made aware.

Loray Averett stated that there is a process in place for zoning to have an opportunity to review such a request.

Frank Forde stated that he believes that it is a reasonable request however, recently there was a case involving the same circumstances where the Board denied the request and there should be consistency. Frankie Jones stated that since the applicant is willing to forego the opportunity to install a kitchen to the structure and the fact that Duke Power will pay for the underground cable, he is in support of the variance. Patti Eckard stated that she would support the variance if it included a specific condition that the applicant may not install a kitchen which would prohibit the use of the structure as a separate rental unit.

Thereupon the public hearing was reopened for additional testimony by the applicant.

Martin Spottl stated that the closest source of power is the transformer which is approximately 60 feet.

Sarah Wood asked if the applicant would add to the lease that the tenants cannot sub-lease the garage and Mr. Spottl stated that he would not allow any sub-leasing.

Loray Averett stated that the property owners within 150 feet of the applicant's request were notified of this request.

It was moved by Ms. Huffman and seconded by Ms. Hayworth and the Board voted unanimously to close the public hearing.

Mr. Forde moved that in regard to BOA-14-03 1005 Westridge Road, that the findings of fact be incorporated and that the zoning officer be overruled and the variance be granted based on the following conditions. There are practical difficulties or unnecessary hardships that result in carrying out the strict letter of this 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 the requiring of separately metering the accessory building will result in excessive construction activities and additional cost and additional safety concerns. The hardship of which the applicant complains results from conditions peculiar to the property and unique circumstances related to the applicants property because the power which is the most convenient and practical electrical service was installed by the utility contractor and not the applicant. The hardship results from the application of this ordinance to the property because the requiring of a separate meter is motivated by the desire to prevent separate rental units. The hardship is not the result of the applicants own actions because the power pole was placed in its current location by the utility contractor and not the applicant. The variance is in harmony with general purpose and intent of this ordinance and preserves its spirit because it allows the efficient and economical enhancement of the applicant's property. The granting of the variance ensures the public safety and welfare and does substantial justice because it enhances the community and provides for safety and provides a responsible economic upgrade to this property. The motion is made with the following condition: The property owner may not install a kitchen which for the purposes here shall mean those additional appliances of a stove or sink, seconded by Ms. Hayworth. The Board voted in favor of the motion subject to the conditions read by Mr. Forde (Ayes: Nimmer, Eckard, Hayworth, Jones, Forde, Wood. Nays: Huffman.)

### **SPECIAL EXCEPTION**

- (a) **BOA-14-04: 321 SOUTH TATE STREET** Terri Wallace requests a Special Exception as authorized by Section 30-4-14.4 and 30-9-4.6. *Special Exception Request:* A proposed detached garage will encroach 8 feet into a 20 foot street setback adjacent to Edgar Street. Table 7-3. The Historic Preservation Commission has recommended this Special Exception. Present zoning R-7 (Residential Single-Family), College Hill Historic District, Cross Street-Walker Avenue. **(GRANTED)**

Loray Averett stated that the applicant requests a Special Exception for a detached garage which will encroach 12 feet into a 20-foot street setback adjacent to Edgar Street. The property is located on the eastern side of South Tate Street and west of Edgar Street. It is zoned R-7 and is located in the College Hill Historic District. The lot is considered a through lot and must meet two street setbacks. It has frontage on S. Tate Street and Edgar Street. The minimum street setback for the R-7 district is 20 feet. The lot is rectangle shaped and contains approximately 8,350 square feet. The lot contains an existing single-family dwelling and a detached 8 ft. by 10 ft., detached storage building. The applicant is proposing to construct a detached one-story garage which will be 14 feet by 18 feet for a total of approximately 260 square feet. At their January 29, 2014 meeting, the Historic Preservation Commission recommended this Special Exception request. 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.

Patti Eckard asked staff who is responsible for the upkeep of Edgar Street. Ms. Averett stated that there have been internal discussions with GDOT officials about the status of Edgar Street. It was determined the City does maintenance for Edgar Street which includes the placement of gravel. The vehicular travel-flow on this right-of-way is much greater than what a normal alley would serve.

Mike Cowhig stated that Edgar Street started out as an alley that ran from Walker Avenue to West Market Street but eventually the City began collecting garbage on the alley. There is one house that has an Edgar Street address.

Raymond Cassell, 1519 Countryside Drive, stated that he is the contractor for the applicant and has done quite a bit of work for her over the years.

Patti Eckard asked if the building would be placed outside the privacy fence and Mr. Cassell stated that it would be constructed outside of the fence.

Patti Eckard asked how close to the alleyway will the garage come and Mr. Cassell stated that he doesn't know the exact footage until he gets the blueprint.

Jeff Nimmer asked how far from the Edgar Street right of way is the adjacent neighbor's building located and Ms. Averett estimated that it is 3-4 feet from the alley.



Mr. Carruthers stated that Edgar Street is officially a Street which makes the setback 20 feet.

Patti Eckard asked what street the door of the garage would face and Ms. Averett stated the elevations reflect the garage door faces Edgar Street.

It was moved by Ms. Huffman and seconded by Ms. Hayworth to close the public hearing. There being no further speakers the public hearing was closed by unanimous vote.

**Board Discussion:**

Cheryl Huffman stated that she will support the LDO which states “special conditions no fault of their own”.

Franke Forde stated that although Edgar Street is classified as a street, it has no curb, gutter, pavement and is not maintained by the City therefore it doesn’t really have a setback.

Mr. Jones moved that in regard to BOA-14-04 321 South Tate Street, that the findings of fact be incorporated and that the zoning officer be overruled and the special exception be granted based on the following. The special exception is in harmony with general purpose and intent of this ordinance and reserves its spirit because it provides the homeowner a garage which is within the carriage of the neighborhood. The granting of the special exception ensures the public safety and welfare and does substantial justice because it provides the appropriate setback given the nature of Edgar Street, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion. (Ayes: Nimmer, Eckard, Hayworth, Jones, Forde, Wood, Huffman. Nays: None.)

**OTHER BUSINESS**

There was no other business before the Board

**ACKNOWLEDGEMENT OF ABSENCES**

There were no absences acknowledged.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 6:40 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd

**GREENSBORO BOARD OF ADJUSTMENT  
REGULAR MEETING HELD  
MARCH 24, 2014**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, March 24, 2014 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, Cyndi Hayworth and Cheryl Huffman. Planning Department staff were: Loray Averett; 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 from the February 24, 2014 meeting, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion

**SWEARING IN OF STAFF**

Loray Averett was sworn in.

**CONTINUANCES/WITHDRAWALS**

Counsel Carruthers stated that the State legislature changed the law on Board of Adjustment procedures last year and this was not with the City of Greensboro; however, requirements are that the concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. Only vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority if there are no qualified alternates available to take the place of such members.

Chair Jones thanked Counsel Carruthers for that clarification.

Loray Averett gave an update concerning Case #13-25 at 514 Hickory Ridge Road, which had been continued to the March meeting. The case was withdrawn by the applicant; thus no other Board of Adjustment business was required.

Loray Averett stated that there are six cases before the Board tonight and based on the 4/5 voting requirements that the board is required to use, based on the general statute, she suggested that all of the matters be continued to the April meeting.

Ms. Huffman moved that all matters on the March 24, 2014 agenda be continued to the April 28, 2014 meeting, seconded by Ms. Eckard. The board voted unanimously in favor of the motion.

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Mr. Nimmer, Mr. Forde, Ms. Wood, and Mr. Marshall was acknowledged and excused.

**OTHER BUSINESS**

Loray Averett stated that she had received several phone calls and emails on various cases on the agenda concerning the cases and she did not have the ability to notify the citizens that were within the notification radius. The applicants and their representatives were notified concerning continuances of these cases.

Chair Jones thanked Ms. Averett for her efforts.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 5:38 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd

## **GREENSBORO BOARD OF ADJUSTMENT**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, April 28, 2014 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members and alternate members present were: Frankie T. Jones, Jr., Chair, Jeff Nimmer, Patti Eckard, Cyndi Hayworth, Frank Forde, Cheryl Huffman Sarah Wood, Adam Marshall and Laura Blackstock. Planning Department staff were: Loray Averett; 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 March 24, 2014 minutes, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion.

### **SWEARING IN OF STAFF**

Loray Averett, Nicole Smith, Mark Wayman and Jared LaRue were sworn in for their testimony at this meeting.

### **CONTINUANCES/WITHDRAWALS**

Loray Averett introduced Mark Wayman and Jared LaRue as staff members who may be called on to speak this evening. She stated that there has been a request for a continuance for the Appeal of a Notice of Violation related to 200 East Newlyn Street. Also, there is a request that 805 Dover Road be withdrawn.

Brian Pearce, attorney representing the owner of the property, was sworn in and stated that he wishes to ask for a continuance in this matter. He feels that eventually it will lead to a withdrawal request, but he does not wish to withdraw the matter prematurely.

Mr. Jones moved to continue this matter to the May regularly scheduled meeting, seconded by Ms. Huffman. The Board voted 7-0 in favor of the granting of a variance. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman, Wood. Nays: None.)

Marc Isaacson, attorney representing the applicant for 805 Dover Road, stated they were withdrawing the request. The violation has been corrected. No motion was necessary for the withdrawal of this matter.

## OLD BUSINESS

### VARIANCE

- (a) BOA-14-05: **541 WOODLAND DRIVE** Tony and Madeline Schiffman request a variance from the minimum rear setback requirement. **Variance:** A proposed attached sunroom to a single family dwelling will encroach 5.1 feet into a 20-foot rear setback. This case was continued from the March 24, 2014 meeting. Section 30-7-3.2 - Table 7-2, Present Zoning-R-5 (Residential Single-family), Cross Street-Briarcliff Road. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed attached sunroom to the rear of the existing house. The addition will encroach 5.1 feet into a 20-foot rear setback. This case was continued from the March 24, 2014 meeting. The property is located at the southeastern intersection of Woodland Drive and Briarcliff Road and is zoned R-5. The applicant is proposing to construct an attached sunroom over an existing raised patio. Records reflect the structure was built in 2005. The lot is unique shaped and has street frontages along Woodland Drive and Briarcliff Road. The property boundaries are defined with existing retaining walls and heavy landscaping. Guilford County records reflect the house was constructed in 2005. The footprint for the existing dwelling is shown at 4,556 square feet. The proposed patio area to be enclosed for a sunroom will be 316 square feet. This will total 4,872 square feet of structure on the ground. The lot is allowed to be covered with structures not to exceed 40 percent of the lot area. The lot area is approximately 13,503 square feet, thus the applicant may have a maximum of 5,401 square feet on the ground. The R-5, Residential Single-Family District is primarily intended to accommodate low-density single-family detached residential developments. The overall gross density in R-5 will typically be 5.0 units per acre or less

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

Lane Schiffman was sworn in and stated that staff has given a very detailed explanation they wish to do on this property. In response to a question he stated that his neighbors have no objection to the proposed sunroom area.

Madeline Schiffman was sworn in and stated that the air-conditioning units are now at the side of the house next door and they are very noisy.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Mr. Forde moved that in regard to BOA-14-05, 541 Woodland Drive, that the findings of fact be incorporated by reference and the Zoning Enforcement Officer be overruled and the variance granted as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance,

unnecessary hardship result to the property by applying strict application of the ordinance because if ordinance is strictly applied, the improvements contemplated by the applicant could not be constructed. 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 unique configuration of the lot. The hardship results from the application of this ordinance to the property because the lot configuration existed prior to the applicant's consideration of the proposed improvement. The hardship is not a result of the applicants of actions because the applicant was not responsible for the lot configuration. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because it would allow for the full use of the applicant's property. The granting of the variance assures the public safety and welfare and does essential justice because it allows for the improvement of the individual home and is in conformity with the surrounding properties, seconded by Ms. Huffman. The Board voted 7-0 in favor of the granting of a variance. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman, Wood. Nays: None.)

After a short discussion it was determined that Mr. Marshall, alternate board member, could be excused from the remainder of the meeting.

- (b) BOA-14-06: **3812 MADISON AVENUE** Loretta Calhoun requests variances from the minimum side and rear setback requirements. **Variance:** An existing attached garage to a single family dwelling encroaches 4.9 feet into a 10-foot side setback and 7.7 feet into a 30-foot rear setback. This case was continued from the March 24, 2014 meeting. Section 30-7-3.2 - Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-North Holden Road.  
**(GRANTED)**

Nicole Smith stated that the applicant is requesting variances for an existing attached garage to a single family dwelling which encroaches 4.9 feet into a 10-foot side setback and 7.7 feet into a 30 foot rear setback. This case was continued from the March 24, 2014 meeting. The property is located on the north side of Madison Avenue east of North Holden Road and is zoned R-3. The property contains a single family dwelling with an attached garage. The garage was constructed in 2008. The owner recently applied for a permit to construct an attached addition to the other side of the house and it was noted at that review time the existing attached garage was too close to the side and rear lot lines. The permit records from July 8, 2008 indicate the applicant applied on July 1, 2008 for a permit. On July 10, 2008 a record for this property was removed from the permit system. The permit did not receive zoning approval until July 15, 2008. Typically a residential permit of this nature would be completed within 3 working days. In this case, 15 days passed before zoning approval. Inspections provided a copy of a permit record that was signed by zoning staff on July 15, 2008 with an attached site plan that did indicate the garage was attached. They also provided a copy of an electrical inspection report for the property dated September and October 2008. This report indicated the garage was detached. Exhibit C was submitted by the applicant. This exhibit contains a specification and material contract between the owner and the contractor that constructed the garage dated June 4, 2008. This contract indicated the intent was to attach the garage. 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 matter.

Loretta Calhoun, the property owner, asked that her representative, Jeffrey Arnette, be allowed to speak on her behalf.

Jeffrey Arnette, 3012 Stratford Drive, New Age Builders, stated they are constructing the new addition to the home. The owner had always intended that the garage be attached to the house. Photographs indicate the garage location is where it has to be able to get on the lot and be accessible to the home.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Ms. Huffman moved that in regard to BOA-14-06, 3812 Madison Avenue, that the findings of fact be incorporated and the Zoning Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of the ordinance. If the applicant complies with the provision of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because proper permits were requested in 2008 and approved. The hardship which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the hardship was a result of the city of Greensboro review process. The hardship results from the application of this ordinance to the property because the permit was approved and the location of the garage most logical, due to the rectangular shape of the lot and the existing driveway. The hardship is not the result of the applicant's own actions because they proceeded upon approval of the permit in good faith. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because the garage was built in good faith and placed exactly where it was requested to be. The granting of the variance assures the public safety and welfare and does substantial justice because the garage is in harmony with the neighborhood and was built in good faith, seconded by Mr. Forde.

Chair Jones made a friendly amendment that in terms of the peculiar nature of the property, noting its rectangular shape and the testimony that there was really nowhere else to locate the garage on the property. Ms. Huffman accepted the family amendment.

The Board voted 7-0 in favor of the granting of a variance. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman, Wood. Nays: None.)

- (c) BOA-14-07: **1410 ASHER DOWNS DRIVE** Alaza Nassam requests variances from a minimum separation requirement and a side setback requirement. This case was continued from the March 24, 2014 meeting. **Variance #1:** An existing detached carport is located 1.25 feet from the principal structure and is required to be a minimum of 5-feet from the structure, thus requesting a separation variance encroachment of 3.75 feet. Section 30-8-11.1 (E). **Variance #2:** The same carport has an overhanging eave that encroaches 1-foot into a 3-foot side setback. Section 30-7-1.4 (C) 6.CD-RM-18 (Residential Multi-family), Cross Street-Yanceyville Street. **(DENIED)**

Nicole Smith stated the applicant request variances from a minimum building separation requirement and a side setback requirement for an existing detached carport. Variance #1: The carport was located 15 inches from the house and requires a minimum 5 foot separation. Variance #2: The carport overhang also encroaches one-foot into a three-foot side setback requirement. The property is located on the south side of Asher Downs Drive east of Yanceyville Street and is zoned CD-RM-18 (Conditional District- Residential Multi-family). The lot contains a two-story house and a detached carport. Records reflect the house was constructed in 2007. The lot is approximately 55 feet wide by 110 feet deep and contains approximately 6,050 square feet. The rear yard is fenced with wooden privacy fencing. In mid January, the applicant applied for a permit to construct a small storage shed. At that time, zoning review noted the carport was in violation of minimum separation and setback requirements. City records reflect that a permit was not requested for the detached carport. The carport is 21 feet x 16 feet and contains 336 square feet of covered area. The carport is less than 15 feet tall and is located behind the existing house. In their application, the applicant mentions that the carport was placed there, prior to the recent purchase of the applicant. The applicant is requesting the variances so they may keep the carport in its current location. 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 or in opposition to the request.

Phil Barbee, Habitat for Humanity, 617 N. Elm Street, was sworn in and stated that he is speaking on behalf of the owners of the property. The applicants qualified to become Habitat for Humanity homeowners, which means that they not have been able to qualify for a commercially available loan and in the process they had to work 300 hours in sweat equity along with other volunteers before they qualified to purchase the house. Habitat acquired the house from Bank of America through an REO program last year. The house was built in 2007. The carport is a metal structure and is substantially built and is placed close to the house. The property has a small back yard. Complying with the ordinance would represent a hardship to the property owners due to the cost of tearing down the existing carport and moving it.

In response to questions Ms. Nassam stated that none of her neighbors had complained.



Ms. Huffman stated that the photographs show a lot of mattresses within the carport area and she considers that a fire hazard. Ms. Nassam stated that the mattresses have been removed. Ms. Wood stated that she visited property today and she saw only three mattresses inside the carport and it looked like they were moving them out. Ms. Hayworth stated that since they are not using the carport for parking a vehicle, then what purpose does it serve? Ms. Nassam stated that they do park the vehicle within the carport.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

## **Discussion**

Ms. Eckard stated that she is a little frustrated because we work with professionals you depend on them to find out what the law is and what you can and cannot do. In this case she feels that Habitat for Humanity should bear all expenses that might be incurred by the applicant because they did not catch the problem of the garage to close to the house. She is also concerned about safety issues. Ms. Hayworth stated she is also surprised that the problem was not caught earlier. Ms. Huffman stated that she is also concerned and cautious about the storage of mattresses in this area. She would be voting against this variance. Ms. Wood stated that she visited the property today and did not see mattresses on the ground but there were three mattresses in the bed of the truck. She will vote to approve the variance.

Mr. Forde moved that in regard to BOA-14-07, 1410 Asher Downs Drive, that the findings of fact be incorporated and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, unnecessary hardship result to the property by applying strict application of the ordinance because the property will not be able to be used to its fullest potential. The hardship of which the applicant complains results from the conditions that are peculiar to the property and the circumstances related to the applicant's property because of the size of the lot and that construction of the structure was constructed by others. The hardship results from the application of this ordinance to the property because the structure constructed by others was placed too near the existing house. The hardship is not a result of the applicant's own actions because others placed the structure, which is in violation on the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows for the continued use of the property in a manner consistent with its purpose. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the continued use of the property by the owners and is common to residential accessory uses in the surrounding community, seconded by Mr. Jones. The Board voted 4-3 in favor of the granting of a variance. (Ayes: Jones, Nimmer, Forde, Wood. Nays: Eckard, Hayworth, Huffman.) **DENIED**

Chair Jones stated that in regard to variance #2, he would move to approve the variance and incorporating the findings of fact in the initial motion with respect to variance #1, seconded by Mr. Forde. The Board voted 5-2 in favor of the granting of a variance. (Ayes: Jones, Nimmer, Forde, Wood. Nays: Eckard, Hayworth, Huffman.) **DENIED**

- d) BOA-14-08: **30 KEMP ROAD EAST** Marc Isaacson, Attorney for Nancy Revzen requests a variance from a minimum side setback requirement. **Variance:** An existing attached garage to a single family dwelling encroaches 1.7 feet into a 10-foot side setback. This case was continued from the March 24, 2014 meeting. Section 30-7-3.2 - Table 7-1, Present Zoning-R-3 (Residential Single-family) Cross Street-Starmount Drive. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for an existing attached garage to a single family dwelling which encroaches 1.7 feet into a 10-foot side setback. This case was continued from the March 24, 2014 meeting. The property is located on the eastern side of Kemp Road East southwest of Starmount Drive and is zoned R-3. The property contains a single family dwelling with an attached garage. The garage was thought to have been constructed approximately 30 (or more) years ago. The current owner did not construct the garage. They are requesting a variance to correct an existing encroachment. The 1982 zoning Ordinance for certain properties which were zoned 120S in regards to setbacks stated: Minimum side yards occupied by one or two-story structures shall be 10 percent of the plot width but no less than five (5) feet except that any side yard abutting a street shall be at least fifteen (15) feet. The sum of two side yards shall be no less than twenty-five (25) percent of the plot width but not less than ten (10) feet; Either way, the side setback could not have been less than 10 feet. Exhibit 3 contains BOA case minutes and materials from a previous BOA meeting dated November 22, 1982. The drawing reflects that the request was for a side encroachment for an addition to an attached carport in about the same location as the current garage. The case was withdrawn and no action was taken. The lot is rectangular shaped with slight angles on each side lot line. It is just a guess that perhaps that owner decided to withdraw the variance and build the garage to meet setbacks. Due to the angle on the southern side lot line the front portion of the garage may have been a survey error. The front portion of the garage is located 8.3 feet from the side property line. The remaining rear portion of the garage meets the 10 foot setback. 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 matter.

Marc Isaacson, attorney representing the applicant, stated that this variance request is to allow a small encroachment into a side yard setback, that arises due to an attached garage that was constructed of 30 years ago. This was not discovered until a few months ago when a perspective purchaser of the home had a survey prepared prior to closing. The property owners never had any Notices of Violation and no known neighborhood complaints. The ordinance requires a 10 foot side yard setback in this zoning district. The property lines are angled, but the house is situated squarely to the street. This is where the issue arises so it is not the entire alignment of the garage that is encroaching, it is just the front corner. The garage would have to be removed if the ordinance is strictly applied. He is asking that the Board approve the variance.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Ms. Huffman moved that in regard to BOA-14-08, 30 Kemp Road East, that the findings of fact be incorporated and the Enforcement Officer be overruled and the variance granted based on

the following: There are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, unnecessary hardship would result to the property by applying strict application of the ordinance because the garage has been in place for approximately 30 years and has never received a complaint from the neighbors and was not built by the applicant. 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 the lot is rectangular in shape with slight angles on each side yard line. The hardship results from the application of the ordinance to the property because the placement of the garage was thought to be compliant with the processes in 1982. The hardship is not the result of the applicant's own actions because it appears that a slight encroachment was made in the placement of the garage due to the severe side line angles of the lot. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit because the garage is in harmony with the neighborhood. The granting of the variance assures the public safety and welfare and does substantial justice because the approval of the variance corrects a 30 year old issue, seconded by Ms. Hayworth. The Board voted 7-0 in favor of the granting of a variance. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman, Wood. Nays: None.)

- (e) BOA-14-09: **805 DOVER ROAD** Marc Isaacson, Attorney for Sun Capital, Inc. requests a variance from a minimum front setback requirement. **Variance:** The front porch for a house that is under construction will encroach 5 feet into a 25-foot front setback. This case was continued from the March 24, 2014 meeting. Section 30-7-3.2 - Table 7-1, Present Zoning-R-3 (Residential Single-family), Cross Street-Starmount Drive. **(WITHDRAWN)**

At this time a 10 minute break was taken between 6:55 and 7:08.

### **SPECIAL EXCEPTION**

- (a) BOA-14-10 410 MEMPHIS STREET Johnny and Shirley Richardson request a Special Exception as authorized by Section 30-8-10.1(B) to allow family care home separation encroachments from the current one-half mile development spacing standard. This case was continued from the March 24, 2014 meeting. Special Exception Request #1: A proposed family care home will be 65 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 408 Memphis Street when 2,640 feet is required. Special Exception Request #2: The family care home will also be 1,840 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1104 W. Meadowview Road when 2,640 feet is required. **Special Exception Request #3:** The family care home will also be 1,998 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2214 Atlanta Street when 2,640 feet is required. Present Zoning-R-5 (Residential Single-family), Cross Street-Atlanta Street. **(GRANTED)**

Loray Averett stated that the applicant is proposing to locate a family care home which is too close to three existing family care homes. This case was continued from the March 24, 2014 meeting. Special Exception Request #1: A proposed family care home will be 65 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 408 Memphis Street when 2,640 feet is required. Special Exception Request #2: The family care home will also be 1,840 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1104 W. Meadowview Road when 2,640 feet is required. Special Exception Request #3: The family care home will also be 1,998 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2214 Atlanta Street when 2,640 feet is required. The lot is located on the south eastern side of Memphis Street and is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at this location and it is too close to three other existing family care homes which have been described in the requested action section. Privilege license records reflect all three of the existing family care homes are in operation and required renewals are in compliance. Staff recently visited the sites and the homes were occupied. One home is located north of the proposed location, one is located west of Kersey and Floyd Street and the nearest existing home is located one lot southeast of the proposed location and fronts on Memphis Street as well. 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 opposition to the request.

John Richardson was sworn in and stated that he would bet Mr. Goergen speak first.

Emil Goergen, IV, Licensing Coordinator for Community Support Service, was sworn in and stated they are the supervising agency for the Richardson home. They are a therapeutic foster care agency and an alternative family living service. The home is currently licensed as a therapeutic foster home which does not require any zoning approval. Currently, there are two individuals in the home that have lived there for seven and 15 years and they were placed there prior to turning 18 years old, which is why the home is allowed to be a licensed therapeutic foster home with these individuals in their home. The individuals have now reached the age of majority in the state of North Carolina. AFL consumers cannot reside in a therapeutic foster home after the age of 18. They are currently trying to get the correct license in place at this time. He submitted 24 notarized letters of support from neighbors. Mr. and Mrs. Richardson are residents of the home and are not taking shifts or leaving the residence. The type of permit they receive is a 5600-F and that would be limited to two persons at the residence.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Chair Jones stated that he feels this is a true special exception because of the classification of the home for the better part of 12 or more years, it did not have to comply and all the other groups homes had to have the separation. And because of a change in the law it was in favor of this requirement. Therefore, he will support the Special Exceptions being requested.

Mr. Forde moved that in regard to BOA-14-10, 410 Memphis Street, that the findings of fact be incorporated for each Special Exception, and the Enforcement Officer be overruled and the Special Exceptions be granted based on the following: The Special Exception may be granted by the Board of Adjustment if evidence presented by the applicant persuades it to reach the following conclusions: the special exception is in harmony with the general purpose and intent of this ordinance and preserves its spirit because the intent of the ordinance is to prevent the clustering of family care homes and one neighborhood. Although the current applicant is required to identify it as a family care facility, it is actually used more closely resembling that of a single family home. The granting of the Special Exception assures the public safety and welfare and does substantial justice because it allows for the continuing use and occupancy of the property in its current use and provides care needed in our community to the individuals housed there. This approval is conditioned upon the 5600-F licensing procedure and is conditioned further to only two individuals. This motion is made with respect to Special Exception requests #1, #2 and #3, seconded by Ms. Hayworth. The Board voted unanimously in favor of the granting of the Special Exception. The Board voted 7-0 in favor of the granting of a variance. (Ayes: Jones, Nimmer, Hayworth, Eckard, Forde, Huffman, Wood. Nays: None.)

Chair Jones stated that he wished to recognize the Board's new Alternate, Ms. Blackstock, who is observing today's procedures.

## NEW BUSINESS

### 1. VARIANCE

- (a) BOA-14-11: **1428 SOUTH ELM-EUGENE STREET** Joseph P. Hodgin, III, requests a variance from a minimum street setback requirement. **Variance:** A proposed detached warehouse/storage building will encroach 15 feet into a 25-foot setback adjacent to Sussman Street. Section 30-7-6.1 – Table 7-15, Present Zoning-HI (Heavy Industrial), Cross Street-Sussman Street. **(GRANTED)**

Nicole Smith stated that a proposed storage/warehouse building will encroach 15 feet into a 25-foot setback requirement adjacent to Sussman Street. The property is located at the southwestern intersection of South Elm-Eugene Street and Sussman Street. The owner and occupant of the property is Happy Rentz, Inc. The lot contains an existing office/warehouse building. The applicant is proposing to locate a 30 foot by 80 foot warehouse building for additional storage. The building will be 10-feet from the property line adjacent to Sussman Street. The applicant applied for and was granted a variance for a similar, but larger encroachment in 1987. That request was for a 6-foot encroachment into a 35-foot centerline setback adjacent to Sussman Street. The actual setback of the building would have been 4 feet from the property line and 29 feet from the centerline of Sussman Street. The construction would have to commence within 12 months of the granting of the variance. The applicant did not construct the building. The field photo labeled as 6-A shows a severe elevation drop of at least 12 feet or more along the Sussman Street side. That property line is also heavily landscaped and fenced. Due to the severe topography, landscaping and existing fencing, it is likely the proposed building will not be viewed from the Sussman Street right-of-way.

The lot is a corner lot and tax records indicate the property is approximately 0.89 acres or 38,768 square feet. Records reflect the business has been established at this location since 1974. The applicant is aware if the variance is granted, the proposed construction for this property will be required to obtain TRC approvals prior to obtaining a building permit. Heavy Industrial District is primarily intended to accommodate a wide range of assembling, fabricating, and manufacturing activities. The district is established for the purpose of providing appropriate locations and development regulations for uses which may have significant environmental impacts or require special measures to ensure compatibility with adjoining properties.

Joe Hodgins, 1428 S. Elm-Eugene Street, the property owner, was sworn in and stated that his grandfather was traded this property back in the mid-1960s when the apartments on the north side of Sussman Street were built. He does not know whether the street has been widened or not.

Mr. Nimmer asked where the new building would be placed on the property. Mr. Hodgins stated that they would construct the building in the similar location that was previously approved. He indicated the placement of the building would be on the side of the property adjacent to Sussman Street based on his exhibit survey. In response to a question by Ms. Wood, Mr. Hodgins stated that the back wall of the building would be 10 feet tall and is a single sloped building so that it matches the side profile of the existing building, and the front of the building will be 13 feet tall.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Ms. Huffman moved that in regard to BOA-14-11, 1428 S. Elm-Eugene Street, that the findings of fact be incorporated and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from the carrying out the strict letter of the ordinance. If the applicant complies with the provision of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the shape of the lot and 12 foot severe elevation drop make it difficult to locate the proposed storage warehouse building. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the property because security has been an issue on the property. Also, the building will serve as storage and allow some clean up of the property along with a better vehicular travel flow internal to the site. The hardship results from the application of this ordinance to the property because the applicant will be able to improve the visual condition of the property. The hardship is not the result of the applicant's own action because the shape and elevation of the property has been in existence since it was developed. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because allowing the storage warehouse building will help preserve security on the property and improve internal vehicular travel flow. The granting of the variance assures the public safety and welfare and does substantial justice because the impacts for the area will be less and better enhance the property, seconded by Ms. Hayworth. The Board voted 7-0 in favor of the granting of a variance. (Ayes: Jones, Nimmer, Hayworth, Eckard, Forde, Huffman, Wood. Nays: None.)

## APPEAL OF NOTICES OF VIOALTION

- (a) BOA-14-12: **200 EAST NEWLYN STREET** Brian T. Pearce, Attorney for Jeffrey Hyde appeals a Notice of Violation concerning the use of this property for a commercial photography business in a single family residential zoning district and also requests an interpretation that the applicant has occupied the Property as a Home Occupation permitted by the Greensboro Development Ordinance. Table 8-1-Permitted Uses, Sections 30-8-8.5, 30-8-11.5 and 30-15-9, Present Zoning-R-5 (Residential Single-family), Cross Street - Georgia Street **(CONTINUED TO MAY MEETING)**

Jeff McClintock, City Zoning Official, was sworn in for testimony concerning Case #14-13.

- (b) BOA-14-13: **28 BATTLEGROUND COURT** Greg Berry, General Manager for Ferguson Enterprises, Inc. appeals a Notice of Violation concerning exceeding the allowable amount of window signage for a business. Table 14-1, Present Zoning-C-M (Commercial Medium), Cross Street - Winstead Street. **(ENFORCEMENT OFFICER OVERTURNED)**

Loray Averett stated that the applicant is Greg Berry for Ferguson Enterprises. They are appealing a Notice of Violation concerning exceeding the allowable amount of window signage for a business. Supporting documentation is Exhibit #1, a copy of the Notice of Violation dated February 17, 2014. Exhibit #2 is a copy of service that the applicant received the Notice of Violation on or around the 19<sup>th</sup> 2014. Exhibit #3 is a zoning map of the property which shows the property is on CM (Commercial Medium). Exhibit \$4 is a copy of a complaint that was received in the Zoning office on or around January 26, 2014 concerning the window signage at 28 Battleground Court. Exhibit #5, table 14 – 1, ordinance standards for signs allow a valid permit including standards window signs, which state “the aggregate area of all window signs is limited to 25% of the window area.” Exhibit #6, Section 30-8-8.5, 30-8-11.5 and 30-15.9, which states” A sign that is painted on, affixed to or designed to be visible through the window, excluding displays of merchandise.” Exhibit #7 are 5 field photos that were taken April 9, 2014. The property is located on the north side of Battleground Court, South of Winstead Street. The ordinance wants businesses to place signage in their windows, not to exceed 25% of the aggregate window area. In late January, the Zoning Officer received a complaint that this building had covered more than 25% of the aggregate window area. The Enforcement official followed up on the complaint and issued a notice of violation to the applicant. The Enforcement official, Jeff McClintock is present to testify.

Greg Berry, Ferguson Enterprises, was sworn in and stated that they moved their location for their parking access in July. After moving into the new building they discovered that there is heat coming into the front windows and they felt that some kind of sun block shade would be necessary to cut down on their utility bill. After speaking with several companies concerning what type of shading could be used, they chose to use the type shown in the photographs. He feels that the complaint came from a signage company that was not chosen to do the work on the sun screening for the windows. He produced photographs of several other companies that also use this type of sun screening in their windows, probably for the same purpose - to cut

down on their utility bills because of the heat generated by the sun shining on those windows. He also produced letters from his neighbors in support of the appeal.

Ms. Huffman asked what are the items shown in the pictures? Mr. Berry stated that they are products that consist of copper fittings, plastic fittings, and water heaters and these are items that are sold in the store.

Chair Jones stated that in this case the violation is for too much coverage of the sign without a permit and the standards on those violations, if you were to apply for a permit what sort of process would you be looking at? He also asked if any of the buildings shown in the photographs produced by Mr. Barry have sign permits that allow them to have that much coverage?

Jeff McClintock, Enforcement Officer, stated that the other locations shown in the photographs would not have a permit for the window signs because one is not required because it is covered in the section of signs that are allowed without a permit. He explained that this notice of violation as described, was the result of an email complaint. He explained the process he went through to provide notice of violation. Speaking with several businesses on the east side of Battleground Avenue he has learned that many of those businesses also complain about afternoon sun causing extreme heat radiating from their East facing windows. Window tinting of this type is not regulated by the Land Development Ordinance (LDO), at least not under the Sign Section. Blocking the afternoon sun is not something that is regulated by the Sign Ordinance, but in this situation and in the photographs provided, the graphics used by the plumbing company show water heaters, pipe fittings that appear to be copper and plastic, which are commonly known to be used in the plumbing industry. In Section 30-15-15, the LDO defines a sign as: "any object by its display or structure or part thereof that is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product service event or location by any means including but not limited to words, letters, and pennants, banners, implements, trademarks, trade names, insignias, numerals, figures, designs, symbols, fixtures, colors, illumination, or projected images or any other attention directing device." The LDO further defines a window sign as: "a sign that is painted on, affixed to, or designed to be visible through a window, excluding displays of merchandise." So in this particular situation it was determined that because of the graphics, the definition for a window sign with graphics showing plumbing supplies would be applicable to the maximum 25 percent allocation that is permitted.

Ms. Huffman stated that her argument relates to, "excluding displays of merchandise", which in this case he is displaying merchandise whether he stacks up 25 water heaters in the window or displaying it on a sign, is the technicality concern.

Chair Jones stated that the applicant feels this is arbitrary enforcement and asked if there may be an alternate means of compliance.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Chair Jones pointed out that the ordinance has a definition for a window sign, so anything under that definition should apply to the definition of the sign and it does not provide clarity about a physical or non-physical display of merchandise being a sign.



Mr. Forde moved that in regard to BOA-14-13, 28 Battleground Court, that the findings of fact be incorporated and the Enforcement officer's Notice of Violation be overturned following reasons: The property is located at 28 Battleground Court and is within the corporate limits of the city of Greensboro and subject to its jurisdiction and application of its ordinance. At the time the notice of violation was issued a Land Development Ordinance was not applicable to window signage which was installed on the building. Section 30-14-6.2, (Table 14-1) is not applicable to building because the material affixed to windows constitute a display of merchandise. The Board accepts the following testimony and evidence as true: the purported violator affixed sun shades to his windows which displayed his merchandise. The greater weight of the evidence does not show that the Notice of Violation does not comply with the LDO windows/signage requirements, seconded by Hayworth. The Board voted 7-0 in favor of the granting of a variance. (Ayes: Jones, Nimmer, Hayworth, Eckard, Forde, Huffman, Wood. Nays: None.)

**OTHER BUSINESS**

Counsel Carruthers stated that at the May meeting it is anticipated that there could other matters coming before the Board that would be in a similar vein to what was just discussed.

Counsel Carruthers also noted that the Code of Ordinances has been modified and appeals concerning nuisances such as overgrown lots, or vehicles parked on a lot may be appealed to Board of Adjustment, as well as a privilege license appeals. Currently a privilege license appeal that applies to Zoning comes to this Board, but other than zoning would go to City Council, which would create an unusual situation where an appeal would go to two different bodies for different decisions. These appeals tend not to occur frequently, however, the process for appeal will be the Board of Adjustment.

**ACKNOWLEDGEMENT OF ABSENCES**

None

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 8:36 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd

**GREENSBORO BOARD OF ADJUSTMENT****May 27, 2014**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, May 27, 2014 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, Jeff Nimmer, Patti Eckard, Cyndi Hayworth, Frank Forde, Cheryl Huffman, Adam Marshall. Planning Department staff were: Loray Averett; and Tom Carruthers, Terri Jones and Becky Jo Peterson-Buie, 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 April 28, 2014 minutes with a few minor changes noted to the Court Reporter, seconded by Ms. Hayworth.

Mr. Forde stated that he has an issue with a case that was heard at the April meeting concerning BOA-14-07, 1410 Asher Downs Drive. He has reviewed Roberts Rules of Order and asked if it is possible to get a reconsideration of this particular matter.

Counsel Carruthers stated that a motion to reconsider is permitted under Roberts Rules and can be made either by majority vote and then the time to reconsider could be set in the future and would be required, in this instance, since it must be re-advertised. Mr. Forde asked if he should disapprove the minute in some manner of speaking to bring this back up. Counsel Carruthers stated that the minutes are accurate in what had been reported in that particular meeting. Therefore, the minutes not change the actual vote or outcome and would not include a motion to reconsider. If Mr. Forde can prevail upon one of the other members who was on the prevailing side to make that motion, it could then be considered.

The Board voted unanimously in favor of the original motion in regard to the minutes.

**SWEARING IN OF STAFF**

Loray Averett, Ron Fields and Rodney Covington were sworn in for their testimony at this meeting.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that BOA 14-12 has been withdrawn by written notice that was received this morning. In regard to BOA 14-14, 2401 Marston Road, there is an interpreter present for the applicant and there has been some discussion of a possible continuance request.

Bac Van Nguyen and the interpreter, Hlen Nguyen, were sworn in and asked that the applicant be allowed to continue this matter. He would like a little more time to be able to gather information related to this matter.

After a short discussion Mr. Forde moved that BOA 14-12 would be heard today at the request of the applicant through his interpreter, seconded by Mr. Jones. The board voted unanimously in favor of the motion. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman and Marshall. Nays: None.)

Bulent Bediz was sworn in and stated that his attorney is not yet at the meeting and he may have to ask for a continuance.

Chair Jones advised that the Board go through the agenda and see if Mr. Bedez's attorney would arrive in time for the case to be heard.

## **OLD BUSINESS**

### **VARIANCE**

- (a) **BOA-14-12: 200 EAST NEWLYN STREET** Brian T. Pearce, Attorney for Jeffrey Hyde appeals a Notice of Violation concerning the use of this property for a commercial photography business in a single family residential zoning district and also requests an interpretation that the applicant has occupied the property as a Home Occupation – permitted by the Greensboro Development Ordinance. This case was continued from the March 24, and April 28, 2014 meetings. Table 8-1-Permitted Uses, Section 30-8-8.5, 30-8-11.5 and 30-15-9, Present Zoning R-5, (Residential) Single Family) Cross Street - Georgia Street.  
**(WITHDRAWN )**

## **NEW BUSINESS**

### **VARIANCE**

- (a) **BOA-14-14: 2401 MARSTON ROAD** Bac Van Nguyen requests a variance from a minimum thoroughfare street setback requirement. Variance: A proposed detached storage building will encroach 15 feet into a 35 foot setback adjacent to West Cone Boulevard. Section 30-8-1.1(B)B and Table 7-1, Present Zoning R-7 (Residential Single Family) Cross Street- West Cone Boulevard.  
**(GRANTED)**

Loray Averett stated that the applicant is requesting a variance for a proposed detached storage building which will encroaches 15.0 feet into a 35-foot setback requirement adjacent to West Cone Boulevard. Several Exhibits were provided for the Board's information. The front property line of this lot is located on the Marston Road frontage and the West Cone Boulevard frontage is established as a side property line. Thus, the proposed detached building is not located in front of

the principal dwelling. The driveway is located on the West Cone Boulevard frontage and there is a wrought iron fence with a gate for pedestrian access located on the Marston Road frontage. The house is one story and the building height is proposed to be in context with the house. The storage building height is proposed to be 11 feet. The building will be 12 x 20 feet for a total area of 240 square feet. 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 matter.

Bac Van Nguyen, was sworn in, as well as his interpreter, and stated that he would like to have a storage building to store the lawnmower and yard tools for this property.

Ms. Huffman asked if there is anywhere else on the property that the building could be constructed. Mr. Nguyen stated that he is concerned about the flood zone and this is the highest part of the property and the best place to put it. In response to other questions, he stated that there would not be any trees cut down on the property. Ms. Averett stated that the property is heavily wooded and landscaped and the building would not be easily viewed from the street.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Mr. Forde moved that in regard to BOA-14-14, 2401 Marston Road, that the findings of fact be incorporated and the Zoning Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because of the unique configuration of the lot and the placement of the residence on the lot and leaves very little other area for the location of the proposed storage building. 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 of the unique configuration of the lot, the house placement and adjoining residences. The hardship results from the application of this ordinance to the property because of the application of the ordinance for the determination of the established front building line. The hardship is not the result of the applicant's own actions because the applicant did not locate the residence on the lot nor place the sewer line or control other utilities on the property. The variance is in harmony the general purpose and intent of this ordinance and preserves its spirit because it allows the storage building to be placed in the most appropriate place on the lot. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the full use of the applicant's property in the most practical way, seconded by Mr. Jones. The Board voted 7-0 in favor of the granting of a variance. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman, Marshall. Nays: None.)

At this time Attorney Smith, representing Bulent Bediz and others, came forward and stated that because of recent site visits by City Enforcement Officials, they need more time to gather information. He would, therefore, ask for a continuance in these two matters which are further on the agenda.

Counsel Carruthers asked if he could confer with Attorney Smith outside and was allowed to do so. It was determined that the next case would be heard.

- (b) **BOA-14-15: 605 KEMP ROAD WEST** Donald and Elizabeth Stovall request a variance from a minimum rear setback requirement. Variance: A proposed attached addition will encroach 10.7 feet into a 30 foot rear setback. Table 7-1, Present Zoning – R-3 (Residential Single family), Cross Street – East Erskine Drive. **(GRANTED)**

Loray Averett stated the applicant requests a variance from a minimum rear setback requirement. The proposed addition will encroach 10.7 feet into a 30 foot rear setback. Supporting documentation was supplied for the Board members' information. The property is located on the western side of Kemp Road West, south of West Friendly Avenue and is zoned R-3. The property contains a single family dwelling which was constructed in 1953. The lot is 0.37, or 16,117 square feet in area. The property owners also own a lot containing 0.11 acres, adjacent to the south of the subject property. However, that lot is not included in this request and no portion of that house has any bearing to that lot that is independent to the south. The southern corner of the rear portion of the existing house encroaches 3.1 feet into the 30 foot rear setback requirement. Records do not reflect that any variance was ever granted to this property. The addition is proposed to be constructed on the northwestern corner of the existing house. The property is oddly shaped with a severe property line real angle along the rear portion of the lot. The rear property line is landscaped and fenced. The existing dwelling is located approximately 58 feet from the front property line, thus, limiting the rear area for additions. The R-3, Residential Single-Family District is primarily intended to accommodate low density and the overall density in the R-3 would typically be 3 units per acre or less.

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

Mr. Forde stated that it seems that this happened in the past and he is not quite sure he understands, but it seems that the violation occurs in a complaint-driven system when a complaint is made and no complaint has been made, so why is there a violation? Becky Jo Peterson-Buie stated that there is no variance necessary on the pre-existing condition that was just discovered, but for the addition that they are proposing, a variance would be necessary.

Elizabeth Stoval, the property owner, was sworn in and stated that they purchased the home in 2012 and have done extensive renovations to the existing floor plan. They did intend to add an addition off the back for use as a family room and when the architect came on-site he realized that there was not enough space without receiving a variance. The addition would not have any adverse impact on the neighbors because of the location of the rear of the house. There is a privacy fence around the rear of the property which would also block the view from the neighbors. There has been no opposition related to them by the neighbors.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Mr. Jones moved that in regard to BOA-14-15, 605 Kemp Road West, that the findings of fact be incorporated and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of 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 the applicant will be unable to add the family room addition, which is a common feature for most homes. The hardship of which the applicant complains results from the conditions that are peculiar to the property and the unique circumstances related to the applicant's property because the home was built in 1953, over 60 years ago, and the lot is odd shaped. The hardship results from the application of this ordinance to the property because the ordinance requires the 30 foot setback. The hardship is not the result of the applicant's own actions because the applicant did not build the home. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it provides for the feature of the addition to the home. The granting of the variance assures the public safety and welfare and does substantial justice because it provides for a very common feature with a minimum encroachment into a rear setback requirement, seconded by Ms. Hayworth. The Board voted unanimously in favor of the granting of a variance. (Ayes: Jones, Nimmer, Forde, Marshall, Eckard, Hayworth, Huffman. Nays: None.)

Counsel Carruthers stated that Attorney Smith would like to address the Board concerning BOA-14-18A and 18B.

Attorney Norman Smith stated that he appreciates the opportunity to confer with Counsel Carruthers and they have agreed, subject to the Board members' approval for this matter to be continued to the June 2014 meeting. He feels they will be ready at that time to proceed.

Chair Jones asked if there was anyone wishing to speak in favor or in opposition to a possible continuance of this matter.

Ms. Hayworth asked if it is really necessary to continue the matter. She feels that the attorney has had over 30 days to go over the information and both the applicant and his attorney are in attendance today.

Brian Higgins, 1007 Haywood Street, was sworn in and stated that he would reserve his comments until the case is actually heard.

Chair Jones moved that the matter concerning BOA-14-18A and 18B be continued to the June meeting, seconded by Mr. Marshall. The Board voted 4-3 in favor of the continuance to the June 23, 2014 meeting. (Ayes: Jones, Marshall, Eckard and Forde. Nays: Hayworth, Huffman and Nimmer.)

## **SPECIAL EXCEPTION**

- (a) **BOA-14-16: 211 WEST BESSEMER AVENUE** Tracy Lathrop and David Shub request a Special Exception as authorized by Section 30-4-14.4 and 30-9-4.6. *Special Exception #1:* A proposed detached garage will encroach 8.7 feet into a 10 foot side setback requirement. Table 7-2. *Special Exception #2:* The same garage will have an overhanging eave that

encroaches 2.58 feet into a 3 foot side setback. Section 30-7-1.4 (C)6. The Historic Preservation Commission has recommended these Special Exceptions. Present zoning R-5 (Residential Single family), Fisher Park Historic District, Cross Street – Virginia Street. **(GRANTED WITH CONDITIONS)**

Loray Averett stated that the applicant is requesting a Special Exception for a proposed detached garage that will encroach 8.7 feet into a 10 foot side setback requirement. The same garage will have an overhanging eave that encroaches 2.58 feet into a 3 foot side setback. Supporting documentation was supplied to each Board member. The Greensboro Historic Preservation Commission has reviewed this request and recommends the granting of the Special Exceptions in this matter. Work was commenced on this property without a proper Certificate of Appropriateness or building permit. The property owner was out of state and was unaware of some of the work that was done and when discovered, she immediately came to the Planning Department to find out what could be done to correct these errors and violations. Enforcement processes were implemented which consisted of the issuance of a Notice of Violation, a civil penalty and a letter, etc. Revised drawings were submitted to staff to become compliant with the ordinance. At the April 30<sup>th</sup> HPC meeting, the applicant received a recommendation for a Special Exception in regard to the building side setback encroachments. The building was constructed on a portion of the same footprint and the expansion portion was constructed inward, away from the property line. The rear elevation of the property changes and dramatically slopes downward in the location where the building expansion is being constructed. The building will be one story and approximately 19 feet in height. It is compatible to the existing dwelling. Single family residences are existing in the neighborhood and zoned R-5 for residential single family uses. The R-5 district is primarily intended to accommodate low density detached residential developments and typically have 5 units per acre or less. Mike Cowhig, City Planner is available for questions.

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

Tracy Lathrop, 211 W. Bessemer Avenue, the property owner was sworn in and stated that she has owned this property for 15 or 20 years and she lived in New Jersey. Before moving back to North Carolina she designed a larger garage, as the existing garage is very small and her car will not fit into it. She was unaware that the contractor had pulled the garage forward to get better footings and that he had not applied for the proper building permit. There is no parking on Bessemer Avenue and she has 3 cars and has a 9 foot driveway so it was necessary to expand the size of the exiting garage. After she fired the contractor, she hired another contractor so that the garage will mirror the existing house. It is common in this neighborhood for garages to be on the property line. In response to questions, she relayed that she has spoken at the Fisher Park Neighborhood Association and there was a lot of support for the current design. There is a large tree in the rear yard near the garage that she wishes to preserve. The existing driveway is in very poor shape, so the driveway will be removed and a gravel driveway will be installed. This is also very common in this historic neighborhood.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Mr. Forde moved that in regard to BOA-14-16, 211 West Bessemer Avenue, that the findings of fact be incorporated and the Enforcement Officer be overruled and the Special Exceptions granted based on the following: The Special Exception is in harmony with the general purpose and intent of this ordinance and preserves its spirit because this is an historical district and the

Historic Preservation Commission has approved the location and design associated with the Special Exception. The granting of the Special Exception assures the public safety and welfare and does substantial justice because as determined by the HPC, the proposed addition to the garage is in keeping with the historic nature of the neighborhood and allows for the modern use of a historic structure. The motion conditions the detached garage to a one-story 3-car bay, seconded by Mr. Jones. The Board voted 7-0 in favor of the granting of both Special Exceptions. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman, Wood. Nays: None.)

- (e) **BOA-14-17: 912 NORTH EUGENE STREET** Rachel and Blair Percival requests a Special Exception as authorized by Section 30-4-14.4 and 30-9-4.6. *Special Exception:* A proposed attached bedroom addition will encroach 0.35 feet into a 5 foot side setback requirement. Table 7-2. The Historic Preservation Commission has recommended this Special Exception. Present Zoning R-5 (Residential Single family), Fisher Park Historic District, Cross Street – Victoria Street. **(GRANTED)**

Loray Averett stated that a proposed attached bedroom addition will encroach 0.35 feet into a 5 foot side setback requirement. Supporting documentation has been provided to the Board members for their review. The Historic Preservation Commission has recommended this Special Exception at their April 30, 2014 meeting. The current zoning is f R-5, located in the Fisher Park Historic District, contains a single family dwelling and the property is rectangular in shape and is narrow and long. The width is approximately 54 feet and the length is approximately 153 feet. The R-5 district intends to accommodate low density single family detached residential development.

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

Rachel Percival, 912 North Eugene Street, the property owner, was sworn in and stated that they would like to put a master bedroom onto the rear of the existing house. They have lived in Fisher Park for 12 years and they need a little more space in their home. The neighbors have no objection to this construction to the home.

There being no speakers in opposition to the request, the public hearing was closed by unanimous vote.

Ms. Huffman moved that in regard to BOA-14-17, 912 North Eugene Street, that the findings of fact be incorporated and the Enforcement Officer be overruled and the Special Exception granted based on the following: The Special Exception can be granted by the Board of Adjustments if evidence presented by the applicant persuades that each of the following conclusions: the Special Exception is in harmony with the general purpose and intent of this ordinance and preserves its spirit because the applicant will be maintaining property values and improving the neighborhood itself. The granting of the Special Exception assures the public safety and welfare and does substantial justice because the lot the applicant currently owns is long and narrow and the applicant will be able to make better use of the property, seconded by Ms. Hayworth. The Board voted 7-0 in favor of the granting of both Special Exceptions. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman, Wood. Nays: None.)



**2. APPEAL OF DECISION REGARDING ABANDONED JUNK MOTOR VEHICLES DECISION AND APEAL OF A NOTICE OF VIOLATION FOR NON-PERMITTED LAND USES AND HOME OCCUPATION VIOLATIONS THROUGH A CONSENT REQUEST ORDER.**

- (a) **BOA-14-18-A: 805, 807, 809, 811, 814, & 816 LEXINGTON AVENUE AND 901 HAYWOOD STREET** Norman B. Smith, Attorney for referenced locations and Bulent Bediz appeals the decisions of the Zoning Administrator and Code Compliance Officer concerning the violations of City Code of Ordinances Chapter 17 referencing Abandoned and Junk Motor Vehicles and the Permitted Use Table governing land use, Article 30 concerning uses of the property. Code of Ordinances – Chapter 17, Article 3 and LDO Section 30-8-1 and 30-8-11.5, Present Zoning – RM-12 (Residential Multi-family), Cross Street – Union Street. **(CONTINUED)**
- (b) **BOA-14-18B: 804, 806, 808 & 817 LEXINGTON AVENUE** Norman B. Smith, Attorney for referenced locations and Bulent Bediz appeals the decisions of the Zoning Administrator and Code Compliance Officer concerning the violations of City Code of Ordinance Chapter 17 referencing Abandoned and Junk Motor Vehicles and the Permitted Use Table governing land use, Article 30 concerning uses and standards for the property. Code of Ordinances – Chapter 17, Article 3 and LDO Section 30-8-1 and 30-8-11.5, Present Zoning – RM-12 (residential Multi-family), Cross Street – Union Street. **(CONTINUED)**

**OTHER BUSINESS:**

Considerations for Chair and Vice-Chair nominations for the June 23<sup>rd</sup> meeting.

Chair Jones stated that he could not be reconsidered for the position of Chair as he will be leaving the Board.

**ACKNOWLEDGEMENT OF ABSENCES:**

The absence of Ms. Wood and Ms. Blackstock were acknowledged.

Chair Jones stated that he and Mr. Forde had questions related to BOA-14-15, Asher Downs Drive property. Mr. Forde stated that it seems that irregardless of the outcome of the vote on this matter, that what occurred was the carport for this property was built too close to his house and staff did some research and could not find any evidence that there was a building permit for the carport and the applicant was asked to come before the Board last month to ask for a variance for the carport, not for the storage shed on the property, which did not require a building permit to begin with, which is what he had submitted to the City. Apparently, once he submitted that site plan to the City, it was noticed that the carport was too close to the house and it was requested that he submit a variance request, which he did and that request was subsequently denied. Tonight another person submits a site plan and their house is too close to the rear setback, but they do not need a variance for that and they may in the future.

Loray Averett stated that one of the main differences is that the carport was placed there in a way more recent time and it is during a period that staff would have had records on it. She also stated that she has gotten information that the property owner has relocated the carport and it now meets the setback and separation requirements.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 7:07 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd

**GREENSBORO BOARD OF ADJUSTMENT****June 23, 2014**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, June 23, 2014 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, Jeff Nimmer, Patti Eckard, Cyndi Hayworth, Frank Forde, Cheryl Huffman, Sara Wood and Adam Marshall, Alternate. Ms. Laura Blackstock, the newest member of the Board sat on the Board, but did not vote. Planning Department staff were: Loray Averett and Mike Kirkman; Code Enforcement staff consisted of Ron Fields, Mark Wayman, Beth Benton, and Roddy Covington; Tom Carruthers, and Terri Jones, City Attorney's Office; Councilwoman Sharon Hightower was also in attendance.

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 May 27, 2014 minutes, as written, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Ms. Averett and Inspector Fields were sworn in for their testimony during the meeting.

**CONTINUANCES/WITHDRAWALS**

Chair Jones asked if there were any continuances or withdrawals and Ms. Averett stated that there were none.

**OLD BUSINESS**

1. ***APPEAL OF DECISION REGARDING ABANDONED JUNK MOTOR VEHICLES  
DECISION AND APPEAL OF A NOTICE OF VIOLATION FOR NON-PERMITTED  
LAND USES AND HOME OCCUPATION VIOLATIONS***
  - (a) **BOA-14-18-A: 805, 807, 809, 811, 814, 816 and 901 LEXINGTON  
AVENUE** Norman B. Smith, Attorney for referenced locations and Bulent Bediz appeals the decisions of the Zoning Administrator and Code Compliance Officer concerning the violations of City Code of Ordinances Chapter 17 referencing Abandoned and Junk Motor Vehicles and the Permitted Use Table governing land use, Article 30 concerning uses of the property. This case was continued from the May 27, 2014 meeting. Code of

Ordinances – Chapter 17, Article 3 and LDO Section 30-8-1 and 30-8-11.5, Present Zoning-RM-12 (Residential Multi-family), Cross Street - Union Street. **(APPEAL DENIED)**

**BOA-14-18-B: 804, 806, 808 & 817 LEXINGTON AVENUE** Norman B. Smith, Attorney for referenced locations and Bulent Bediz appeals the decisions of the Zoning Administrator and Code Compliance Officer concerning the violations of City Code of Ordinances Chapter 17 referencing Abandoned and Junk Motor Vehicles and the Permitted Use Table governing land use, Article 30 concerning uses and standards for the property. This case was continued from the May 27, 2014 meeting. Code of Ordinances – Chapter 17, Article 3 and LDO Section 30-8-1 and 30-8-11.5, Present Zoning-RM-12 (Residential Multi-family), Cross Street - Union Street. **(APPEAL DENIED)**

Chair Jones announced that Mr. Nimmer had to leave the meeting, but Mr. Marshall will step in as the Alternate. Mr. Marshall will not participate in the decision concerning the first matters.

Loray Averett stated that this is an Appeal of a decision concerning Code of Ordinances Chapter 17 referencing Abandoned and Junk Motor Vehicles and Appeal of Notices of Violation Land Development Ordinance, concerning the Permitted Use Table and Home Occupation Standards, along with a copy of a court motion concerning a consent order to transfer these appeals to the Board of Adjustment. The properties are under Notices of Violation for Auto Storage and Salvage Yard operations. These uses are not permitted in the RM-12 zoning district. The properties also do not comply with Home Occupation Standards based on regulations and more specific that outdoor operations and outdoor storage are prohibited, as Home Occupations are required to be conducted entirely within the dwelling unit. City records reflect that on or around December 27, 2013 a Vehicle Hearing was held with certain City Staff and Mr. Bediz concerning the use of the properties for auto storage and/or salvage yards. The report also shows that City Staff conducted property inspections the month of January 2014 and compiled lists and photos of the referenced properties relative to the current enforcement action. These reports and photos are attached as Exhibit 6 in each case packet. 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.

Counsel Carruthers stated that he would like to direct the members' attention to Exhibit 1-1 through 1-3 and this was intended to answer the questions and concerns expressed regarding the addresses. Exhibit 2 that was referenced by Ms. Averett in the package before the Board was dated May 7<sup>th</sup> and the City has updated the Notice of Violations and on Exhibits 1-1 through 1-3, the date is now May 28<sup>th</sup>. This update was done to correct an error on some of the addresses of Mr. Bediz's property and is the current Notice of Violation which has been served and has been objected to by Mr. Bediz's attorney.

Mike Kirkman explained the zoning violations by stating that these violations are for multiple issues of uses that are not allowed in a Residential zone and include auto towing and storage uses, salvage yard, and self-storage facilities, as well as there are issues with home occupations with both outdoor storage associated with a home occupation and having

unlicensed commercial vehicles in a Residential zone, both of which are not permitted. In response to questions by Counsel Carruthers, Mr. Kirkman stated that the current zoning for all the properties under consideration today is RM-12 which is Residential Multifamily district and this would be for all 13 addresses included in the request located on Lexington Avenue. He referenced the Land Use Table from the Land Development Ordinance and the tables indicate the various uses that are allowed on or not allowed in the zoning districts. The information for the tables are incorporated herein as well as information related to 2-1 through 5-2, 2-1 and 2-2 and 8-1 through 8-4.

Norman Smith, attorney representing the applicant, asked questions of Mike Kirkman and stated that the new Notice of Violation is now dated May 28<sup>th</sup> and that is the most recent Notice of Violation. Mike Kirkman stated that some addresses were left off the original Notice, that was the cause of the new Notice being issued. Attorney Smith stated that the words "self-storage facilities" have also been inserted, which was not set forth in the May 7<sup>th</sup> document. He pointed out that they were not served with the May 28<sup>th</sup> document until today. Counsel Carruthers stated that he and Attorney Smith appeared in Superior Court on May 28<sup>th</sup> and submitted a joint consent order which was signed by Judge Susan Bray and I told Mr. Smith at that time, that he would be willing to testify to this, that he was amending the Notice of Violation with the correct addresses. Attorney Smith stated that he objects to proceeding because the words "self storage facilities" which were added. Counsel Carruthers stated that the City would not proceed on the self storage facilities.

Attorney Smith asked if the photos of the vehicles constitute an auto towing and storage operation and a salvage yard facility? He also asked if the vehicles are proposed to be unlicensed and for commercial use? Mike Kirkman stated that was correct. Attorney Smith asked if there was any evidence that Mr. Bediz or other persons named have engaged in a towing and storage operation? Mike Kirkman stated that they have basic evidence before them that vehicles have been brought to the site and remained there for a significant period of time.

In response to other questions, Mark Wayman, Code Enforcement Office, stated that he is familiar with this case. There have been several visits by Code Enforcement to the Bediz properties in regard to violations. He is currently not in violation of anything under Chapter 17, however, there are violations under Chapter 30 under the LDO due to the vehicles on all the properties listed. This was a complaint based initiation of the investigation on these properties.

In response to a question by Counsel Carruthers, Mr. Wayman stated that he wrote down the VIN numbers for each of the vehicles on the properties. Most of the vehicles have no listing with the State of North Carolina data base. Mr. Smith pointed out that there is nothing anywhere in these sections of the Greensboro Code of Ordinances that deals with a vehicle being registered or not registered with the DMV. Mr. Wayman stated that was correct. Attorney Smith pointed out that is a State Statute that is administered by the Department of Transportation Division of Motor Vehicles. With respect to safety issues, cleanliness issues and things of that nature, those are all dealt with under Chapter 17 dealing with abandoned and junked motor vehicles. He also pointed out that the City is not proceeding under Chapter 17 so cannot be testified to in this matter. Mr. Wayman stated that the vehicles are in compliance at this time.

Attorney Smith asked that all of the claims of the City be dismissed because they do not come within the provisions of Chapter 30 that have been cited and Chapter 17, by the City's admission as going out of the case. He stated that he did have questions for Mr. Bediz.

Bulent Bediz, 811 Lexington Avenue, was affirmed and stated that David Bediz is his son and the Nellie J. Jones, LLC is a company he formed named after his two neighbors. That LLC does not have any business at this time, only that the houses he has purchased and some of the cars he purchased under that LLC. Some of the houses are being renovated and some are in the process of being renovated and some are rented and some are planned to be rented. There are a number of vehicles on the properties that have been identified. He purchased the vehicles under a verbal and written contract that he had with UNCG, who proposed to obtain a property for him to open a used car lot in the neighborhood. They have now gone back on those promises and he is now stuck with these vehicles. He has tried for the last 30 years to improve the neighborhood and has renovated and rebuilt more than 30 houses within the area. He went in bankruptcy and has been unable to do anything with the vehicles he has previously purchased with the plan outlined by UNCG for the car lot. His hope was to make enough money on the vehicles to start renovating some of the other houses. He has never paid anyone or been paid by anyone to tow any of the vehicles. He purchased a flatbed truck for use in his house renovations and he used that truck to move some of the vehicles to the properties. None of the vehicles are parked on the street or near the front of the houses, all of them are in the rear of the properties and are not seen from the street. He is currently negotiating with someone that has a dealer's license in the hope of getting rid of the vehicles. He would like to preserve the neighborhood and does not want it to turn in commercial properties.

Willie Davis, 905 Haywood Street was sworn in and stated that he previously lived at 817 Lexington Avenue and has known and worked with Mr. Bediz for many years. He is familiar with the vehicles in question and stated that they do not cause a problem for him as they are not visible from the street. In response to questions by Attorney Smith he stated he does not feel this is a towing and storage operation.

Susan Wells, 905 Haywood Street, was sworn in and stated that she is familiar with the vehicles and they do not bother her and are not a nuisance to her. She has not seen any evidence that a towing and storage facility is being conducted. She also has not seen any evidence of a salvage yard in the neighborhood.

Nancy Lenk, 1005 S. Aycock Street, was sworn in and stated that she does know Mr. Bediz and she is familiar with the vehicles. They do not cause her any hardship or inconvenience. She drives down Lexington Avenue every day to and from work and she had a difficult time even finding the vehicles. They are all behind buildings and they have never been a problem for her. She has never seen any evidence that there is an auto towing and storage business and no evidence of a salvage yard being conducted by him.

Matthew Hence, 925 Lexington Avenue, was sworn in and stated that he is not familiar with the vehicles that are being discussed and only found out about them today. They have never been obvious or visible to him before today. He walks from his home to the University and he also jogs and drive in the neighborhood and he has never even seen anything unusual or cars that have been described. He is unaware of any towing and storage operation in the neighborhood and never seen any evidence of any salvage yard being conducted there.

Chair Jones asked if there was anyone wishing to speak in opposition to the appeal of the Notice of Violation.

At this time there was a break from 7:25 until 7:35 p.m.

Counsel Carruthers stated that he sympathizes with Mr. Bediz and believes that he bought 100 vehicles intending to go into the car business in reliance of a promise from other parties and intending to place the vehicles on a commercial lot and generate income through the sale of these vehicles. He then found himself trapped with no place to put the vehicles. His testimony was that he was using the back yards as a place to keep the vehicles while they were not being used. The Merriam-Webster definition of "storage" is cited as, "the state of being kept in a place while not being used and in a place where it is available, where it can be kept safely. The act of storing something." The outdoor storage definition refers to "materials stored outdoors and includes vehicle storage yards and salvage yards." He stated that Mr. Bediz has offered no resolution to the dilemma that began almost three years ago when he went into the car business. He admits that to sell five or more vehicles every twelve months, he will have to get a commercial motor vehicle dealer's license and go into business. He admits that he cannot even sell them in bulk, that he has no plans that he is aware of at this time to move them. However, for almost three years now, 55 vehicles, unlicensed, unregistered, untitled in North Carolina, have remained in a residential lot in Glenwood. Mr. Bediz is trying to improve the neighborhood and it does not add up that the man who cares so much for the neighborhood and who wishes to improve the neighborhood, refuses to face the reality that these vehicles do not belong there. They are being stored, they are for a commercial purpose and to get rid of them he will have to commence commercial activity, all of which is prohibited. The technical defenses concerning whether the vehicles were towed or not, whether there is a storage or salvage facility, are defenses that do not go to the plain intent and purpose of the zoning. The entire reason this Board sits, is to enforce reasonable zoning regulations to enhance the quality of life of neighborhoods and to separate, as appropriate, commercial activities from residential activities from industrial activities. Because of an unfortunate circumstance, Mr. Bediz became trapped with 100 vehicles, 55 of which he had no place to put so he parked them behind his houses. Counsel Carruthers stated that he does not feel it is reasonable for the City of Greensboro to wait twelve or fourteen years for a citizen to remove his vehicles that he bought for a commercial activity in mind. The City's position is well-founded, this is a prohibited use on residential lots and by the City moving forward they offered the only possible solution to move the vehicles. He cannot sell them, as he would have to obtain a commercial license with a commercial lot and building and he did not forecast that he could do that and he cannot sell them in bulk. This is the only reasonable and legal position and the correct position, but it may very well be the only way to move these vehicles. Because of that, he asked that the Board uphold the Inspector.

Attorney Smith stated that he wished to point out that the Board is no longer considering self-storage facilities as the City is not proceeding on that. Last winter the City was proceeding on Chapter 17, abandoned, junked and wrecked vehicles and they could not proceed on that because all the vehicle cranked and could be moved. Instead they had to turn to Chapter 30, and have come up with theories that simply will not hold up. Everyone wishes the cars were gone, but they're not, they are there. The question is; as they are and where they are, and how they are, do they constitute a violation and the answer has to be, no. To begin with, Mr. Kirkman

admitted that auto towing and storage means both, "and" not "either/or". You cannot just tow some cars and be in violation, you cannot just store some cars and be in violation, you need to have a towing and storage type of operation, and that certainly more than suggests and mandates, that you would be taking money from people to tow their cars or store their cars and his client has never done that. He is storing his own cars and has not towed any of them, at least in a couple of years. The big issue is it not a towing and storage operation. It is not a salvage yard either, as in Exhibit 8-2, you will see that salvage yards are linked to auto parts and those are places where a lot of cars are put and people come and either take parts off them, or hire people to take parts or buy parts that have been taken so the parts are being recycled. That is not what is happening here, as on some of the vehicles, some parts were loose and being put back on, or a part or two were missing and being replaced, but there is, in no sense of the word, is a salvage yard being operated. The one home occupation violation requires unlicensed commercial vehicles and a vehicle that is potentially for sale is not a commercial vehicle. A commercial vehicle under the ordinary understanding of the word, is a vehicle that has a logo on it, a vehicle that has a decal on it, a vehicle that is used to carry things for a business or to carry passengers or to carry items for hire and none of those things work with the vehicles of his client. Finally, there is no outdoor storage of anything because the vehicles are not being used for storage and there is no home occupation that goes with it. So these things have to be linked to home occupation and there is no existing home occupation that is present in this situation. Counsel for the City has indicated that at one time his client hoped to sell the cars, and he did at one time hope to sell them, but this ordinance addresses not what you hope in your heart in the past, but addresses what you are doing in the present. It addresses deeds and conditions, not states of mind. The vehicles have never been sold and there is no inventory that was replaced. He bought the inventory on the promise from the University, he did not replenish it. So none of these things fit. It's a problem that is not a real problem in the community, but even if it were, it will get resolved in the future when Mr. Bediz is able to get rid of the vehicles. He doesn't want them and they are tying up money that he needs to use on his renovation projects. The neighbors are not bothered by the vehicles being where they are. He feels the City had a failed case under Chapter 17 for abandoned and junked cars, which they gave up, but they tried to fit it under some other labels that just do not work. He asked that the Board dismiss all of these claims.

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

**Board Discussion:**

Ms. Wood stated that it seems there is a lot of help through the City for businesses to get on their feet and seems there should be a way to help the applicant fix the commercial building on Lexington Avenue so that he could move the vehicles and have a business there. She suggested that he explore this possibility and that may help him get things going. Ms. Huffman stated that her vote would be to uphold the LDO and her basis is simply the wording the Mr. Bediz conveyed that he has 55 vehicles that are not being used and he is keeping them there to hold them safely until they can be sold. She is compassionate to his problem but feels that the LDO should stand and she supports that. Mr. Forde stated that there are a lot of remedies available to the applicant. He has a commercial building available and he could apply for a dealer's license. He feels there are remedies that Mr. Bediz has not explored, so he will be upholding the Notice of Violation. Ms. Hayworth stated that she feels the applicant is in violation of the LDO and agrees that she would uphold the Notice of Violation. Ms. Eckard stated that she will also support the LDO and does not feel that what is happening now on Lexington Avenue is



helping the neighborhood move in a positive direction. Mr. Nimmer stated that he feels that storage is happening on the properties and towing has happened. He is confident that the City would be in worse shape if everyone got to store or keep fourteen cars in their back yard. He would agree to uphold the Inspector. Mr. Jones stated that he also agrees with the rest of the Board members to uphold the Inspector.

Mr. Jones moved that in regard to BOA-14-18A and 18B, the findings of facts be incorporated herein. These findings will be relevant to 807, 809, 810, 812, 814, AND 816 Lexington Avenue, and 901 Lexington Avenue, and 804, 806, and 808 Lexington Avenue, he moved that the Board should uphold the Notice of Violation issued by the City's Code Enforcement Official. In support of this motion the Board finds the following facts: The properties as described are within the corporate limits of the City of Greensboro and subject to its jurisdiction and the application of its ordinances and are zoned RM-12, Residential Multi-family. At the time the Notices of Violation were issued, the properties were owned by the appellants referred to and presented to the Board. Sections 30-8-8.5(a), 30-8-11.5, 30-15-9, 30-8-10.4(c) and Table 8-1 of the City of Greensboro Land Development Ordinance applies to the property. The Board accepts the following testimony and all documents submitted are acceptable into evidence as true. The properties are zoned RM-12 and Home Occupations must be conducted entirely within the residence. Home Occupations with outdoor storage are prohibited in a Residential zone. The appellants have vehicles with the intention of generating an income from the sale of the vehicles. The appellants were unable to secure a commercial car lot. The appellants subsequently stored the vehicles on Residential lots. A vehicle is considered for use for business and personal use and is used for transportation on a regular basis e.g. at least once every seven days. The appellants do not drive the vehicles and do not use the vehicles for their personal or business use. The appellants are the owners of the lots. The appellants do not intend to retain the cars for their personal use. The appellants are storing the vehicles until they can sell them. At least half of the vehicles were towed to the properties as they were transported to the property not under their own movement. Other vehicles are also stored on the properties. The towing and subsequent storage of the vehicles to the identified properties constitute auto towing and storage. Auto towing and storage is not permitted in a Residential zone. The storage of the vehicles constitutes a home occupation at 808 Lexington Avenue, but is not considered towing and subsequent storage of vehicles at 808 Lexington Avenue. The greater weight of the evidence presented shows that the appellant violated Section 30-8-1 and Table 30-8-11.5 of the City of Greensboro Land Develop Ordinance. A lawful exception to the application of this Ordinance does not exist, seconded by Ms. Eckard. The Board voted 7-0 in favor of the motion and the appeal of Notice of Violation was denied. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman and Wood. Nays: None.)

At this time Mr. Nimmer left for the remainder of the meeting and Mr. Marshall became a voting member as an Alternate. Ms. Blackstock also took her seat on the dais, but would not be voting.

## I. NEW BUSINESS

### 1. VARIANCE

BOA-14-19: **3230 RANDLEMAN ROAD** Ray Alvarez for Randlerman Plaza, LLC requests a variance from the minimum spacing requirement that a nightclub establishment located on a tract greater than 5 acres must maintain from residentially zoned property or a lot that contains a residence. **Variance:**

The proposed nightclub establishment will be 149 feet from the nearest residentially zoned property, when no such establishment may be located within 400 feet of a lot containing a residence, or that is residentially zoned. Thus the applicant is requesting a variance for a maximum of 251 feet from any residentially zoned or used properties located within 400 feet of the establishment. Section 30-8-10.4(F), Present Zoning-CD-C-H (Conditional District-Commercial Heavy), Cross Glendale Drive. **(DENIED)**

Loray Averett stated the applicant requests a variance from the minimum spacing requirement that a nightclub establishment located on a tract greater than 5 acres must maintain from residentially zoned property or a lot that contains a residence. The proposed nightclub establishment will be 149 feet from the nearest residentially zoned property, when no such establishment may be located within 400 feet of a lot containing a residence, or that is residentially zoned. Thus the applicant is requesting a variance for a maximum of 251 feet from any residentially zoned or used properties located within 400 feet of the establishment. The property is located at the southwestern intersection of Glendale Drive and Randleman Road and is zoned CD-C-H (Conditional District-Commercial-Heavy). The property functions as a shopping center with grocery store, various retail and personal use services. The lot consists of 6.34 acres. Tax records reflect the shopping center was constructed in 1988. The applicant is proposing to lease the most southern portion of the building to operate a night club. A nightclub that is located on tracts greater than 5 acres is required to meet specific ordinance standards. The building is required to be 400 from any residentially zoned property or any lots that contain a residential use. The spacing requirement is measured from the building to the residential property line or to the lot that contains a residential use. The C-H, Commercial-High District: 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.

Ms. Averett also stated the property is located at the southwestern intersection of Glendale Drive and Randleman Road and is zoned CD-C-H (Conditional District-Commercial-Heavy). The property functions as a shopping center with grocery store, various retail and personal use services. The lot consists of 6.34 acres. Tax records reflect the shopping center was constructed in 1988. The applicant is proposing to lease the most southern portion of the building to operate a night club. A nightclub that is located on tracts greater than 5 acres is required to meet specific ordinance standards. The building is required to be 400 from any residentially zoned property or any lots that contain a residential use. The spacing requirement is measured from the building to the residential property line or to the lot that contains a residential use. The subject site has driveway accesses from Glendale Drive and Randleman Road. The parking spaces are primarily located between the building and Randleman Road. There are minimal amounts of parking, (approximately 50 spaces), along with loading areas located to the rear of the building. These areas are easily accessed from Glendale Drive. Staff's Exhibit 4 is a separation table indicating the amount of separation for each residential property that is located within the 400 foot buffer separation requirement. The nearest residential property is 10 Oliver Court and is 149 feet from the building area proposed for the nightclub. The remaining 15 residential homes range in distances from 151 feet up to 384 feet from the proposed nightclub location. Listed at the bottom of Exhibit 4 are two residentially zoned properties that are partially within the 400-foot separation buffer. The tract to the south is zoned R-5 and contains a church; the tract to the east is vacant county property and is zoned RS-30. Staff's Exhibit #5 shows a row of parking containing 30 spaces which are located immediately south of the portion of the building proposed for the nightclub. These spaces begin 72 feet from the residential property located to the west of the site. The C-H, Commercial-High District: 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.

Chair Jones asked a question concerning Exhibit 2, that there are 2 different selections for property establishment separation. He asked how the City determine which standard to apply. Mike Kirkman stated that as with other aspects of the LDO, they look at what the Administrative Authority is in terms of development. In this case they were looking at establishments on tracts of greater than 5 acres and there are two options. The intention, as they understand it, on the second part was to allow a site, specifically with a large building that are a portion of it which may be a bar or nightclub, is to allow a measurement from the establishment itself, rather than from the edge of the property line, which would be a little more flexible in general. If that standard can be met they would be allowed to do so. In terms of this request if they cannot meet that establishment, that is why they are requesting the variance request of 152 feet from the closest residential property.

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

Don Korn, 1210 Burnett's Chapel Road, representing the applicant, was sworn in and stated that he is the Security Manager and advisor for the applicant. The site at 3230 Randleman Road has been the most appealing site they have been able to locate for their intended use as a night club for a multicultural setting. This building has been sitting vacant for better than 2 years. The front of the building faces Randleman Road and on the opposite side of the road is a vacant lot. At the rear of the building there is an established row of vegetation and a fence that separates this property from the residentially zoned property. There is an area that is wide enough for parking and that area will be blocked off and reserved for employees and staff and used for any bands to unload their equipment. The hours of operation are planned to be from 9:00 pm until 2:00 am. Other retail establishments in the shopping center area would not be impacted by the use of the parking lot for this proposed night club use because those businesses are closed by the time patrons of the night club would be on the premises. In regard to sound disturbances to the neighbors in the rear, the materials used in constructing the building would minimize the sound from the night club traveling to the residential area and they plan to construct a barrier fence to establish a better separation. In regard to occupancy, they would be allowed to have approximately 200-300 and possibly more patrons within the night club at one time. He presented a schedule of security outlines to show that they are prepared to keep the entire area safe and secure. The plan is to provide the community with an establishment that is safe and secure for the location, the community and the patrons that will come to enjoy a night of music and dancing. There will be video surveillance that will cover the parking lots at the front, rear and side of the building. There will also be security pat-down at the entrance to the building by a minimum of 6 qualified security officers to eliminate dangers of any weapons and/or drugs from entering the building by the patrons. Any trash or litter in the parking area will be picked up nightly by staff. He asked that the Board consider allowing this variance for this proposed facility.

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

Michael J. Hinson, 3402 Fulton Drive, stated that he is very opposed to this night club being established this close to his quiet neighborhood. He has lived here for 18 years and he and his neighbors enjoy their quiet peaceful existence. He and the neighbors are concerned about the added noises coming from the night club and the possibility of unwanted visitors into their neighborhood and they don't feel this is a good thing to introduce to the area. He asked that some of

his neighbors stand to show their opposition and approximately 9 people stood up. He stated that he and his neighbors are not happy that they were not informed of this proposed night club location. They were told by a neighbor who happened to see the signs and then started calling neighbors to let them know about it. There would have been a lot more people at the meeting to oppose this request if they had been informed earlier. He was a fire fighter for over 40 years and is not retired and he stated that if there were 400 people in this particular night club, they would be written up as being in violation. They do not feel that there is enough distance between the neighborhood and the night club.

Harriett Davis, 12 Oliver Court, stated that she is concerned about the property values of this residential area being impacted because of this night club use. She and her husband have raised their family in this neighborhood for many years. She is worried about additional trash and glass coming across the fence into their back yards, which back up to the night club. She is also concerned about the number of people that will be visiting the night club and feels it would present an unsafe factor for this quiet area. Her husband is a retired Police Officer with the Greensboro Police Department. They are also concerned about the additional trash that would be created. Vic Deans, 15 Oliver Court, stated that he agrees with everything Ms. Davis previously said and he does not think this would be a good fit for their neighborhood. Everyone in his neighborhood maintains their property and this is a very nice, quiet neighborhood. They do not want this night club in their area and close to their homes. Melissa Deans echoed the same concerns as her husband and Ms. Davis.

Betty Johnson stated that they have lived in the area for about 25 years and raised their family there. The City tore down a night club that was on Randleman Road several years ago because it was so disruptive to the area.

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

### **Board Discussion:**

Mr. Marshall stated that he is concerned that noise would be a major problem for these residents. He would vote to deny the variance. Ms. Eckard stated that she is concerned that there was no discussion by the applicant with the neighborhood. She does not feel that they are interested in the protection of the surrounding neighborhood and she would vote against granting a variance. Ms. Hayworth agreed that the Ordinances are made to protect neighborhoods and a fence is not going to stop the noise created by a night club. Mr. Forde stated that if this were located in the middle of the center he probably would not have as much concern, but by it being on the end, it would be easier for the night club patrons to bleed over into the neighborhood. Ms. Huffman stated that she was glad to see the neighbors pulling together in opposition to this request. Ms. Wood said she does not feel this is a good fit with the neighborhood. Mr. Jones stated that he also agrees with the other Board members that this particular use is not a good fit for the neighborhood and he would vote in opposition to the variance.

Mr. Jones moved that in regard to BOA-14-19, 3230 Randleman Road, that the findings of fact be incorporated as presented and that the Enforcement Officer be upheld and the variance denied based on the following: There are not 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 hardships will not result to the property by applying strict application of the ordinance because another tenant can lease the property for a different use and would not require the same distance separation. The hardship of which the applicant complains is not a result of the conditions that are cumulative to the property and the unique circumstances related to the

applicant's property because the separation requirement applies across the entire city and the property is not oddly shaped or have any other unique features. The hardship is not the result of the application of this ordinance to the property because the applicant selected the property and the use necessitated the separation. The hardship is the result of the applicant's own actions because the applicant selected the proposed location and the proposed use. The variance is not in harmony with the general purpose and intent of the ordinance and does not preserve its spirit because it places a night club use too close to residentially zoned properties. The granting of the variance does not assure the public safety and welfare and does not do substantial justice because of the concerns of noise, safety, the proposed occupancy and hours of operation, seconded by Ms. Eckard. The Board voted 7-0 in favor of the motion to deny the variance. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman and Wood. Nays: None.)

A break was taken from 9:15 until 9:25 p.m.

- (a) BOA-14-20: **411 NORTH CEDAR STREET** Barbara Cashman requests 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 storage building. Section 30-8-11.1(G), Present Zoning-RM-26 (Residential Multi-family), Cross Street-Bellemeade Street.  
**(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 located detached storage structure. The property is located on the western side of North Cedar Street north of Bellemeade Street and is zoned RM-26 (Residential Multi-family). The lot contains a single family dwelling and a recently located detached accessory storage building. The lot is rectangular shaped and contains approximately 11,016 square feet in area. In January 2014, the applicant applied for a building permit for a detached accessory storage building. The permit to locate the building was approved. The building is a modular style building. The applicant's site drawing shows there is a tree located to the north-west of the building. The applicant is requesting a detached meter for the building and would like to run the electrical connection to a new proposed pole close to their front property line along North Cedar Street. The existing meter on the house is located on the north-western side of the house and would create hardship to connect in to that meter. The applicant mentions the tree, the existing elevations and a hard-scape rocky area between the building and the meter that is on the house. The applicant mentions that the area from the front of the building to the street seems more practical for an electrical connection for the building. The distance from the front of the building to the front property line is 106 feet and the elevation is fairly straight for most of that distance. The applicant is aware that the detached garage is for accessory personal use only. The recent field photos show the lot is developed with existing infrastructure and heavy landscaping. The RM-26 (Residential Multi-Family District) is primarily intended to accommodate multi-family and similar residential uses at a density of 26.0 units per acre or less.

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

Barbara Cashman, the applicant, was sworn in and stated that they have tried for several years to get the correct addressing designated for this property and they cannot seem to eliminate A and B on the property. They are taxed as a single family residence. She produced a photograph of the 409 N. Cedar Street residence next door to show that they are surrounded by rental properties. There are very few owner-occupied homes in this area because of the closeness to the University. Their

main concern is being able to retain the 150 year old Willow Oak tree in the yard and close to the building. She presented documentation from an arborist in regard to the root line of this tree. Duke Energy wants to run the electric lines underground with the least amount of disruption. The meter would be hidden by landscaping and the fence would be replaced. In response to a question, Ms. Cashman stated that she and her husband would be using the building as a hobby shop for glass creations. She and her husband are looking forward to enjoying their retirement. She asked that the Board grant this request.

Chair Jones asked if there was anyone wishing to speak in opposition to this matter and no one came forward. The public hearing was closed by unanimous vote.

### **Board Discussion:**

It was the consensus of the Board members that there was no objection to this request.

Mr. Forde moved that in regard to BOA-14-20, 411 North Cedar Street, that the findings of fact be incorporated as presented and that the Enforcement Officer be upheld 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 unnecessary hardships will result to the property by applying strict application of the ordinance because either the topography and the existing oak tree, electrical service could not be practically run to the allowed and permitted structure. The hardship of which the applicant complains results from conditions that are peculiar to the property and the unique circumstances related to the applicant's property because the location of the existing oak tree and the power in the topography of the lot existed prior to the placement of the permitted structure. The hardship results from the application of this ordinance to the property because the topography of the lot and the existence of the tree existed prior to the applicant's desired allowed expansion. The hardship is not a result of the applicant's own actions because the power company refused or will not permit the electrical service to be run above the ground. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows the allowable use of the applicant's property. The granting of the variance assures the public safety and welfare and does substantial justice because it allows the applicant to use this property in a permitted fashion, seconded by Ms. Hayworth. The Board voted 7-0 in favor of the motion to grant the variance. (Ayes: Jones, Nimmer, Eckard, Hayworth, Forde, Huffman and Wood. Nays: None.)

## **2. SPECIAL EXCEPTION**

- (a) BOA-14-21 **402 MARY E. BLACK DRIVE** Terry Price-Harris requests Special Exceptions as authorized by Section 30-8-10.1(B) to allow three family care home separation encroachments from the current one-half mile development spacing standard. **Special Exception Request #1:** A proposed family care home will be 1,816 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 408 Andrew Street when 2,640 feet is required. **Special Exception Request #2:** The family care home will also be 1,757 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1607 Martin Luther King Jr., Drive when 2,640 feet is required. **Special Exception Request #3:** The family care home will also be 2,492 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1801 Britton Street when 2,640 feet is required. Present Zoning-R-5 (Residential Single-family), Cross Street-Caldwell Street. **(DENIED)** Loray Averett stated that the applicant is proposing to locate a family

care home which is too close to three existing family care homes. Special Exception Request #1: A proposed family care home will be 1,816 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 408 Andrew Street when 2,640 feet is required. Special Exception Request #2: The family care home will also be 1,757 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1607 Martin Luther King Jr., Drive when 2,640 feet is required. Special Exception Request #3: The family care home will also be 2,492 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1801 Britton Street when 2,640 feet is required. The lot is located on the south side of Mary E. Black Drive and west of Caldwell Street and is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at this location and it is too close to three other existing family care homes which have been described in the requested action section. Privilege license records and recent field visits reflect all three of the existing family care homes are in operation and required renewals are in compliance. 409 Andrew Street is located north of the proposed location and they are separated by residential streets and homes. 1607 Martin Luther King Jr. Drive and 1801 Britton Street are located east of the proposed subject location and their separations consist of residential streets, other residential communities as well as thoroughfare streets (Marin Luther King Jr. Drive and W. Lee Street), along with scattered institutional and other non-residential uses. 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. **(DENIED)**

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

Terry Price Harris, 3511 Mountain Brook Circle, Durham, NC, was sworn in and stated that she is the Executive Director over the family care home that they are asking for the Special Exceptions. They are trying to open a transitional home for the homeless youth, ages 15 to 20 for this specific location. They have done their research and gone around to some of these homes in close proximity to this home. They have spoken to the residents on MLK and on Britton Street. Their primary purpose is to provide an environment to help the residents to become productive members in society. According to Guilford County Schools there are 674 kids in that age group that are homeless and currently there is no transitional type living facility that caters to this population of children. The problem is if children are not adopted they have nowhere to go and there may not be a foster care that suits their needs they are out on the street with nowhere to go. Then they get into the juvenile system and there is an increase in crime. There is a very structured outline for residents living in the home and the kids will be supervised at all times. They will not be running around the neighborhood without supervision. There are mentors from the local colleges that will interact with the kids and provide tutoring services. The mission is to regenerate the individuals back into the mainstream society with a positive impact to change their lives. The core philosophy is to make a safe-net support system to develop self-sufficiency, care and self-esteem.

Donna McDonald was sworn in and stated that she is the owner of 402 Mary E. Black Drive. She and her husband have adopted several children through the system and they now find that they need a larger home to accommodate the addition to their family. She has lived in this neighborhood for many years and this is a safe, quiet neighborhood and a wonderful place to raise children. She commends Ms. Harris for her plans for this house as a home for this type of

displaced children.

There being no one wishing to speak in opposition to this matter the public hearing was closed by unanimous vote.

**Board Discussion:**

Ms. Eckard stated that she only has a few concerns but in the long-run it sounds like a good plan. Ms. Hayworth stated that she does see a problem with having this proposed home so close to another one in the neighborhood. She called Raleigh today and spoke to the representative there about these three homes and the one at 408 Andrews is for children and adolescents and not adults. The one at 1607 MLK is for mental health patients group home and they actually had several violations. That is why she is really concerned about their privilege license locally and some additional problems in Raleigh. The one at 1801 Britton is also a mental health group home and she is concerned that there is a cluster of these homes in a really small distance. The whole reason for the establishment of a ½ mile stipulation is so that there will not be clustering in neighborhoods. She applauds what Ms. Harris is trying to do, but this request will burden the area and this is not an appropriate location. Mr. Forde stated that it is his belief that this is for only one home and MLK Drive is a big enough street to divide these neighborhoods and is divided by Florida Street. Ms. Huffman stated that she agrees with Ms. Hayworth and appreciates that she did the additional work of contacting Raleigh to find out some information on this. She also applauds Ms. Harris' efforts but she is not in favor of the placement of this home because of the clustering issue. Ms. Wood stated that she is also in agreement with the clustering issue in one neighborhood. Mr. Jones stated that the criteria that must be met is difficult to overcome, but his initial concern was the home on MLK Drive. He would have to be in opposition to this request.

Ms. Huffman moved that in regard to BOA-14-21, 402 Mary E. Black Drive, that the findings of fact be incorporated as presented and that the Enforcement Officer be upheld and the Special Exceptions denied based on 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 it encroaches into the minimum separation requirements on three already existing family care homes. The granting of the Special Exception does not assure the public safety and welfare and does not do substantial justice because the purpose of the LDO is to avoid clustering of family care homes and to allow this Special Exception would do harm to the homes in the area, seconded by Ms. Hayworth. The Board voted 4-3 and the request was denied. (Ayes: Huffman, Hayworth Wood and Jones. Nays: Marshall, Eckard and Forde.)

**OTHER BUSINESS:**

Ms. Eckard thanked Mr. Jones for his leadership as Chair and his expertise over his years of service.

(a) **Board Members Terms and Elections**

Chair: Annually, at the regular meeting of the Board held in the month of June, a Chair shall be elected by the full membership of the Board of Adjustment from among its regular members. The Chair's term shall be one year (unless earlier terminated as a



result of death, resignation or removal) and until a successor is elected, beginning on July 1, and the Chair shall be eligible for re-election. The Chair shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board in session at the time. The Chair shall appoint any committees found necessary to investigate any matters before the Board.

Ms. Hayworth nominated Ms. Huffman to serve as Chair of the Board, seconded by Ms. Wood. The Board voted unanimously in favor of the nomination. Ms. Huffman will serve as the Chair of the Board of Adjustment.

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

Ms. Huffman nominated Ms. Hayworth as Vice Chair of the Board, seconded by Ms. Wood. The Board voted unanimously in favor of the nomination. Ms. Hayworth will serve as the Vice Chair of the Board of Adjustment.

## **ACKNOWLEDGEMENT OF ABSENCES**

None.

## **EDUCATIONAL ITEM**

*(Time permitting)*

Discussion concerning criteria for Variance Standards as based on a recent article from the School of Government written by Adam Lovelady

Mr. Kirkman stated that in an on-going effort to keep Boards and Commissions up-to-date there are two items in the members' package with information on development trends and other information that would be important for the members to review. There is also information that is specifically relevant to variances and directly related to hardships and other issues that the Board has to consider in whether or not to grant a variance request.

**ADJOURNMENT:**

\* \* \* \* \*

There being no further business before the Board, the meeting adjourned at 10:37 p.m.

Respectfully submitted,

Frankie T. Jones, Chairman  
Greensboro Board of Adjustment

FJ/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT**

**JULY 28, 2014**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, July 28, 2014 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Cheryl Huffman, Chair, Frankie T. Jones, Jr., Patti Eckard, Cyndi Hayworth, Frank Forde, Sarah Wood and Adam Marshall. Planning Department staff were: Loray Averett, Nicole Smith and Mike Kirkman; Terri Jones, City Attorney's Office.

Chair Huffman 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**

Mr. Marshall moved approval of the June 23, 2014 minutes, as corrected by staff, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett, Nicole Smith and Mike Kirkman were sworn in for their testimony during the meeting.

**CONTINUANCES/WITHDRAWALS**

Chair Huffman asked if there were any continuances or withdrawals and Ms. Averett stated that there were none. Chair Huffman also announced that Mr. Jones has requested to be recused from the first item on the agenda. Mr. Jones was recused from this item by unanimous vote of the Board.

**NEW BUSINESS**

**VARIANCE**

BOA-14-22: **4093 BAYLOR STREET** Matthew and Hannah Hill request variances from swim and tennis clubs standards. **Variance #1:** A proposed swim club use must be located on a site containing at least 2 acres. The site contains 1.136 acres. The applicant is requesting a variance for a reduction in site area for 0.864 acres. **Variance #2:** The swim club building(s) including the decking around the pool must be located at least 50 feet from abutting residentially zoned property. The pool decking ranges from 17.95 feet up to 33.26 from the abutting residentially zoned properties. The applicant is requesting to encroach at the nearest location 32.05 feet into the minimum separation requirement abutting

residentially zoned property. Section 30-8-10.3(K), Present Zoning-CD-RM-12, (Residential Multi-family), Cross Street-Bell Orchard Drive. **(GRANTED WITH CONDITIONS)**

Loray Averett stated that Matthew and Hannah Hill request variances from swim and tennis clubs standards. She explained that Variance #1: A proposed principal use swim club (swimming pool and buildings are existing) must be located on a site containing at least 2 acres. The site contains 1.136 acres. The applicant is requesting a variance for a reduction in site area for 0.864 acres. Variance #2: The swim club building(s) including the decking around the pool must be located at least 50 feet from abutting residentially zoned property. The pool decking ranges from 17.95 feet up to 33.26 from the abutting residentially zoned properties. The applicant is requesting to encroach at the nearest location 32.05 feet into the minimum separation requirement abutting residentially zoned property. The property is located on the west side of Baylor Street west of Bell Orchard Drive and is zoned CD-RM-12 (Conditional District - Residential Multi-family). Register of Deeds records indicate the applicant purchased the property in 2011. The property is being used as a principal use swim club on the subject site. A principal use swim club is required to meet specific standards. It is required to be located on a lot at least 2 acres in size. The property is 1.136 in size. Any portion of the swim club including the pool decking is also required to be setback at least 50 feet from any abutting residential property and the pool decking setbacks range from 17.95 feet up to 33.26 feet from the residential properties, which are located immediately south and north of the property. A zoning condition that is applicable to this portion of development for this site is limited to residential units for sale and a maximum number of 572 units allowed for both properties. As mentioned above, the applicant has filed for a rezoning to amend the current conditions and for a Special Use Permit to allow the operations of a principal use swim club on the site. Tax records indicate the swim club was constructed in 2004/2005. A deed that was established in May 2006 (BK 6536 – PG 0977) references uses of the property as a community swim club. The lot was originally part of Bellwood Village and later reestablished as Lenox Commons Swim Club, Inc. The applicant through Hugh Creed and Associates Engineering Firm has recently submitted a Plat for review and approval. This plat is currently being reviewed by Development Services for compliance and subdivision approval. The lot is developed with an existing swimming pool approximately 20 feet wide by 42 feet long, along with a pool house and shower facilities. The lot is a unique shape. The front portion is trapezoid in shape and the rear portion is rectangular and becomes almost triangular as you get closer to the rear lot line. The lot is heavily landscaped on all boundaries with vegetative growth and mature trees. The RM-12, Residential Multi-family Family District is primarily intended to accommodate multi-family and similar residential uses at a density of 12.0 units per acre or less.

Frankie T. Jones, Jr., attorney representing the applicants, 4203 Cypress Grove Lane, stated that he is representing the applicants, the Hills, who have owned the swimming pool, Hannah's Cabana, since 2011. They are asking for the Board's approval of two variances for the swimming pool; one dealing with the 50 foot setback requirements, and the other dealing with a 2-acre minimum lot size requirement. The pool was constructed in the 2004-2005 timeframe, a full 6 to 7 years prior to the Hills' ownership. In other words, they did not build the pool and had no idea for the need of any variances or Special Use Permits or the existence of any LDO violations when they purchased the pool. They wish to operate the pool in the same way they thought when they bought it, as a swimming club, open to members paying dues. In order to do so, they need the Board's approval of the variances requested. This is step one of a two-step process and they would welcome a condition of a successful zoning result. The City became of the need for the variances and a Special Use

Permit because, unbeknownst to the Hills, a person interested in buying the pool contacted the City to discuss possible alternative uses for the property. At that time, the City looked into the property and discovered the issues involved with the property. There was not a complaint that caused the request, but rather, just a matter of someone showing interest in the property. It is also important to note that these issues came up after the Hills purchased the property and is in no way the result of the applicants' own actions. Informational booklets were presented to the Board members for their review. Information within the booklet show notarized letters in support of the continuance of the pool in its present condition.

Mr. Jones also pointed out that there has been a question about the legality of the ownership of the pool by the Hills. He presented documentation of the sale and transfer of the deed to the property since 2002, which indicate that the ownership by the Hills is completely legal.

Hannah Johnson-Hill, the applicant and owner of the property located at 4093 Baylor Street, was sworn in and stated that she and her husband moved into the neighborhood in 2006 and were promised a beautiful pool to enjoy with membership. They found that the pool was closed down by the City due to safety and cleanliness violations. She tried to purchase the pool then and found that it was unrealistic to buy the pool at that time. They watched the decline of the pool until 2011, and found that it was a health and safety hazard. There was prostitution, drug abuse and other undesirable items at the pool area. They ultimately found that they could afford to purchase the pool property and started cleaning the area and bringing it to its current pristine condition. They are very proud of the current condition of the pool and the pool area and would like to be able to sell public memberships to enable them to keep the area up. They have a current roster of people showing interest in obtaining membership to the pool. In response to a question, Ms. Hill stated that the pool is open from 8 am until dusk.

Brian Ledford, 4301 Kenover Court, serving as President of the Homeowners' Association, was sworn in and stated that he has talked with various Board members along with the property management company. Their HOA dues are considerably low, compared to most in the area. They feel that if the pool is added in, it would almost triple their HOA dues. Therefore, they do not feel that they should get involved in this argument. He also stated that since the Hills have owned the pool that it is now in very good shape and adds value to the neighborhood.

Lisa Wright, 704 Princess Road, was sworn in and stated that before the Hills purchased the pool property there were many incidents of illegal activity going on. The pool is now in immaculate condition, is a lovely asset to this area. She does not object to them using it as a public pool area for the neighborhood.

Chris Kenkowski, 4353 Baylor Street, was sworn in and stated that He confirms everything that the other speakers talked about in regard to the quality of the property before and after.

Mr. Jones asked for those in support of the variance to stand showing their support and approximately 10 people stood showing their support.

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

Kenneth Bell, the developer of Bellwood Village, was sworn in and stated that there was approval from the VHA and VA, PUD development of the City of Greensboro and it showed

the pool and the tennis courts to be owned by the Association. He has documents showing that Key Homes and the first 54 units put up escrow money for the people to build the pool and tennis courts. There was a lawsuit concerning the \$400 escrow that was charged to the homeowners. He sold the pool property to Don Sutphin who then deeded the pool property to himself and then sold it to Ms. Hill. Mr. Bell has visited the VA in Winston-Salem and was told that they had to get approval from the VA in order to sell the pool property. He pointed out that there are 54 homeowners who have lost their \$400 each, that was paid into the escrow account.

Chair Huffman informed Mr. Bell that his issues would have to be determined through some other venue and not the Board of Adjustment.

In rebuttal, Mr. Jones stated that the Hills got a Title Insurance Policy when they purchased the property and there was no indication of any HUD approval needed and the deed does not mention that either. If there is a title issue, it should be handled in another venue. He presented the Board members with a copy of the Title Policy for review.

There being no further speakers the public hearing was closed.

### **Board Discussion:**

The Board, as a whole, felt that the variances should be granted and agreed that there should be a condition placed on the variance.

Mr. Forde moved that in regard to BOA-14-22, 4043 Baylor Street, that the findings of fact be incorporated and the Zoning Enforcement officer be overruled and the variance granted based on 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, unnecessary hardships will result to the property by applying strict application of the ordinance because the applicant will be unable to operate the pool which is and has been the sole purpose of 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 the pool was not built to commercial standards and fails to meet either the 2-acre minimum or the 50-foot setback and, the property is oddly shaped with the pool being located in a narrow, trapezoidal shaped portion of the property, which is less than 39 feet in its narrowest point. The hardship results from the application of the ordinance to the property because the ordinance establishes the minimum lot size and setback requirements for swim clubs. The hardship is not the result of the applicant's own actions because the applicant neither built the pool nor chose the location on the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it provides access to a common amenity at a reasonable commercial rate and ensures the pool be maintained in good condition, enhancing the value of surrounding neighborhoods. The granting of the variance assures the public safety and welfare and does substantial justice because prior to the applicant's ownership, the property was vacant, had become an eyesore, a health hazard and an attraction for vagrants. The applicant's ownership has mitigated all these issues and the pool meets the City health Codes. This would be contingent upon the applicant being acceptable with the rezoning of the property and a Special Use Permit, seconded by Ms. Hayworth. The Board voted 6-0-1 in favor of the motion to grant the variance. (Ayes: Huffman, Hayworth, Eckard, Forde, Wood, Marshall. Nays: None. Abstained: Jones.

At this time there was a short break to allow Mr. Jones to join the Board at the dais.

- (b) BOA-14-23: **1409 DESOTO PLACE** Todd and Barbara Lipe requests a variance from the minimum side setback requirements. **Variance:** A proposed detached garage will encroach 1.48 feet into a 3-foot side setback and the garage eave overhang will encroach 1.84 feet into the same 3-foot side setback. Sections 30-8-11.1 & 30-7-1.4(C)6, Present Zoning-R-5, Cross Street-Westover Terrace. **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a proposed detached carport / storage building that will encroach 1.48 feet into a 3-foot side setback and the overhang will encroach 1.84 feet into the same 3-foot side setback. The property is located on the south side of Desoto Place east of Westover Terrace and is zoned R-5 (Residential Single Family). The applicant is proposing to construct a detached one-story carport with storage and personal use office space. The structure will be 677 square feet. The existing house footprint on the ground is 1,381 square feet. The zoning allows for detached accessory structure(s) to be 50 percent of the size of the principal dwelling. The applicant is permitted to have 690 square feet of detached accessory structures on the ground. There is a detached existing storage building containing 96 square feet located at the rear of the property.

Todd Lipe, the owner, was sworn in and stated that he would like his builder to speak on this matter.

Steven Jobe was sworn in and stated that he is the architect for this project and he did the design. The house has been in existence for more than 60 years and because of the size of the proposed addition of the carport, storage and office area, they have to be 10 feet from the main structure. That limits what they are able to do on the property because of the property line. The carport area would be compromised in usefulness in being able to maneuver in and out of the carport. The applicant has mobility issues and uses a wheelchair on occasion, so it would be more difficult for him to get in and out of his vehicle. There is an existing 6 foot fence on the property line with vines growing over it, so it is a very large and dense area for a substantial sight barrier that has been there for over 20 years.

Phil Fleishman, 1407 Desoto Place, was sworn in and stated that he is the next-door neighbor and he has no objections to the request for the variance so that Mr. Lipe can build the addition to his property.

There being no further speakers the public hearing was closed.

In response to questions, Mr. Jobe stated that there would be electricity run to the building but there would be no water and could not be used as an accessory living structure.

#### **Board Discussion:**

The Board members all agreed that this was a reasonable request and had no objections.

Ms. Eckard moved that in regard to BOA-14-23, 1409 Desoto Place, that the findings of fact be incorporated and the Zoning Enforcement officer be overruled and the variance granted based

on the following: there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property applying strict application of the ordinance because it would be too difficult to both vehicles in the narrow driveway for the applicant to be able to get into the allowed spaces, also be able to load and unload groceries, furniture and other items, and also the wheelchair used by the applicant. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the property because existing infrastructure is in place and the yard is already fenced, there are property lines that have been established for many years and it is a very confined space so there is not a lot that can be changed in order to make this more accessible for the applicant. The hardship results from the application of the ordinance to the property because if the applicant complies, he will be too restricted and unable to proceed with the project. The hardship is not the result of the applicant's own actions because the location of the house, the fence and the property lines were already in place. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the fence and landscaping are too restrictive and would prevent more appealing features to be added to the property. The granting of the variance assures the public safety and welfare and does substantial justice because doing so should not negatively impact the neighborhood and should create more value to properties within the neighborhood, seconded by Mr. Jones. The Board voted 7-0 in favor of the motion to grant the variance. (Ayes: Huffman, Hayworth, Eckard, Forde, Wood, Jones, Marshall. Nays: None.)

- (c) BOA-14-24: **2120 COLSON STREET** Revardale Middleton requests variances for an existing detached accessory structure to be located in front of the front building line of the house and for a proposed carport to encroach into a minimum separation requirement. **Variance #1:** An existing detached storage building is located 4.5 feet in front of the front building line of the existing dwelling. It is required to be in line or behind the front building line of the dwelling. Section 30-8-11.1(B). **Variance #2:** A proposed carport will be located one-foot from the principal structure and is required to be a minimum of 5-feet from the structure, thus requesting a separation variance encroachment of 4 feet. Section 30-8-11.1 (E). R-5 (Residential Single-family), Cross Street-Ivy Heights  
**(GRANTED)**

Loray Averett stated that Revardale Middleton requests variances for an existing detached accessory structure to be located in front of the front building line of the house and for a proposed carport to encroach into a minimum separation requirement. #1: A recently located existing detached storage building is located 4.5 feet in front of the front building line of the existing dwelling. It is required to be in line or behind the front building line of the dwelling. #2: A proposed carport will be located one-foot from the principal structure and is required to be a minimum of 5-feet from the structure, thus requesting a separation variance encroachment of 4 feet. The property is located at the northwestern intersection of Colson Street and Ivy Heights. It is a corner lot and is zoned R-5 (Residential Single-family). On January 6, 2014, the applicant applied for a building permit for a detached carport to be located at the rear of the dwelling. The staff review comments noted there were concerns about ordinance compliance and more detail information was requested so that ordinance compliance could be determined. There was also concern about an existing detached building that was recently located on the site without a building permit. Exhibit #5 consists of five 5 different review reports with varying review dates



and concerns that were shared with the applicant. The first staff review was done on January 8, 2014, and the fifth staff review was done June 12, 2014. On or around June 27, 2014 the applicant filed the variance requests as described in the above requested action section. The first request is for an existing detached storage building to be 4.5 feet in front of the front building line of the house. The front setback for the principal structure in the R-5 zoning district was 20 feet. This setback requirement was recently amended by Council that front infill lot setbacks would be determined based on infill standards using average setbacks of houses already constructed. The applicant's survey shows the house setback at approximately 40 feet so that setback was and is in compliance. Detached accessory buildings were never permitted in front of the front building under the UDO (1992) or the current LDO (2010). The applicant stated that she moved the detached building there last year and was not aware that she needed a building permit for the placement of the building. The building is approximately 9 feet tall and dimensions 8 feet by 10 feet for 80 square feet in area. The second request is for a proposed detached carport to encroach 4 feet into a 5-foot separation requirement for an existing structure. The carport is proposed to be located on the Ivy Heights street side. The carport is required to be 5 feet from any structure and it will be one-foot from an existing covered portion of an existing deck located to the rear of the house. The carport will be less than 15 feet tall and will comply with the side street and rear setback requirements. The applicant has two driveway locations for the property. The front driveway is adjacent to the Colson Street right-of-way and the other driveway and access is located adjacent to the Ivy Heights side street right-of-way. There is a privacy fence located on the rear of the applicant's property. Exhibit 6 shows the driveway area, deck area and the privacy fence as viewed from the Ivy Heights right-of-way. 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 Huffman asked if there was anyone wishing to speak in favor of the request

Rivardale Middleton, the applicant, was sworn in and stated that she wishes to place a carport at the rear of her property. She has recently moved back into the home that was previously owned by her parents, which is smaller than the house she was living in. Therefore, she needs extra storage space in her outdoor buildings to hold furniture and other items that she currently cannot use. She was unaware that she needed a permit to place the storage building on her property. She has been trying to obtain a building permit for the proposed carport since October of 2013. She is partially disabled and needs the convenience of having the carport close to her door to enable her to get in and out of her car on a daily basis. She has been frustrated and very disappointed in the lack of help she received from the City in this process. She hired a surveyor who helped her properly mark the placement of the proposed carport on the property. She now needs to obtain the two variances for the placement of the storage building and the carport. The storage building is not an eyesore and does not distract from the appearance of the neighborhood. There is a large tree in the rear yard that she wishes to preserve. She has spoken with several of her neighbors and none of them have any objection to her request for the variances.

Beverly Haith, 1201 Ivy Heights, was sworn in and stated that she is a neighbor of Ms. Middleton. She does not have any objections to Ms. Middleton's requests for variances to be able to place and use the storage buildings and carport on her property. She also feels this would provide safety for Ms. Middleton and she is in favor of the storage building and carport.

There being no further speakers the public hearing was closed

## **Board Discussion:**

The majority of the Board members felt that these variances would not be a hindrance for the neighborhood and there were no objections. Ms. Hayworth did feel that there may a problem with the buildings being so close to the main house.

Mr. Forde moved that in regard to BOA-14-24, 2120 Colson Street, that the findings of fact be incorporated and the Zoning Enforcement officer be overruled and the variance granted based on the following: there are practical difficulties or unnecessary hardships that result from 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 due to the deep setback of the home on the lot, the hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the property because the lot is a corner lot and the home has a deep setback from Colson Street. The hardship results from the application of the ordinance to the property because the home is located on a corner lot and the placement of the home on that lot. The hardship is not a result of the applicant's own actions because the lot and the placement of the home on the lot were 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 it allows for the use of the property by the applicant in the most convenient and necessary fashion. The granting of the variance assures the public safety and welfare and does substantial justice because it allows the use of the property in a reasonable manner in total agreement with all the surrounding neighbors, seconded by Ms. Wood. The Board voted 6-1 in favor of the motion to grant the variances. Fact were incorporated for both variance requests and the votes for each motion were as follows: (Ayes: Huffman, Eckard, Forde, Wood, Jones Marshall. Nays: Hayworth.)

A short break was taken from 7:43 until 7:53 p.m.

## **SPECIAL EXCEPTION**

- (a) BOA-14-25 **1501 KINGSTON ROAD** Stacey Fuller request Special Exceptions as authorized by Section 30-8-10.1(B) to allow six family care home separation encroachments from the current one-half mile development spacing standard. **Special Exception Request #1:** A proposed family care home will be 2,027 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2 Partnership Court Street when 2,640 feet is required. **Special Exception Request #2:** The family care home will also be 468 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2315 Bonaire Lane when 2,640 feet is required. **Special Exception Request #3:** The family care home will also be 530 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1514 Woodbriar Avenue when 2,640 feet is required. **Special Exception Request #4:** The proposed family care home will also be 1,558 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2008 Chatwick Drive when 2,640 feet is required. **Special Exception Request #5:** The family

care home will also be 1,747 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1209 Westhampton Drive when 2,640 feet is required. **Special Exception Request #6:** The family care home will also be 2,583 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1310 Elwell Avenue when 2,640 feet is required. Present Zoning-R-5, Cross Street-Woodbriar Avenue. **(GRANTED WITH CONDITIONS)**

Nicole Smith stated that the applicant is proposing to locate a family care home which is too close to six existing family care homes. Special Exception Request #1: A proposed family care home will be 2,027 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2 Partnership Court Street when 2,640 feet is required. Special Exception Request #2: The family care home will also be 468 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2315 Bonaire Lane when 2,640 feet is required. Special Exception Request #3: The family care home will also be 530 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1514 Woodbriar Avenue when 2,640 feet is required. Request #4: The proposed family care home will also be 1,558 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 2008 Chatwick Drive when 2,640 feet is required. Request #5: The family care home will also be 1,747 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1209 Westhampton Drive when 2,640 feet is required. Request #6: The family care home will also be 2,583 feet from one family care home (6 or less persons) to another family care home, (6 or less persons) located at 1310 Elwell Avenue when 2,640 feet is required. The lot is located on the south side of Larkspur Drive on the western side of Kingston Road and is zoned R-5. The applicant is proposing to locate a family care home (6 or less persons) at this location and it is too close to six other existing family care homes which have been described in the requested action section. Privilege license records and recent field visits reflect all six of the existing family care homes are in operation and required renewals are in compliance. Exhibit 3-A is a list of 149 family care homes that were deemed legal nonconforming based on the ½ mile spacing increase that was adopted by Council on May 18, 2010. These existing six family care home locations are identified on this list. The proposed family care home is located south of three of the existing homes and north of the other three homes as shown on Exhibit 2. They are separated by various residential streets and neighborhoods. 2 Partnership Court, 2315 Bonaire Lane and 1514 Woodbriar Avenue are located north of the proposed subject location and their separations consist of residential streets, other residential communities and vacant wooded properties. 2008 Chatwick Street, 1209 Westhampton Drive and 1310 Elwell Street are located south of the subject site and their separations consist of residential neighborhoods, multi-family development and a thoroughfare street thoroughfare street, Phillips Avenue, along with a few non-residential uses. 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 Huffman asked if there was anyone wishing to speak on this matter.

Stacey Fuller, the applicant, 1501 Kingston Road, was sworn in and stated that Emil Gorgan would be speaking on her behalf. Emil Gorgan, 1805 Bull Run Court, was sworn in and stated that he is the licensing coordinator for Community Support Service and they are a therapeutic

foster care agency and they also have AFL (Alternative Family Living) homes. He was before the Board a few months ago presenting another case and the information is basically the same in both cases. The applicant has resided at the current residence since 2002 and became licensed as a therapeutic foster care in 2005 at the current residence. Therapeutic foster care does not require prior zoning and he presented copies of information related to the applicant's licensing for the Board members' review. He also produced a photograph showing the current family. Due to a rule change regarding TFC and due to a funding change for the individuals in her home, is why they are now having to obtain zoning approval because she is now in need of a new type of license. There have been no clustering issues or other issues from any of the neighbors. They are now able to obtain Innovations Waiver Slots which changes the type of funding they receive which is why they are here today. The main difference between the applicant's home and the other six licensed facilities in the area, those are all group home facilities and are not considered foster care homes. He pointed out the differences in ages of clients in the other homes and also pointed out that there is not staff who is required to be on-site 24 hours. There are hired employees who come in and rotate on shifts. The applicant lives in her own residence and the individual that live with her do so as members of her family and there are no staff members. They are asking that the property be conditioned to just two individuals, due to the size of the home, the number of bedrooms and the space requirements by the State, she is only allowed two individuals. He also presented 20 notarized letters of support from the surrounding neighbors within the ½ mile radius. There are no other family care homes on her street. If she is unable to gain the Special Exception it would cause unnecessary hardship for the applicant and the individuals who have become a part of her family and they would have to move and be displaced to another licensed facility. The male has been in the home for 8 years and the female has been there for a year-and-a-half.

In response to questions, Mr. Gorgan stated that the male is considered a special needs person and is still in the custody of his parents, but they could no longer care for him and placed him in the care and home of Ms. Fuller. Ms. Huffman stated that she has concerns about the safety of the clients in the home, especially special needs individuals. Mr. Gorgan clarified that the male individual can stay for an indefinite period of time, if the Special Exception is granted. Both of the individuals attend day programs, school and are very active.

Ms. Fuller stated that they both attend school and will not graduate until they are 22 years old.

Mr. Gorgan stated that their organization's goals is to acclimate their individuals into the community and are capable of functioning on their own. They provide monthly activities for them to be out in the community.

Ms. Huffman stated, again, that if they are clustered with so many other family care homes in the area and they have mental challenges, how much at risk are they in this neighborhood, being at the park or out in the area. Her concern is for their residents. Mr. Gorgan pointed out that they are with individuals that share similar diagnosis, so if they happen to run into another individual with special needs at the park, there is usually no challenge because it is a tight-knit community and a lot of these people know each other due to their participation in the day programs and special education settings. Ms. Fuller and Mr. Gorgan stated that they do not see this as a risk, being so close to 6 other homes in the neighborhood. In response to a question by Ms. Eckard, Mr. Gorgan stated that the applicant's home is like any other home with a single parent and two children. Ms. Fuller has the support of her mother and other individuals that help out when necessary. In response to a question by Ms. Hayworth concerning whether the male individual could leave Ms. Fuller's home and care and try to be out on his own, Mr. Gorgan

stated that the male could not leave care on his own as he has been deemed incompetent and his mother has Guardianship. Also, he has not shown any signs in the past of being at risk for "running away" or leaving on his own without permission. Ms. Huffman stated that she still has concerns about the individuals leaving the house on their own.

Mr. Gorgan stated they have gone door-to-door in order to get the notarized signatures and they were not met with any opposition and there was nothing to suggest that they were in any danger of harm from any of those residents of the neighborhood. Ms. Fuller has to follow all the rules and guidelines in regard to the type of locks that are permitted on the doors and the State only allows someone to do so much as far as security because of fire codes and risks. There cannot be a keyed deadbolt to the inside of the house, there has to be a thumb-latch. They are also not allowed to use alarms because that is considered a restriction on the individual and that is not allowed.

In response to a question by Mr. Marshall concerning placing conditions on the Special Exception that it would be limited to 2 individuals, Mr. Gorgan stated that she would not be able to care for more than 2 individuals by the State because of the size requirements of her home in relationship to the bedrooms and square footage.

Ms. Hayworth stated that in regard to this request, they are asking for with an average of 972 feet per variance. Per her discussion with the Raleigh office, there are a total of 245 mental health facilities of these types of homes in Guilford County. The home on Partnership Court has 3 developmental disable adults with no violations and they have 24 hour care in that facility so there are care-givers going in and out all the time; Concerning the Davis Rest Home, on Bon Aire, they had a violation in 2009 relative to water temperature and they were fined for that. It is a 24 hour care facility, adult care home; Ms. Hayworth stated that the Davis Rest Home #1 on Woodbriar Avenue is 24 hour care with workers changing shifts and they had no violations; The 2008 Chapel Drive had 4 development disabled adults with no violations with 24 hour care; At 1209 West Hampton Drive there are 4 developmentally disabled adults with no violations and 24 hour care and 1310 Elrod Avenue is licensed for 6 specialized community residential center with no violations, along with 24 hour care. She goes back to the issue of why the ½ mile restriction was put into place and the North Carolina Regulation #168-22 says, "this legislation mandates family care homes to be treated as single family residences, caps the number of individuals living in the home to 6, limits the residents to those suffering from physical, mental or emotional disabilities and allows maximum separation requirements of ½ mile from each family care home." She pointed out that there is a reason this separation restriction was put into place. In response to a question by Mr. Forde concerning what the reason for the restriction was, Ms. Hayworth stated that in regard to this matter the City of Durham was cited as, "concentration of family care homes and facility in specific parts of the City." Mr. Gorgan stated that some counties in North Carolina do not consider what they do as a family care home because of the number of individuals that are allowed. It is unfortunate that where they live as a foster home, where they live as a part of a family as opposed to having rotating staff, they are clumped in with a "group home" atmosphere.

George Matere, 1417 Kingston Road, was sworn in and stated that Ms. Fuller has done an excellent job of caring for these young people. She has treated them as if they were her own adopted children and raised them accordingly. He would hate to see either of the young people have to move as it would be very disruptive to their lives. They are happy in the home of Ms. Fuller and they feel that she is their mother figure as their caregiver. He is not in opposition, but had some questions that were cleared up during the Board's discussions and questions.

In response to questions concerning if the applicant should move to another location in the future, Mike Kirkman stated that this is a family care home with whatever conditions are attached and it would go with the individual and not the property. The property would revert back to being just a single family residence. Mr. Gorgon stated that the license is specific to Ms. Fuller at this location and if she were to move, she would have to go through the process again at another location. The license cannot be transferred to another location without going through the zoning process at the new residence.

There was no one speaking in opposition and there being no other speakers the public hearing was closed.

### **Board Discussion**

Mr. Jones stated that the City is going to have a big issues coming forward with the changes in the legislature, especially as it pertains to CAP funding and the push to these sort of facilities. The State has made a judgment call but they would rather have people living in these facilities and CAP funding is not available if you live in larger settings. Here, this is a unique situation in the sense that if they had been classified this way 8 years ago, they would have only been looking at a Special Exception from two of the other locations in the neighborhood. He feels that it is unique enough for him, to give in the nature of the 2 residents in the family setting and the fact that there are 6 of the other family group homes in the area. He could support a motion to grant the Special Exception in this matter. Mr. Forde stated that he feels these type of homes are outrageously beneficial to the community, in general, and obviously to the 2 individuals in this specific one. He has read the State requirement several times and feels that there should be a definitive difference between these types of homes and group homes that house wayward youths. He feels confident that these 2 individuals will not be associating themselves with residents of the other homes which are close by. He feels there is a need for this kind of service and he would support the request.

Mr. Jones clarified that he would support the request with the conditions that it is limited to a 5600-F license and limits the home to 2 clients or residents.

Mr. Eckard stated that it is a very difficult decision to look at but also feels for the individuals involved in this home. If the conditions stated by Mr. Jones are part of the request, she would be in favor of granting the Special Exception. Ms. Wood stated that according to the testimony of the neighbor, the applicant has done a good job taking care of things and these individuals are accustomed to their home and she would hesitate to disrupt them and their life style. Therefore, she would support the request. Mr. Marshall stated that he agrees with the statements previously made by the Board members and he is inclined to grant the request with the 2 proposed conditions. Ms. Huffman stated that she still has concerns about the safety issues she previously stated concerning the closeness of the homes, but also feels that these individuals should remain as a family.

Mr. Forde moved that in regard to BOA-14-24, 1501 Kingston Road, that the findings of fact be incorporated and the Zoning Enforcement officer be overruled and the Special Exception granted based on the following: The Special Exception may be granted by the Board of Adjustment if evidence presented by the applicant persuades the Board to reach each of the following: The Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the reduced separation will not lead the residents to

cluster themselves along with other persons inhabiting other group homes within the separation area; the granting of the Special Exception assures the public safety and welfare and does substantial justice because it allows for the 2 special members of the community to receive the necessary and proper care they deserve. This approval is conditioned on the following two conditions: 1) that the home be limited to only 2 residents, and 2) that the provider obtain the necessary and specific license, 5600-F, to operate the use, seconded by Mr. Jones. The Board voted 6-1 in favor of the motion to grant the variance. (Ayes: Huffman, Eckard, Jones, Forde, Wood, Marshall. Nays: Hayworth.)

### **OTHER BUSINESS**

Mr. Jones congratulated Cheryl Huffman on her first meeting as Chair and Cyndi Hayworth on her first meeting as Vice Chair.

### **ACKNOWLEDGEMENT OF ABSENCES**

The absence of Mr. Nimmer and Ms. Blackstock were acknowledged and excused.

### **ADJOURNMENT:**

\* \* \* \* \*

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

Respectfully submitted,

Cheryl Huffman, Chairman  
Greensboro Board of Adjustment

CH/jd

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
SEPTEMBER 22, 2014**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, September 22, 2014 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Cheryl Huffman, Chair, Patti Eckard, Cyndi Hayworth, Frank Forde, Sarah Wood, Mark Cummings and Jeff Nimmer. Planning Department staff were: Loray Averett, Nicole Smith and Mike Cowhig; David Ortega, GDOT Engineering Staff; Terri Jones and Jennifer Schnerier, City Attorney's Office.

Chair Huffman called the meeting to order and explained the policies and procedures of the Board of Adjustment. She 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 August 2014 minutes, as written, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett, Nicole Smith, David Ortega and Mike Cowhig were sworn in for their testimony during the meeting.

**CONTINUANCES/WITHDRAWALS**

None

**OLD BUSINESS**

**APPEAL OF NOTICE OF INCIDENT**

- (a) BOA-14-26: **212 SOUTH ELM STREET** Allan Blackwell, Attorney for TR Nightlife LLC, d/b/a Club Inferno appeals a Notice of Incident for a nightclub business which is regulated by the Entertainment Facility Use Ordinance. This case was continued from the August 25, 2014 meeting. Land Development Ordinance Section 30-8-13, Present Zoning-CB (Central Business), Cross Street-West Washington Street. **(WITHDRAWN)**

Jim Clark, Attorney for the Police Department stated that he has several discussions with opposing Counsel on this matter and they are very close to coming to a mutual agreement. He asked that the Board table this matter for a short period of time so they can continue discussions and possible withdraw the matter.



Ms. Hayworth moved to table the matter to a later time in the meeting, seconded by Mr. Nimmer. The Board voted unanimously in favor of the motion.

I. NEW BUSINESS

1. VARIANCE

- (a) BOA-14-29: **914 WEST VANDALIA ROAD** Cheryl Verma requests a variance from the minimum side setback requirement. **Variance:** A recently constructed carport attached to a single family dwelling encroaches 2 feet into a 5-foot side setback. Section 30-7-3.2, Table 7-2, Present Zoning-R-5 (Residential Single-family), Cross Street-Rehobeth Church Road. **(GRANTED)**

Nicole Smith stated that the applicant is requesting a variance for a recently constructed attached carport to encroach 2 feet into a 5-foot side setback. The property is located on the north side of West Vandalia Road west of Rehobeth Church Road and is currently zoned R-5 (Residential Single-family). The Building Inspector noticed the carport and informed the applicant they needed a building permit. On July 18, 2014, the applicant submitted a request for a building permit. On or around July 29, 2014, the permit was denied because the attached carport did not meet the minimum 5-foot side setback. On August 15, 2014, the applicant filed for a variance request. The carport dimensions are 17 feet wide by 27 feet long. It is attached to the house including the porch areas. It is a total of 459 square feet. Guilford County tax records indicate the house was constructed in 2002. The lot is 0.31 acres and contains approximately 13,548 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 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 Huffman asked if there was anyone wishing to speak in favor of this matter.

Cheryl Verma, the property owner, was sworn in and stated that they purchased the property in 2009, and they decided to add a carport to the home because there is no garage and nowhere to park their vehicle during bad weather while loading and unloading groceries and children. They felt that it would add value to the home and the area. They received a Stop Work Order and have not done anything else to the carport since that time. Because of the angle of the driveway, the carport is as tight as it can be and it would cause a hardship for them to bring it in to meet the full 5 foot requirement. She has just learned that the neighbor beside her property does not own that house, but they rent it. She was just recently contacted by the owner and learned that he is opposed to this encroachment request. In response to a question by Mr. Forde, the applicant stated that her husband is doing the work on the carport himself and that if a variance is granted, the structure will be inspected for building code requirements.

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

Sonny Rye, the owner of the property located at 912 W. Vandalia Road, was sworn in and stated that he owns this property and has several other rental properties within the City under the name of Home Sweet Home, LLC. He feels that the rules and ordinances should be followed to retain property values for everyone. He is opposed to the neighbor's request to build a carport so close to his property. He also pointed out that if he decided to place a storage building in the rear yard of his house, he would be unable to do so because there would not be enough clearance to get past his neighbor's carport posts. He plans to sell this property at some point in the future and fears that it would be difficult to sell with an adjoining encroachment in place. He also has concerns about a reduction in property values to his property because of the encroachment.

Ms. Huffman asked Ms. Eckard if she knew whether variances would show up on a deed, although easements are shown on a deed. She clarified for Chair Huffman that she did not know whether a variance would necessarily be on a deed or would have to be disclosed.

There being no one else to speak in favor or opposition to the property, the public hearing was closed.

Mr. Forde pointed out that this would not have any impact on Mr. Rye's property, it does not encroach on his property. He feels that when the carport is complete it will enhance both properties as well as the neighborhood.

In response to questions, Ms. Verma returned to the podium and stated that if the variance is granted, the carport would be completed within 30 days.

#### **Discussion:**

Mr. Cummings stated that he would support the variance. Mr. Nimmer also would support the variance as the carport would add value to the surrounding area, as well. Ms. Eckard stated that she visited the property and feels there is a nice distance between the carport and the property line and feels there is no problem with approving the variance. Ms. Hayworth stated she does support Mr. Rye for trying to protect his property, but in this instance the granting of a variance for the carport will be valuable to the homeowner and she does not see it creating any negative impacts or distracting from his property. Mr. Forde stated that he agrees and Ms. Wood also agreed. Chair Huffman stated that she also agrees with supporting the variance.

Mr. Nimmer moved that in regard to BOA-14-29, 914 West Vandalia Road, 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 unnecessary hardships will result to the property by applying strict application of the ordinance because they would not be able to build an appropriately sized carport. 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 the existing lot is slightly angled and in addition, the driveway was constructed at an odd angle. The hardship results from the application of the ordinance to the property because it requires a 5 foot setback which makes the carport difficult to utilize. The hardship is not the result of the applicant's own actions because the existing conditions were present when they purchased the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the property directly adjacent is set back more than the minimum separation requirements, thus creating acceptable setback. The granting of the variance assures the public safety and welfare and does substantial justice because it allows the residents to make better use of their property and maintains the character of neighborhood, along with property values, seconded by Mr. Forde. The Board voted unanimously in favor of the motion.

- (b) BOA-14-30: **1218 MOSLEY ROAD** Don Smith General Contractor, Inc requests a variance from a temporary turnaround standard that prohibits the turnaround from being used for parking and/or driveways. **Variance:** A proposed building permit shows a proposed driveway connected to a temporary turnaround located at the dead end portion of this section of Mosley Road. Section 30-13-2.6, Present Zoning-R-3 (Residential Single-family), Cross Street-Mosley Court. **(GRANTED)**

Loray Averett stated that the applicant is requesting a variance from a temporary turnaround standard that prohibits the turnaround from being used for parking and/or driveways. A proposed building permit (for a single-family dwelling) shows a proposed driveway connected to a temporary turnaround located at the dead end portion of this section of Mosley Road. The property is located on the north side of Mosley Road, south of Air Harbor Road and west of Bass Chapel Road. It is zoned R-3. The property is currently vacant. It is a platted lot described as Northern Point, Phase 12, Lot #16. The Plat shows there is a temporary turnaround easement along a portion of the frontage of this lot. When the road is connected to the east as someday planned, then the temporary easement will dissolve itself. Guilford County records reflect the applicant purchased the lot in 2007. At that time, the Unified Development Ordinance was in effect and did not prohibit driveway connectivity to temporary turnarounds. The lot directly south of the applicant's lot known as 1223 Mosley Road was developed with a single-family dwelling in 2008. Their driveway was constructed to access directly from the temporary turnaround easement. The UDO did not prohibit this design and vehicular maneuver in 2008. We now fast forward to July 1, 2010. The LDO was adopted and specific language as described in Exhibit #3 was adopted to prevent parking and driveway access from temporary turnaround easements. On or around July 16, 2014, the applicant applied for a residential permit and the site drawings as shown in Exhibit B & Exhibit 2 shows the proposed driveway access using the temporary turnaround; thus, the permit was not approved. The lot has an average width of 82.5 feet and an average depth of 288 feet. This lot has drainage maintenance utility easements covering the mid and rear portions of the lot. The building envelope for this lot was greatly reduced by the amount of D.M.U.E. located on this property. The applicant has made mention that the proposed house plan for the lot and the driveway access using the temporary turnaround is necessary due to the limited area of the building envelope. 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.

In response to questions by Chair Huffman, David Ortega, GDOT, stated that this would adversely affect either the properties that are near this turn-around. The intent of a temporary turn-around from the UDO to the LDO, regarding the access points, was because the Department started to receive phone calls from property owners that they were experiencing cracks in their driveways. There were also complaints about people parking recreational vehicles in these types of scenarios, which potentially blocked those turn-arounds.

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

Norris Clayton, representing Don Smith Builders, was sworn in and stated that information has been provided for the Board members' review, including photographs that should clarify the area, the street, the driveways and the surrounding residential lots. Typically, when lots are developed you want to build the house with the driveway on the high side of the lot for drainage purposes. There are several constraints on this property because of the drainage easements which restrict moving the house further back onto the lot. There is not enough room to move the house further back on the lot and make a decent driveway access.

When the property was originally platted and sub-divided, the Ordinance was not in effect as it was under the old UDO. The developer bought the property in August 2007, and the property was legally platted prior to that date. There is a temporary turn-around until the street is extended in the future and it is recorded on record as being a temporary turn-around. The thickness of the temporary turn-around concrete was built for that purpose and he does not feel that there would be a problem with cracking concrete and driveways at this location.

Don Smith, the applicant, was sworn in and stated that they plan to reinforce the thickness of the reinforced concrete to avoid cracking of the concrete at this location. He feels this would avoid cracking of the concrete.

John Lawson, 1223 Mosely Drive, was sworn in and stated that he has no objection and everyone uses his driveway to turn around and he has not experienced any cracking in his driveway. He did point out that the curb has cracks. He is not opposed to the request.

There being nor other speakers on this matter the public hearing was closed.

### **Discussion:**

Ms. Wood stated that she would be against this request because she does not feel that this road will be extended any time in the near future because of the horse farm and house located at the end of the road. She is also concerned about the cracking of the driveway in the future. Mr. Forde stated that he would be in favor of this request as this is a legally sub-divided lot that was purchased in good faith to build a house on. Ms. Hayworth stated that she agrees with Mr. Forde. Ms. Eckard stated that she would also support the variance. Mr. Nimmer also agreed and Mr. Cummings stated that this property and the proposed site design is beneficial to the character of the community and he would support the request. Ms. Huffman stated that she is also inclined to support the variance.

Mr. Forde moved that in regard to BOA-14-30, 1218 Mosely Drive, that based on the stated findings of facts, the Code Enforcement Officer be overruled and the variance granted. There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance unnecessary hardships will result to the property by applying strict application of the ordinance because a single family home would not be able to be constructed on the legally sub-divided lot due to a change in the language of the LDO versus the UDO. 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 the change in the ordinance combined with the existing easements present on the lot render the lot unusable without adequate access through a driveway. The hardship results from the application of the ordinance to the property because the change in the ordinance has caused a legally sub-divided lot to become practically unbuildable because of its existing grade. The hardship is not the result of the applicant's own actions because the applicant was not involved in amending the ordinance and had no control over its ramifications. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because it allows for the development of the legally established buildable lot. The granting of the variance assures public safety and welfare and does substantial justice because it allows the applicant to develop the legally sub-divided established, buildable lot, seconded by Ms. Hayworth. The Board voted 6-1 in favor of the motion. (Ayes: Huffman, Hayworth, Cummings, Nimmer, Eckard, Forde. Nays: Wood.)

At this time, the applicants for BOA-14-26, 212 South Elm Street, returned to the podium and stated that they have come to a mutually agreeable solution to this matter and Jim Clark, Counsel representing the Police Department asked that this matter be withdrawn.

A short break was taken between 6:55 and 7:00 p.m.

## APPEAL OF HISTORIC PRESERVATION COMMISSION

- (a) BOA-14-31: **704 SPRING GARDEN STREET** E. Todd Doerner appeals a decision of the Historic Preservation Commission to deny the applicant a Certificate of Appropriateness for the type of wood deck floor that was recently replaced on the front porch. Decking lumber was used for the floor material instead of tongue and groove material. Section 30-4.12(K), Present Zoning-R-7 (Residential Single-family), (College Hill Historic District Overlay), Cross Street-Fulton Street. **(DECISION OF HPC OVERTURNED)**

Loray Averett introduced Jennifer Schneier who is with the City Legal Department.

Counsel Terri Jones stated that she represented the Historic Preservation Commission when this case was heard and she will continue to be the assigned Counsel for the Board of Adjustment to provide counsel in this matter. Ms. Schneier will be representing the interest of the Historic Preservation Commission. This is an on-record appeal and no additional testimony or evidence will be offered in regard to the decision made by the HPC in this case. However, both sides can argue what is in the record as to whether their decision was correct or incorrect.

Loray Averett stated that E. Todd Doerner appeals a decision of the Historic Preservation Commission which was to deny the applicant a Certificate of Appropriateness concerning a specific type of materials that were used for a recent porch floor replacement. The property is located on the north side of Spring Garden Street west of Fulton Street. It is zoned R-7 and is located in the College Hill Historic District. Tax Records indicate the property contains a duplex/triplex and was built in 1900. On or around April 8, 2014, the applicant was issued a Notice of Violation for exterior repairs to the structure without a Certificate of Appropriateness. The applicant applied for his Certificate of Appropriateness for replacing his front porch flooring. The request was heard at the July 30, 2014 Historic Preservation Commission meeting. His application for replacing front porch flooring was denied. On August 13, 2014, the applicant filed an appeal concerning the decision to deny his application. The verbatim transcript concerning this appeal from the July 30, 2014 Historic Preservation Commission is attached with this report. As noted in Ordinance Section 30-4-1.6, the appeal should be heard based on the correct record from the meeting. 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 by Chair Huffman regarding whether Counsel Schneier had any objection to the testimony to be given by Mike Cowhig, Counsel Schneier stated that she had a meeting with Mr. Cowhig earlier and as far as she knows, she does not have any objection. Loray Averett added that the information Mr. Cowhig is presenting was presented at the HPC meeting and was a part of that record for their meeting.

In response to a question by Ms. Eckard, Counsel Jones stated that the N C General Statutes require that when the Board of Adjustment is hearing an appeal for a Certificate of Appropriateness for the HPC, that it reviews it in the same manner that the Superior Court would review a decision that is made on a variance or other type of administrative appeal, so the Board is required to consider these factors, but it depends on what the appellants are arguing is the defect they believe the HPC made. The Board can make determinations on their own, even if the appellants do not raise all six of the issues related to the case.

Mike Cowhig, staff representing the Historic Preservation Commission, was sworn in and stated that what he offers are staff comments that were provided at the meeting, along with the section of the Guidelines that were used at the meeting. He presented copies of this information for the Board members' review.

In response to a question by Mr. Cummings regarding if it would make a difference whether the applicant replaced the same type of boards rather than using the appropriate board for the replacement project, Mr. Cowhig stated that it would make a difference from a practical standpoint. Mr. Cummings stated that it seems that the Certificate was not approved because the applicant did not use historical materials, tongue and groove flooring and that is why the Commission made the decision they made. Mr. Cowhig stated that was correct. Mr. Cummings stated that it seems that maybe the deck boards were what the historical material was for that particular residence, even if other properties in the area used the tongue and groove. Mr. Cowhig stated that he has rarely seen original houses of that vintage that had anything other than tongue and groove and the reason for that is because the tongue and groove material sheds water, whereas, deck boards have a seam and tongue and groove joins with each board, thereby making a seal and shedding water. He does not feel that the deck boards were used historically. Mr. Cummings asked if there anything that would suggest there was a previous violation of this property or at some prior point, the house had received a violation for the type of flooring material on the front porch. Mr. Cowhig stated that no violations were on record, but logically the flooring was replaced in the 1970's with deck boards and that would have been before the Historic District was established. Staff does not go looking for violations because there are too many to deal with, but when someone reports a possible violation or staff just happens to see a violation, it is their obligation to act on it. It was later on that they learned that the owner replaced deck boards with deck boards.

Ms. Hayworth pointed out that the homeowner put back what was already there and when he purchased the house the deck boards were already there, so he did not think he was doing anything wrong, he was just replacing some deteriorated boards with like materials. Ms. Hayworth also pointed out that the record shows that the applicant has several other properties in the Historic District and keeps them up very well and in good condition. Mr. Cowhig stated that it is difficult to replace only a few boards and that is why most people go ahead and replace the whole floor instead of just a few boards at a time.

In response to a question by Mr. Forde, Mr. Cowhig stated that if he had been told that the applicant was planning to replace the front porch floor, he would have relayed that a Certificate of Appropriateness would be required, as well as a building permit. He may or may not have known to ask if the materials to be used were going to be tongue and groove or deck boards.

Chair Huffman stated that Mr. Cowhig's statements in the verbatim transcript on page 5, were very telling for her because it is not clear what "repair" means, whether it is in whole or in part. Mr. Cowhig stated that again, they do not have a definition of what is "repair" and that is another point that needs clarification when guidelines are revised.

John Lalonde, 3810 Dogwood Drive, was sworn in and stated that he is also one of the owners of this property. He pointed out that the Guidelines are very confusing and they are being held to confusing criteria, i.e. "minor repairs" says, "The following projects do not require a COA; minor repairs to materials" and it even mentions "porch flooring", which is pretty straight forward. In another spot it says that they do need a COA, so again, it is very confusing and inconsistent. They were trying to obey what they thought were the rules and repairing what was already there, originally, to them, not necessarily original to the property when it was built in 1900.

Todd Doerner, the applicant, was sworn in and stated that they strive to maintain their properties and they own four houses in the Historic District and that was what they were trying to do when they replaced this flooring with what they found to be there, not knowing that they had to have a COA.

Chair Huffman stated that she has read through the record thoroughly and the testimony supports the applicant's appeal in that he was complying with the Historic District guidelines when he replaced the deck board with similar or like materials. She feels that their intentions were to comply.

There being no other speakers, the public hearing was closed

**Discussion:**

Mr. Cummings stated that looking at the scope of review for these types of decisions, he feels the decision of the HPC was arbitrary and capricious because the repairs complied with the guidelines and meeting COA requirements and that the applicant acted appropriately. Mr. Nimmer stated he feels that a COA was not needed because it was in the Guidelines that this was a minor repair and a COA was not necessary. Ms. Eckard appreciates the work that the HPC does in trying to maintain and increase the value of properties in the Historic Districts. In this case, she feels there was a situation that it was not very clear as to how to proceed for a repair or renovation. She hopes the Guidelines will be cleared up so there won't be cases like this again. Ms. Hayworth stated that she hopes the Board will not use this situation as a scape-goat as they tried to do the right thing. She urged staff and the HPC to get these things spelled out for clarification in the future. Mr. Forde stated that the Ordinance seems to be outrageously clear that "the ordinary maintenance or repair of exterior architectural features in an Historic District Overlay which do not involve a change in design, material or outer appearance." It seems that this was a repair and they did not change the design, did not change the material and if it had been painted, it probably would not have been seen. Ms. Wood said she was also in agreement with the Board members. Ms. Huffman thanked the applicants for taking such good care of their historic homes and stated that she would be supporting the applicants.

Mr. Forde moved that in regard to BOA-14-31, 704 Spring Garden Street, in regard to the Appeal of Historic Preservation Commission's decision to deny a Certificate of Appropriateness concerning the type of front porch flooring material which were recently replaced with treated decking boards instead of tongue and groove material for an existing multi-family home, the Board of Adjustment finds that: the Historic Preservation Commission did commit an error in law by acting in excessive statutory law for local Ordinance. The HPC voted on the merits of approving a COA when no COA was statutorily required. The HPC did not act consistent with proper procedures in both statute and Ordinance by holding a hearing on the issuance of a COA when the Ordinance, by its terms, does not require the issuance of a COA. The HPC did not ensure the procedural due process rights and all other constitutional rights were secure by forcing the applicant to submit a request when no request was necessary. The HPC decision was not supported by substantial competent evidence in viewing the entire record. No substantial testimony was presented upon which to make a competent decision that the materials were placed, were not in fact, historically accurate. The HPC decision was arbitrary and capricious, the rules are unclear and contradictory and provide no guidelines in what to do in a situation like this. The Board of Adjustment hereby overturns the decision of the HPC and the applicant should be allowed to complete the project to restore the porch to its appearance prior to the repair to ensure that no changes in design, material or outer appearance occur, second by Ms. Hayworth. The Board voted unanimously, 7-0 in favor of the motion.

**II. OTHER BUSINESS**

None

III. ACKNOWLEDGEMENT OF ABSENCES

None

There being no further business before the Board, the meeting adjourned at 7:50 p.m.

Respectfully submitted,

Cheryl Huffman, Chair  
Greensboro Board of Adjustment

CH/jd



**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT**

**OCTOBER 27, 2014**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, October 27, 2014 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Cyndy Hayworth, Vice Chair, Patti Eckard, Frank Forde, Sarah Wood, Mark Cummings, Adam Marshall. Planning Department staff were: Loray Averett, Nicole Smith and Mike Kirkman; Jennifer Schnierer, City Attorney's Office.

Vice Chair Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She 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 to approve the September 22, 2014 minutes, as submitted, seconded by Mr. Forde. The minutes were approved by unanimous vote.

**I. SWEARING IN OF STAFF**

Loray Averett, Mike Kirkman and Nicole Smith were sworn in for their testimony during the meeting.

**II. CONTINUANCES/WITHDRAWALS**

Loray Averett stated the applicant for the first case is going to ask for a continuance based on the number of members that are seated tonight.

**III. NEW BUSINESS**

**1. VARIANCE**

- (a) BOA-14-32: **713 KEMP ROAD, WEST** Tom Walton requests a variance from the minimum rear setback requirement. **Variance:** A proposed attached screened porch to an existing single-family home will encroach 5 feet into a 30-foot rear setback. Present Zoning-R-3 (Residential Single-family), Section 30-7-3.2 - Table 7-1, Cross Street-West Friendly Avenue. **(CONTINUED TO NOVEMBER 2014 MEETING)**

Taylor Lanier, 8007 Eastridge Road, Oak Ridge, NC, representing the applicant, stated that since there is not a full Board present he wished to ask for a continuance in this matter.

Vice Chair Hayworth stated that no motion or vote is necessary to allow the applicant a continuance in this matter.

- (b) BOA-14-33: **337 NC 68 South** David Pearce requests a variance from the minimum off-street parking requirements. **Variance:** A proposed change of use from office/warehouse to a retail/leasing operation for generators with limited outdoor storage will require 27 spaces and the applicant is proposing to provide 15 spaces; therefore, a variance of 12 spaces is requested. Section 30-11-2.3 and Table 11-1, Present Zoning-CD-C-M (Conditional District- Commercial Medium), Cross Street-Americhase Drive. **(GRANTED)**

Loray Averett stated that David Pearce requests a variance from the minimum number of required parking spaces. The applicant is proposing to establish a commercial retail use on the property which previously operated as a service restoration company. The applicant is requesting a variance to be allowed to provide 15 parking spaces when 27 spaces are required. The property is located on the eastern side of NC Hwy 68 South north of Gallimore Dairy Road and south of Americhase Drive. It is zoned CD-C-M (Conditional District - Commercial - Medium). The lot is located in the Highway NC 68 Scenic Corridor Overlay District and contains 2.01 acres. The property contains a vacant building that was last used as First Restoration Services containing warehouse space with office/service area. The front portion of the property contained Key Homes Display Center. That business is gone and this portion of the lot has been returned to grassy area. The property is limited to one driveway access. The applicant is proposing to change the use of the existing building to commercial retail/leasing of generators. The retail operation will require one space per 300 square feet of floor area. The building is 8,000 square feet in area, thus will require 27 spaces. The applicant is proposing to have a small outdoor display area close to the rear portion of the building. The outdoor display area will be limited to applicable standards for Class A Outdoor Storage as defined in the Land Development Ordinance. The applicant has mentioned when he submits his official change in use plane, he will meet compliance for the outdoor display area. The property is heavily landscaped and the existing parking is paved and striped. The loading docks are not visible from NC Highway 68 South. They are located at the side of the building close to the rear wall. The applicant has mentioned that his operations concerning his particular commercial retail use for generators will not use the amount of required additional spaces. Also, by not providing parking spaces that will not be used, the impervious surface area for the property will not be impacted. This district is primarily intended to accommodate a wide range of retail, service and office uses. The district is typically located along thoroughfares in areas which have developed with minimal front setbacks.

**NOTE\*\*** The address for this property is 337 NC Highway 68 South. The building has large numbers on the front which identify this property as "341" as well as the mailbox in the kiosk area located left of the driveway area. The numbers need to be changed to 337 to reflect the correct address. This will immensely guide emergency responses as needed.

Mr. Forde stated that a City Council member had sent him an e-mail pertaining to this case and he pointed out that the e-mail had absolutely no effect on his decision to hear the case. He feels that this was inappropriate to receive those kinds of statements because it has the potential of swaying someone's vote on a case before the Board.

Counsel Schnierer stated that she appreciates Mr. Forde clarifying that information.

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

Mark Lindsay, 7606 Riveria Drive, Kernersville, NC, stated that he is a listing agent for this property and he is speaking on behalf of David Pearce, the owner of the property. The property has been on the market for about a year and the owner has spent a substantial amount of money on the property's landscaping. He is attempting to attract a good tenant to that area to maintain the integrity of the area. Ten parking spaces were removed from the front to help with the watershed and in advertising for the leasing of the property, they were getting a lot of input from people that wanted to take advantage of the Highway 68 corridor. Because of the nature of the business of Western Branch Diesel, even though they are considered a retail business, their clientele mostly consists of hospitals, schools, large industrial businesses and not just the general public. The type of generators they deal with are not the type that most residents would want or need for general residential use. Most of the generators weigh in at about 6,000 pounds and are very large. He asked that the Board members consider the size and weight of these generators and what they are used for. The business would display no more than three generators on the outside. He also pointed out that this property is not very easily seen from Highway 68 and a potential client would have to know where they were located to be able to find them. It is not that a person going down the road would see their facility and want to come in, such as other types of general retail establishments. He feels that the issue of the parking spaces is not relevant in this particular case, because there would never be a time when all of the parking spaces would be needed for their clients. Their clients reserve a generator over the phone or on-line and make arrangements to come and it up. They would quickly hook up the generator they wished to rent and leave the property very quickly. This is not the type of business where there are potential clients coming and going throughout the day.

In response to questions by Mr. Cummings, Mr. Lindsay stated that the potential tenants are considered long-term tenants. There are currently 15 parking spaces on the property, of which only 2 or 3 would be used by employees of the company. There again, there is no need for even the 15 existing parking spaces as their clients do not come and park to come into the facility. They only come to the driveway, hook up the generator and then leave. He explained that the outdoor display area would be at the back of the building and it is below grade level of the street and it cannot be seen from Highway 68. It is only there so that when they have someone to pick up a generator, they can drive in, hook up and go.

Mike Kirkman stated that when they spoke with the owner, the previous use was a wholesale use which has a significantly smaller parking requirement, whereas a retail use requires much more parking.

In response to questions from other members, Mr. Lindsay stated that there are enough handicap spaces provided to meet the regulations and requirements. He pointed out that there are floodlights on the building and someone is there every day doing some kind of work at the building, so security is not a problem there.

Mike Fox, 100 N. Greene Street, attorney representing the potential tenant, stated that his client would like to be located at this site. Their business is retail but it is an unusual type of retail because it is more of a business-to-business type. Their generators are very large, as Mr. Lindsay previously stated and are not the type designed for general residential use. He again pointed out that the requirement for the number of parking spaces is more for a general type of retail business that have customers that visit the retail use on a daily basis and there are several different customers coming in and out frequently during their business hours. This is not such a business where they have this type of customer. He asked the Board to realize the difference in this type of particular business and support their request.

Phillip Hilton, 324 Glencoe Church Loop, Summerfield, NC, the owner of the business, stated that the generators are about 10' by 5' and most of them are on dual axel trailers and weigh about 6,000 – 10,000 pounds. The average home unit would be about 1,000 pounds. Most home units are permanently installed and these units are portable and can be taken from site to site.

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

### **Discussion:**

The Board members expressed their support of the request, except for Mr. Cummings, who stated that he has concerning hardships related to the particular property.

Mr. Forde pointed out that one of the issues is determining that the applicant has a hardship following the strict application of the Ordinance. He does feel that these are unique circumstances related to the retail use because it is unlikely that there will be more than one or two customers at the site at one time.

Ms. Hayworth stated that she felt this type of case is the reason the Board is in place, to discuss and allow adjustments to the Ordinance, due to unique circumstances of the use of the property. She pointed out that the curb appeal for higher volume retail is not there for this location. She urged Mr. Cummings to re-think his objections to granting the variance in this particular case.

After a short discussion the public hearing was re-opened by unanimous vote and Mr. Hilton returned to the podium for more discussion.

Mr. Cummings asked Mr. Hilton if failing to obtain the variance would prevent them from opening this site for the proposed business use. Mr. Fox, speaking on behalf of Mr. Hilton, stated that he felt that if the variance is denied, then there would be no deal to move forward with their plans for this property.

After a short discussion and questions answered by the proposed tenant and his legal representative and the property owner's representative, the public hearing was closed.

Mr. Forde moved that in regard to BOA-14-33, 337 NC 68 South, that the findings of fact be incorporated and the Code Enforcement Officer be overruled and the variance be 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 unnecessary hardship will result to the property by applying strict application to the Ordinance because its proposed legally allowable use would not be able to be located on the subject property due to the existing parking requirements for that allowable use. 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 the applicant's proposed legally allowable use would be overly burdened by the existing parking requirements for the proposed use under the Ordinance. The hardship results from the application of this Ordinance to the property because the Ordinance has use-specific parking requirements which are only variable through the variance procedure. The hardship is not a result of the applicant's own actions because the site was developed and the building located on the property prior to the current use desired to be placed on the lot. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it allows for the use of the applicant's property without burdening the parking in the surrounding areas. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the existing use of the property without affecting parking or impacting the area, seconded by Ms. Eckard. The Board voted unanimously 6-1 in favor of the motion. (Ayes: Hayworth, Forde, Wood, Marshall, Eckard and Cummings. Nays: None)

At this time there was a five minute break taken from the proceedings.

### 3. SPECIAL EXCEPTION

- (a) BOA-14-34: **1003 NORTH EUGENE STREET** Jane Nickles requests Special Exceptions as authorized by Section 30-4-14.4. **Special Exception Request #1:** A proposed detached garage will encroach 5 feet into required 10-foot side and 10-foot rear setbacks. Section 30-8-11.1 (C)(2). **Special Exception Request #2:** A proposed detached garage will exceed the maximum building coverage requirement. In the R districts, the maximum building coverage for accessory buildings may not exceed 50 percent of the building coverage of the principal structure or 600 square feet, whichever is greater. The proposed detached building will exceed 600 square feet by 50 square feet. Section 30-8-11.1(A)(3). The Historic Preservation Commission has recommended these Special Exceptions. Present zoning R-5 (Residential Single-family), Fisher Park Historic District, Cross Street-Victoria Street. **(GRANTED)**

Nicole Smith stated that the applicant request Special Exceptions for a detached garage which will encroach 5 feet into a 10-foot rear setback and 5 feet into a 10-foot side setback requirement; It will also exceed the maximum building coverage requirement. In the R districts, the maximum building coverage for accessory buildings may not exceed 50 percent of the building coverage of the principal structure or 600 square feet, whichever is greater. The proposed detached building will exceed 600 square feet by 50 square feet. The property is located on the west side of North Eugene Street north of Victoria Street. It is zoned R-5 and is located in the Fisher Park Historic District. The lot contains an existing two-story single family dwelling. The applicant applied for a Certificate of Appropriateness to construct a detached garage with an attached pergola. At their September 24, 2014 meeting, the Historic Preservation Commission approved the COA and recommended for the special exceptions, as described in the Requested Actions. Records indicate the house was constructed in 1921. The lot is approximately 8,664 square feet. The site drawing shows a shared driveway between this property and the adjacent lot. The applicant is proposing a detached garage with an attached pergola to the garage. The garage footprint and pergola footprint must meet setbacks. Based on the definitions in Exhibits 5, the pergola is not counted towards building coverage as it is not a roofed structure. The building coverage for the detached building may not exceed 600 square feet or 50 percent of the footprint of the house, whichever is greater. The house footprint is shown as 1,092 square feet; thus the applicant may have 600 square feet of detached building on the ground. The garage is proposed to be 650 square feet, exceeding the allowable coverage by 50 square feet. The pergola will be 312 square feet but is not counted as building coverage. All overhangs and eaves will remain at least 3 feet from the property lines. The garage height is proposed to be 15 feet – 7 inches which increases the garage setback from 5 feet to 10 feet because it is taller than 15 feet by 7 inches. The R-5 Residential Single-Family District is primarily intended to accommodate low density single-family detached residential developments. The overall gross density in R-5 will typically be 5.0 units per acre or less.

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

Jessie Arnett, New Age Builders, representing the applicant, was sworn in and stated that he has been working with the applicant to construct the proposed garage on her property. The lots in Fisher Park are very narrow and they are trying to maximize the amount of space available while trying to match the eave overhang to match the existing house. The building is seven inches taller than 15 feet because of the roof pitch that also matches the existing house. The proposed construction closely matches other structures in the neighborhood. There has been no opposition voiced and the Historic Preservation Commission supports the request.

Jane Nickles, the property owner, was sworn in and stated that the shared driveway will not have any impact on the placement of the proposed garage. There would still be access to pull through from Eugene Street to the back of the neighbor's house and out to Victoria Street.

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

#### **Discussion:**

The Board members were all in favor of supporting the request for the Special Exception as the proposed garage is in keeping with the historic nature of the neighborhood.

Mr. Forde moved that in regard to BOA-14-34, 1003 North Eugene Street, that the findings of fact be incorporated and the Enforcement Officer be overruled and the Special Exception be granted due to the following: A Special Exception may be granted by the Board of Adjustment if evidence presented by the applicant persuades 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 it allows for the continued use of the property in an historically appropriate manner. The granting of the Special Exception assures the public safety and welfare and does substantial justice because it allows for the owner to use the property in a manner consistent with the zoning and the historical district requirements and with its own personal desires, seconded by Ms. Eckard. The Board voted 6-1 in favor of the motion. (Ayes: Hayworth, Marshall, Cummings, Eckard, Wood, Forde. )

## **OTHER BUSINESS**

Loray Averett stated that at the November meeting there will possibly be 4 items.

## **IV. ACKNOWLEDGEMENT OF ABSENCES**

The absence of Mr. Nimmer and Ms. Huffman were acknowledged as excused.

## **ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 7:25 p.m.

Respectfully submitted,

Cyndy Hayworth, Vice Chair  
Greensboro Board of Adjustment

CH/jd

24,

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT****NOVEMBER 24, 2014**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, November 24, 2014 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Cyndy Hayworth, Vice Chair, Patti Eckard, Frank Forde, Mark Cummings, Adam Marshall, Laura Blackstock and Jeff Nimmer. Planning Department staff were: Loray Averett, Nicole Smith, and Mike Kirkman; Teresa Childress, Tax Collector; Terri Jones and Jennifer Schnierer, City Attorney's Office.

Vice Chair Cyndy Hayworth called the meeting to order and explained the policies and procedures of the Board of Adjustment. She 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**

Mr. Forde moved approval of the October 27<sup>th</sup> minutes, as submitted, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion and the minutes were approved.

**SWEARING IN OF STAFF**

Loray Averett, Nicole Smith, Ron Fields, and Mike Kirkman were sworn in for their testimony related to cases before the Board.

**CONTINUANCES/WITHDRAWALS**

Loray Averett stated that in a brief discussion, just prior to the beginning of the meeting, the applicant for BOA-14-35 wished to ask for a continuance.

Derek Fleming, 2006 Chelsey Lane, Greensboro, the applicant, asked for a continuance to the next Board meeting. His attorney notified him within the past couple of hours that he would not be able to be at today's meeting as he had a criminal case in Charlotte.

Counsel Jones, attorney for the Board, stated that she was going to present the City's case with respect to the Revocation of Privilege License, and Mr. Fleming did inform her that he has not discussed this matter fully with an attorney. She stated that the City is prepared to go forward, there are five witnesses here today who are ready to testify, there is an automatic stay with the privilege license so he will be allowed to continue to operate until such time there is a hearing in this matter. If the Board is inclined to continue, which she would object to on behalf of the City, she would ask that it not be continued any later than the December meeting.



Mr. Cummings stated that there are due process concerns here. In response to a question by Vice Chair Hayworth concerning what the due process concerns are, Mr. Cummings stated that the applicant's livelihood is on the line and if he has Counsel for such a substantial interest, having the ability to have Counsel present is a due process or fairness in his case. Since the City is represented by an attorney, it would only be fair for the applicant to also be represented by an attorney.

Loray Averett stated, for clarification, that the next meeting will be held on December 15th, 2014 which is the 3<sup>rd</sup> Monday in December, due to the Holidays.

In response to a question by Vice Chair Hayworth, Counsel Jones stated that the applicant would be able to continue to operate his business, according to Chapter 13 of the Code.

In response to a question by Mr. Marshall, Mr. Fleming stated that he contacted his attorney in Charlotte about a week after receiving notification of the Revocation. He contacted the criminal attorney in Greensboro, regarding some of the allegations in the complaint, some time after that. He does not wish to make any testimony without his Counsel present, because this would have an impact on his 5<sup>th</sup> Amendment rights and his 6<sup>th</sup> Amendment rights because he has a right to Counsel in the criminal matter.

Mr. Cummings stated that the applicant is within his rights to ask for a continuance to allow representation of an attorney, as anything he says in this setting could be used against him in a criminal setting. If he were the applicant's attorney, he would be advising him of that. He pointed out that some of the allegations led to criminal charges and if he says something here today, which could be used in a criminal case against him.

Mr. Forde stated that it is unfortunate that the City is here tonight and prepared with members of law enforcement community and other City attorneys, and while he is incredibly appreciative of Mr. Cummings' points on the applicant's Constitutional and other Rights, it seems that the applicant had an obligation to himself, as well as to the Board and the City attorney, to have his attorney contact these people with information regarding moving forward with the case. He is concerned that the same circumstances may present themselves at the December meeting and another continuance would be granted. He feels that the attorney should have attempted to contact the City attorney with this information. He suggested that the applicant may want to close his business until the December meeting and then re-open it afterwards, if he is allowed to, then he would have no problem giving a continuance.

Ms. Blackstock stated that she agrees with Ms. Hayworth and Mr. Forde, because she feels that this club should not be operating during this time period. She has no problem with a continuance since his attorney is not present, but she does have a problem with the club remaining open.

Ms. Eckard stated that she agrees with the other members of the Board, and has concerns about the applicant having access to an attorney for the parts of this particular hearing and she also gets very frustrated because the public does not take the Board of Adjustment seriously. She likes the recommendation made by Mr. Forde about closing the business until after the December meeting.

Mr. Nimmer asked if this is a condition that the Board can place on the continuance. Counsel Scheirer stated that more than likely, they would have to go to Court and get an injunction for closure of the business as he is still in operation at this time.

Mr. Cummings stated that he is concerned about the Board being consistent, as not too long ago there was another club before the Board that sought a continuance and that continuance was granted. He asked that the Board just be consistent.

Mr. Forde stated that a continuance was granted in that case, but in that instance, their attorney reached out to the City attorney prior to the meeting time and they both came to an agreement, requesting a continuance on both sides, showing a good faith effort on behalf of the applicant.

Mr. Marshall stated that he agrees with Mr. Cummings and that the Board has to take the applicant at his word that he has hired an attorney and if there is a conflict, he should be allowed the one opportunity to come back before the Board. In this instance, he is willing to grant a continuance.

Vice Chair Hayworth stated that she wished to reiterate that the continuance is something that is discussed on each case, but her problem is that this club will continue operations and she has a problem with that, considering the information she has received.

Mr. Fleming stated that the information should be taken at face value as true and that an allegation has been made.

Counsel Jones stated that for clarification, both the City Code of Ordinances and state law, it allows him to continue to operate pending an appeal, there is an automatic stay of the Enforcement action here. It should not be held against him that he has the legal option of staying open. If he should voluntarily shut down, that would be his option, but she does not feel that it can be compelled upon him. Had the City attorney's office been approached before the meeting by his attorney, they typically would not object to a request for a continuance but she has no way of verifying that information.

Mr. Cummings asked if Jim Clark was contacted. Counsel Jones stated that Jim Clark handles cases when it is an entertainment facility based on criminal activity occurring at the site and this case is a Zoning dispute and she is Counsel for the Planning Department. Mr. Cummings pointed out that it has been stated that there were criminal charges that came out of this. Counsel Jones stated that without going into the substance of the allegations, the Police are here to testify on this case, but this only about Zoning. If Mr. Clark had been notified concerning a continuance for this case up until 5:00 o'clock, he would have contacted her.

Mr. Forde stated that based on that, if the case is heard tonight, the only issues that the Board will decide upon is whether the business is being conducted at this particular premises, is in keeping with the privilege license that has been issued for this particular premises. Counsel Jones stated that the Police officers are here to describe what they have observed to give the Board an opportunity to determine if the use is reasonable under the law. Mr. Forde asked if a business was conducting business activities that were not within the realm of the privilege license issued, would that be a criminal offense? Counsel Jones stated that under the General Statutes violations of City Ordinances can be punished as a misdemeanor, although they typically are not.

Vice Chair Hayworth asked the Board members who were in favor of denying the continuance to raise their hands. Ms. Hayworth raised her hand to indicate denial of the continuance.

Vice Chair Hayworth then asked the Board member who were in favor of granting the continuance to raise their hands. The other six (6) Board members raised their hand, therefore, granting the continuance to the December 15<sup>th</sup> meeting.

Mr. Marshall asked the applicant to have his attorney contact the City attorney's office. Mr. Nimmer thanked the Police officers for coming to the meeting. The Board appreciates their time.

## **NEW BUSINESS**

### **APPEAL OF REVOCATION OF GREENSBORO PRIVILEGE LICENSE**

- (a) BOA-14-35: **2206 STAMEY STREET** Derek Fleming appeals a decision to revoke his Privilege License for Club Turnt Up 336 located at 2206 Stamey Street. The business is licensed as a teen club with no alcohol and has been determined that it operates in violation of the teen club definition as regulated by the Land Development Ordinance. City Code of Ordinances Section 13-48 and Land Development Ordinance Section 30-8-3, 30-8-7.2 and Article 15, Definitions, Present Zoning-CM (Commercial-Medium), Cross Street-East Market Street. **(CONTINUED TO DECEMBER 15<sup>th</sup> MEETING)**

## **OLD BUSINESS**

### **VARIANCE**

- (a) BOA-14-32: **713 KEMP ROAD, WEST** Tom Walton requests a variance from the minimum rear setback requirement. **Variance:** A proposed attached screened porch to an existing single-family home will encroach 5 feet into a 30-foot rear setback. This case was continued from the October 27, 2014 meeting. Present Zoning-R-3 (Residential Single-family), Section 30-7-3.2 - Table 7-1, Cross Street-West Friendly Avenue. **(GRANTED)**

Vice Chair asked if anyone wishing to speak on this matter would come forward to be sworn in for their testimony.

Mr. Marshall stated that at the last hearing he was going to recuse himself ad he did the closing on this particular home. The sellers are speaking on behalf of the buyers and they had an escrow agreement that was on-going at the time of the last meeting and he was still involved. That is no longer pending and he is no longer involved and he cannot benefit in any way, financially, and he feel that he can vote and has no conflict, but he just wanted to disclose that information.

Loray Averett stated that the applicant is proposing to remove an existing deck and construct a screened porch which will encroach 5 feet into a 30-foot rear setback. The property is located on the western side of Kemp Road, north of West Friendly Avenue and is zoned R-3 (Residential Single-family). Guilford County tax records indicate the dwelling was constructed in 1980. The house was built centered on a square shaped lot. The applicant is proposing to remove an existing rear patio and construct a screened porch with a fireplace. The screened porch will encroach 5 feet into a 30-foot rear setback. The property located to the rear of the applicant's property is a long rectangular lot. The house on this lot fronts on West Friendly Avenue. The area directly behind the applicant's rear lot line is the rear yard space for the property located at 4102 West Friendly Avenue. This layout can be seen on Exhibit 1. The applicant also mentions there is a large significant tree located north of his proposed screened porch location which they are interested in saving. The porch addition would need to be constructed towards the rear lot line instead of the north lot line to maintain the tree. Also, the grade at the northern rear portion of the house slopes downward. The foundation of the existing house in that area falls below grade. Existing foundation vents, which are required by code, are located in this area and are protected by below grade vent wells. The R-3, Residential Single-Family District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Vice Chair Hayworth asked for anyone speaking on this matter to come forward.

Taylor Lanier, 8007 Eastridge Road, Oak Ridge, NC, was sworn in and stated that Tom Walton, the owner of the property could not attend today's meeting. A notarized letter from Mr. Walton was submitted as evidence. There is also a letter from the property owner of the house that is directly behind the subject property. This letter indicates their support of the request for a variance to build the screened porch. The applicant wants to build a screened porch that will encroach into the rear setback. There is a very old tree in that rear area that they are trying to preserve and the only other placement that would work is toward the back of the lot.

There being no speakers in favor or in opposition to the request the public hearing was closed.

Mr. Forde moved that in regard to BOA-14-32, 713 Kemp Road West, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the Ordinance. If the applicant complies with provisions of the Ordinance unnecessary hardships will result to the property by applying strict application of the Ordinance because of the existing topography and landscaping and existing large tree. The strict application of the Ordinance would prevent the applicant from utilizing the back yard in an appropriate manner. 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 the property's topography and landscaping existed prior to the applicant's acquisition of the property. The hardship result from the application of this Ordinance to the property because by lending the amount of area in which the applicant can construct the proposed screened porch in the rear lot line would result in additional grading and the loss of a tree. The hardship is not the result of the applicant's own actions because the grade and topography and landscaping of the property existed prior to the Ordinance. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it allows for the use of the property in a manner conducive to the neighborhood. The granting of this variance assures the public safety and welfare and does substantial justice because it allows the applicant to use his property for the highest and best use, seconded by Mr. Nimmer. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Hayworth, Forde, Blackstock, Nimmer, Eckard, Cummings, Marshall. Nays: None.)

## NEW BUSINESS

### VARIANCE

- (a) BOA-14-37: **517- 523 SIMPSON STREET** Steven Todd Rose requests a variance from a minimum front street setback. **Variance:** Portions of a proposed handicap landing will encroach 3.5 feet into a 15-foot front setback adjacent to Simpson Street. Section 30-7-1.4 and Table 7-14, Present Zoning-O (Office), Cross Street - West Fisher Avenue. **(GRANTED)**

Nicole Smith stated that the applicant is requests a variance from a minimum front street setback. Portions of a proposed handicap landing will encroach 3.5 feet into a 15-foot front setback adjacent to Simpson Street. The property is located on the west side of Simpson Street south of West Fisher Avenue and is zoned O (Office). Guilford County tax records indicate the property was constructed in 1931. The previous use was residential. The lot is approximately 60 feet wide and 215 feet deep. It is rectangular shaped in that it is narrow and long. The applicant is proposing to use the property for office space and is required to construct and comply with ADA requirements. The applicant has mentioned that due to the proposed design for the porch along with differences in the exact grade of the existing doors the landings portions of the porch will encroach 3.5 feet into the front setback along Simpson Street. Based on Section 30-7-1.4(C) all ramp sections are permitted to encroach into the setback; however, the landing portion is not permitted to encroach. If the porch or landing portions were less than 35 square feet, the encroachment would be permitted. The landing areas are estimated to exceed more than 100 square feet in area. The applicant is planning to construct and enlarge the front porch to comply with ADA requirements. A connectivity ramp will be attached at the corner turn of the front porch and be installed along the side of the building. The O - Office District is primarily intended to accommodate office, institutional, supporting service and other uses

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

Steven Todd Rose, 7803 French Drive, Browns Summit, NC, was sworn in and stated that he had visited the Planning Department to make sure that this property was zoned for Office use because he was considering purchasing the property because his current business is located next door and behind that is Deep Roots Market. There are plans within the Planning Department for the property to be used for office use. The handicap ramp is required for office use, but the City requires all four front doors to have an access point from that ramp, even though two of the doors go upstairs. Not being an architect, he did not plan for those things. He is diligently working to make this building ADA compliant with the changes he has made. He hopes the Board will provide him the opportunity to go forward with his project.

Wayne Smith, 1710 Madison Avenue, was affirmed and stated that he is the architect for this project and explained the requirements for the handicap landing and ramp for this particular building. He stated that the proposed placement of the ramp and landing will maintain the character of the building.

In response to a question by Ms. Eckard, Mr. Rose stated that this property was zoned for office use before he purchased it. He provided information clarifying this fact.

Mr. Smith added that the scope of the renovation is not limited to just the handicap accessibility. The applicant has put in fire alarms, smoke detection, emergency lighting, et cetera, to make this building a lot safer than it was. He also presented the elevation drawing that the Board had asked to see.

Mr. Forde asked why this is a variance issue and not a Building Code issue. Mike Kirkman explained that in Exhibit 3 it talks about what is allowed in terms of review for encroachments into required setbacks. The setback is the zoning issue in terms of where it is associated with buildings and property lines. There is some limited ability to allow encroachments but what they are asking for exceeds staff's administrative authority and that is why the variance request was made.

Mr. Smith stated that you cannot have the ramp without the landings and to allow the ramp and not the landing would be detrimental. The design presented was done on purpose to meet the Code and zoning requirement. The stairs are moved 5 feet outward to accommodate the ramp.

There being no speakers in opposition the public hearing was closed.

### **Board Discussion:**

Mr. Forde stated that as a builder this type of request is very uncomfortable for him. Here is an applicant that is trying to turn this building into a very nice place in a really nice neighborhood. He stated that the Ordinance needs to be written in a manner that allows for these types of requests, without someone having to spend thousands of dollars and their time to come before the Board with a request for a variance.

Mr. Forde moved that in regard to BOA-14-37, 517- 523 Simpson Street, that the findings of fact be incorporated and the Enforcement Officer overruled and the variance granted based on the following: There are practical difficulties or unnecessary hardships that result from carrying out the strict letter of 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 the property could not be used for commercial purposes, which is an allowable use and comply with the current accessibility Codes. The hardship of which the applicant complains result from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the structure located on the property was constructed before any ADA requirements came into existence. The hardship results from the application of the Ordinance to the property because the ADA requirements were not in existence at the time the structure was built. The hardship is not the result of the applicant's own actions because the compliance Codes were not of his own making. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit because it allows the applicant to use the property in a legally allowable manner. The granting of the variance assures the public safety and welfare and does substantial justice because it allows for the highest and best use of this property, seconded by Mr. Nimmer. The Board voted unanimously in favor of the motion to grant the variance. (Ayes: Hayworth, Forde, Blackstock, Nimmer, Eckard, Cummings, Marshall. Nays: None.)

**OTHER BUSINESS**

Counsel Schnierer thanked the Board members for their efforts, and for volunteering their time and their citizenship to the Board.

Vice Chair Hayworth wished everyone a very happy Thanksgiving.

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Chair Huffman and Ms. Wood were acknowledged.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting adjourned at 6:38 p.m.

Respectfully submitted,

Cyndy Hayworth, Vice Chair  
Greensboro Board of Adjustment

**MEETING OF THE  
GREENSBORO BOARD OF ADJUSTMENT  
DECEMBER 15, 2014**

The regular meeting of the Greensboro Board of Adjustment was held on Monday, December 15, 2014 at 5:30 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were: Cheryl Huffman, Chair, Cyndy Hayworth, Patti Eckard, Frank Forde, Jeff Nimmer, Mark Cummings and Adam Marshall. Planning Department staff were: Loray Averett, Nicole Smith and Mike Kirkman; Teresa Childress, Finance Department; Officers Goodykoontz and Calvert, GPD; Jennifer Schnierer and Terri Jones, City Attorney's Office.

Chair Huffman called the meeting to order and explained the policies and procedures of the Board of Adjustment. She 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. Hayworth moved approval of the November minutes, as submitted, seconded by Ms. Eckard. The Board voted unanimously in favor of the motion.

**SWEARING IN OF STAFF**

Loray Averett, Nicole Smith, Mike Kirkman of the Planning Department; Detective M.J. Calvert, Corporal Goodykoontz, and Teresa Childress, Tax Collector, were sworn or affirmed for their testimony during the proceedings.

**CONTINUANCES/WITHDRAWALS**

Chair Huffman asked if there were any continuances or withdrawals to be considered. Loray Averett stated that the applicant for BOA-14-39, 2109 Lafayette Avenue has withdrawn their request from the agenda.

Ed Galloway, representing the attorney for BOA-14-38, 7806 Boeing Drive, stated that they would request that this matter be continued to the January 2015 meeting, as the attorney, Mr. Murray, for that matter was inadvertently tied up in a court matter out of town and could not be present for today's meeting. He has contacted the legal attorney for the City and the Police Department to explain his absence. Mr. Murray has indicated that he will be ready to speak to the case at the January 26, 2015 meeting.

After a short discussion by the Board members, Mr. Forde moved that BOA-14-38, 7806 Boeing Drive be continued to the January 26, 2015 meeting, seconded by Ms. Hayworth. The Board voted unanimously in favor of the motion.



## OLD BUSINESS

### APPEAL OF REVOCATION OF GREENSBORO PRIVILEGE LICENSE

- (a) BOA-14-35: **2206 STAMEY STREET** Derek Fleming appeals a decision to revoke his Privilege License for Club Turnt Up 336 located at 2206 Stamey Street. The business is licensed as a teen club with no alcohol and has been determined that it operates in violation of the teen club definition as regulated by the Land Development Ordinance. This request was continued from the November 24, 2014 meeting. City Code of Ordinances Section 13-48 and Land Development Ordinance Section 30-8-3, 30-8-7.2 and Article 15, Definitions, Present Zoning-CM (Commercial-Medium), Cross Street-East Market Street. **(APPEAL DENIED)**

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

The applicant, Derek Fleming, was sworn in for his testimony regarding this matter. In response to a question concerning whether he was represented by Counsel, Mr. Fleming stated that his attorney, Mr. Lee, is going to be running late but he is ready to proceed without his presence.

Loray Averett stated that Derek Fleming appeals the revocation of his privilege license for Club Turnt Up 336. The business is licensed as a teen club with no alcohol and has been determined that it operates in violation of the teen club definition as regulated by the Land Development Ordinance. This request was continued from the November 24, 2014 meeting with regards to allow the applicant opportunity to have his attorney present. The property is located on the south side of Stamey Street north of East Market Street and is zoned CM (Commercial Medium). Teen Clubs are permitted in the CM zoning district with regards to the Land Development Ordinance including the specific applicable definition for a Teen Club. On or around January 14, 2013, the applicant applied for and was approved to operate a Teen Club with No Alcohol at this location. Since that date, there have been recurring police evidence that the property is not operating as a teen club. Exhibit 3 contains the decision of the Zoning Administrator and the reasons applicable to request revocation of the applicant's privilege license. Exhibit 4 contains a report from police staff concerning criminal activity at this location beginning October 2013 through September 2014. The report contains specific dated and documented evidence that the property is in violation of the teen club definition. Exhibit 5 contains a memo from City Detective M.J. Calvert that on Oct 11, 2014, around 3:00 A.M., he served the applicant with paperwork concerning the revocation of the privilege license and zoning violations for the property. He noted that while he was there he asked for identification from at least 16 patrons. Out of the 16 patrons that he asked for identification, one was 18 and the other 15 patrons ranged in age from 20 years old to 39 years old. The CM, Commercial-Medium District is primarily intended to accommodate a wide range of retail, service and office uses. The district is typically located along thoroughfares in areas which have developed with minimal front setbacks. Staff is available to answer any questions by Board members.

Chair Huffman stated that she would like to hear the testimony of the Police officers.

Counsel Jones stated that the City would question the Police officers and then Mr. Fleming would be afforded the opportunity to ask them questions.

Detective M.J. Calvert came to the podium to answer questions posed by the City's Counsel, Ms. Jones, as follows: He identified himself as Michael Calvert and is the detective assigned to the Vice/Narcotics Division of the Greensboro Police Department. He has been employed by the City for 9 years in January. His job responsibilities include being the liaison with the ABC Board and the NC Alcohol Law Enforcement (ALE). As part of his role he does the same types of investigations that the ALE people would do, on the local level, as far as alcohol related incidents, gambling offenses, also some drug investigations. He also follows up with any type of violation that is reported with regard to an entertainment facility use or if a violation is suspected. It is his responsibility to pull the necessary case reports for those types of calls for service and forward them on to the proper City officials. He is familiar with the appellant, Derek Fleming and the property located at 2206 Stamey Street and the facility known as Club Turnt Up 336, as he has been to this location 3 to 5 times for different investigations. The club was in operation at the times he was on the site. He normally visited the site in the early morning hours, after 1:00 a.m. and before 3:00 a.m. The typical hours of operation appeared to be in the early morning hours and viewing the hours' information that is posted on a FaceBook page with their name, it says it is an establishment that is open from 2:00 to 6:00 a.m.

When he was at the facility he witnessed entertainment in the form of a DJ at the center of the establishment and there has always been music playing. There is an area used for dancing within the club near the center, there are several couches and chairs and tables and booths. There is a good portion of a stage area close to where the DJ booth is located. He witnessed dancing within the club on these visits. The age of the patrons appeared to be over 21 years of age. They did not card everyone, but that was their approximate age. Looking at previous case reports where officers had responded to the property, the victims and reporting parties involved in the different cases, indicated that their ages were over 21 years of age. There was one person what was 19 years of age and oldest being in the upper 30s. He has not seen any teenagers on the property and he has not observed any alcohol being served on the premises.

He further testified that he provided information to Mike Kirkman of the City Planning Department regarding the use of the property. (A copy of this memo containing this information was included in the BOA members' packets as Exhibit 4). The memo has all of the major incident calls that were responded to and a brief synopsis of those and also mentions Agent Doward, who was the primary ALE agent assigned to the investigations and it mentions a search warrant that was conducted where there was alcohol found and a couple of the search warrants that they performed in the Vice/Narcotics Division for drug sales and then the remainder are different case reports that also had a brief synopsis of officers responding and ages were submitted as part of their investigation. As a result of this investigation and compiling the information related, he has recommended that the privilege license be revoked, based on the calls for service and the types of crimes investigated at the facility. His command staff also concurs with this recommendation. There are no other teen clubs operating within the City of Greensboro.

In response to a question by Chair Huffman, Detective Calvert stated that there is a bar area to the left of the entrance and he noted that there were sodas being sold, but he did not view any alcohol. There were some fryers set up for possible sales of chicken wings, but he does not remember if there was any other food being sold. In response to questions by other Board members, Detective Calvert stated that there were staff people that wore "Security" t-shirts inside and outside the facility.

The report forwarded to Mike Kirkman was compiled from information provided in case reports by other officers who had been to the property. These reports are a matter of public record. His report also contained information when he, personally, visited the property on April 2014, when a search warrant was conducted; on June 27, 2014, they assisted the Fire Department. He is unaware whether there are any criminal charges pending against Mr. Fleming. Chair Huffman asked that questions asked by the Board concentrate on the matter at hand and not go into other information that the Board is not authorized to act upon and which may be irrelevant to this matter.

Counsel Jones stated that this Board is limited only to eyewitness testimony and Detective Calvert has testified that part of his job is to compile information from various Police reports and documents and there is the issue of reliability of those reports and the basis of his recommendation for revocation of the privilege license. Detective Calvert stated that he relied on the reports given by Police officers who were on the scene, he also was on the scene on several occasions which were also covered in the report. He also testified that he was able to observe the patrons in the club and with his experience as a Detective, feels that he is qualified to estimate the approximate age of the patrons he observed on his visit to the premises on October 11, 2014 as well as other visits he made.

Derek Fleming, the appellant, was afforded an opportunity to ask questions of Detective Calvert. In response to these questions, Detective Calvert stated that he did observe people in the premises that appeared to be over 21 years of age. He did not check identification of the patrons. On his first visit he observed approximately 20 people within the establishment. He determined that there were several people who were obvious employees by "Security" shirts and there were other people that did not seem to be performing any sort of employee role, therefore, they appeared to be patrons rather than employees. On October 11, 2014, he went into the establishment after the search warrant was served and he is unsure how many people were inside the club at that time. He did speak to patrons that were outside waiting to get inside the club. The investigation on that date was conducted by ALE and he was not involved in that investigation and he does not have access to their particular case reports. This particular visit was shortly before 3:00 a.m. because the warrant was served at 3:05 a.m. and signed by the appellant. Mr. Forde asked Detective Calvert is, in his professional opinion, did he believe that the Club Turnt Up 336 was operating as a teen club. Detective Calvert stated that it was his opinion that it was not.

Counsel Jones asked questions of Corporal Goodykoontz, who stated that he has been with the Greensboro Police Department (GPD) for approximately 15 years. His job responsibilities include being a Field Supervisor in Patrol in the Eastern Division, which encompasses the East Market Street area. He is also the ABC Enforcement Coordinator as for the secondary employment, which is through the Greensboro ABC Board in conducting investigations through complaints that are logged for ABC establishments or establishments that are providing or selling alcohol illegally. Counsel Jones asked for clarification of ABC. Corporal Goodykoontz stated that the reference is to the Alcohol Beverage Control with Greensboro ABC Board.

He is familiar with the appellant, Derek Fleming and the Club Turnt Up 336 and the property located at 2206 Stamey Street. He co-authored the report, Exhibit 4, in this case. He has been on-site at the club on June 27, 2014; and a second time during the search warrant conducted by ALE in October 2014. He observed that the club had a number of patrons, so much so, that to get through the crowd he had to maneuver sideways. He was assisting the Fire Department in their investigation and conducting a fire and life safety inspection. Once they got to the back of the club, the DJ announced a song for GPD, which was "Get Out of my [expletive] face" and at that time the patrons turned on GPD in the back corner, chanting, "Get out of the club" and started to advance on them. At that point, it was determined to end the inspection for safety reasons and exited the club. He observed that the patrons of the club that evening appeared, in his professional opinion, to be 20 years of age or older, based on his training and experience. On that evening, he did not observe any teenagers below the age of 18 and he does not recall anyone that appeared to be below that age.

He stated he was also at the premises on the October 11, 2014 search warrant activity conducted by ALE and once they were in the establishment, most of the patrons were exited out to the parking lot. The ABC officers that were working under his supervision went to each patron that was waiting to go in or had come from inside the club, escorted by ALE, where they got their names and date of birth in order to show the age range of the patrons on that date. He observed dancing at the club on the June visit, but he did not go inside the club on the October visit until after the search warrant was issued. During the April 2014 investigation for illegal narcotics, those were detectives that were under his supervision under the ABC Division. He did not go into the establishment, however, the parking lot was full of patrons and the detectives were using a confidential informant to do controlled buys of illegal narcotics inside the establishment. At each one of those times, he was present and supervising for the detective in order to get probable cause for the search warrant that was conducted on May 4, 2014. He also recommended that the privilege license be revoked based that it is not operating as a teen night club for persons 13 to 19 years of age; that there is a much older crowd that is in attendance and it is also his opinion that 2:00 a.m. to 6:00 a.m. is not a conducive time frame for 13 to 19 year olds. Also there have been serious violent incidences that have occurred at the establishment. He has not had occasion to investigate any other teen clubs in Greensboro.

Mr. Fleming cross-examined Corporal Goodykoontz and asked the following: on the 27<sup>th</sup>, when he assisted the Fire Department during their inspection, the report states that the people appeared to be at least 20 years old; he asked about the lighting inside the building at the time he entered. Corporal Goodykoontz stated that there was low lighting and was a dim, dark place but he was able to observe the patrons enough to determine that their ages were over 19 years old. He had a Mag-light flashlight and was able to get a good look at the majority of the patrons. He did not I.D. anyone at that time. In his opinion, these people's ages were well beyond their teens in their appearance.

In response to questions by Board members, Corporal Goodykoontz stated that on the March 15, 2014 report that alcohol was being served, he could not confirm that there was alcohol on the premises as he was not at the location at that time. On July 21 and September 27, 2014, there was a report of shootings at the location and the age of those victims were 25 years old and 36 years old. Witnesses ranged in age from 25 to 45 years old. Also there was a fight at the location on January 8, 2014 and the ages of the parties are unknown as the subjects had left the area.

In Exhibit 5, the ages shown for patrons were 22 to 42 years of age. Mr. Cummings asked if Corporal Goodykoontz had every gone to the facility during hours when it would be appropriate for teenagers to be at the location. Corporal Goodykoontz stated that the vast majority of the times that he has gone to the establishment before 2:00 a.m. there has been no patrons at the premises. The only group he has ever seen at the facility before 2:00 a.m. was in April 2014, when there were patrons leaving the establishment at 11:00 p.m. who stated they were there for an event for Claremont Homes reunion. These patrons were in their 50s. In response to further questions, he answered that the vast majority of calls come in after 1:00 a.m. and that is when GPD has calls for service at the location. He also stated that the appellant, Mr. Fleming, has stated to him that he did not know that he was limited to patrons aged 13 to 19 years old. He also reported that he has been by the club on several occasions before 1:00 a.m. and there was no one at the club and/or there were no cars in the parking lot. He stated that an "after hours club" is a facility for patrons to come to once other clubs have closed and stopped serving alcohol. It is illegal to sell alcohol after 2:00 a.m. It is his opinion that this facility was operating as an "after hours club". There was a question concerning Exhibit 10, which shows a sign indicating the age requirements and hours of operation. This sign is located on the front door and appears to have been in place for quite some time.

Counsel Jones asked for testimony from Teresa Childress, who stated that she is the Collections Manager and Tax Collector for the City. She has been employed by the City for 11 years and is responsible for collecting taxes for businesses run within the City. She is familiar with the appellant, Derek Fleming, and a privilege license was issued January 14, 2013, as shown in Exhibit 2-A, for the purpose of use as a teen night club with no alcohol. A letter was sent to Mr. Fleming for notification of revocation of the privilege license. She relied upon information in a memo received from Mike Kirkman requesting revocation of the privilege license based on the operations of the location not adhering to the approved use of a teen club. Section 13-48 of the City's Code of Ordinances allow the revocation of privilege licenses, as shown in the staff report. To her knowledge there are no other businesses operating within Greensboro as teen clubs. In the normal course of issuing privilege licenses, she and her staff verify the use for which the privilege license is issued, based on information provided by the applicant for the privilege license.

Mr. Fleming was given an opportunity to question Ms. Childress. He pointed out Section 110 on the application and under that provision is an area stating "services" which were explained as being DJ services or rental of the facility. Under his business license, he is allowed to rent the facility to another party and is unlimited as to who the facility can be rented to. Mr. Fleming pointed out that sub-section "C" does not limit what he can use the building for. He feels that, technically, he is not in violation of running his business. Ms. Childress verified that her staff has not visited the location.

In response to question by the Board members, Ms. Childress stated that Exhibit 2-A is filled out by her staff relying on the information provided by the applicant. Mr. Forde pointed out that under section "C", "bar/lounge/night club" and that is crossed out and "teen club indoor recreation" is handwritten on the application. Ms. Childress stated that when it was printed at the privilege license office, it was printed with the "bar/lounge/night club" and certain types of business activities go to the Zoning Department or Legal Department for approval prior to issuance of the privilege license because there are some spacing requirements that must be met. This particular application was returned to the Privilege License office with the mark-through and inclusion of "teen club/indoor recreation" handwritten in.

Mike Kirkman stated that when an application of this type is reviewed in the Zoning Department, staff checks to see what zoning requirements must be met to be allowed a privilege license. There are specific development standards that are associated with the use. 2206 Stamey Street would not meet the development standards as there is a 200 foot separation from residential zoning required. Conflicts would have been discussed with the applicant and staff would have helped the applicant determine what type of use could be used on the property.

In further questions by Mr. Fleming, Ms. Childress stated that it is not specifically written in the application that the facility has to be rented out to someone that is going to do a teen event. She explained that he could rent the facility, but the requirements would still fall under the original privilege license of "teen night club". Section 110 only lists different types of activities that would be under a service type business, it does not spell out the times or ages within that particular section, because it is a broad license section and can be applied to many types of businesses. Chair Huffman pointed out that Section 30-15-19 clearly states that a teen club is for 13 to 19 years of age and then goes on to special event facilities.

At this time a 10 minute break was taken from 7:05 until 7:15 p.m. and the meeting reconvened.

Counsel Jones called Mike Kirkman for questions: He stated that he is the Zoning Administrator for the City and has been with the City for 8 years and in this position for 4 years. He is responsible for overseeing land use throughout the City, the application of the Land Development Ordinances (LDO) and the application and interpretation of Ordinances as questions arise. The use of "teen club" is defined in the LDO and is listed in Section 30-15-19 and defined as an establishment where entertainment is provided for persons who are 13 to 19 years old that may include a kitchen or catering facility. This is found in the staff report as Exhibit 7.

This use category would be included in a larger group of uses referred to as indoor recreation, based upon the characteristics of this particular use and staff is allowed latitude if there are similar uses. Indoor recreation uses are generally more to uses that provide schedule entertainment activities in an indoor setting. Table 8-1 is included in the staff report for information as Exhibit 6. These uses are permitted in several zones, and restrictions are also shown on the report. This property located at 2206 Stamey Street is listed as Commercial Medium – C-M. His determination that the privilege license for this facility should be revoked was because of the information received from GPD representatives, describing the activities at the location and he determined that this facility was not being used as a teen club as defined in the LDO.

The closest use that he could determine, based on the information provided from the Police Department was that this use was operating either as a night club or as a special events facility. A night club would not be permitted at this address because the residential zoning is too close. A special events center would also not be allowed at this address because there are specific development standards that must be adhered to. The parking for a special events facility must be located on the same property as the use and there is also a requirement that parking associated with a special events facility be located at least 50 feet from residential zoning. His staff relies on a variety of information by using mapping information to determine zoning present or near the subject property and information on uses surrounding it. They may also use privilege license information to look at the history of the property as well as surrounding properties and they will use information provided by other City staff and other knowledgeable parties which could include engineers, architects, lawyers, et. cetera, that may provide information. They may also visit the property or obtain reports from neighboring properties. It is his opinion that the property located at 2206 Stamey Street is not operating as a teen club and it is his recommendation that the privilege license be revoked.

Mr. Fleming asked Mr. Kirkman if he could recall what was the prior business located on the property before he started his business there. Mr. Kirkman stated that he did not have that information in front of him and he could not recall. Mr. Cummings felt this was a relevant question because one of the Exhibits that were shown was a sign that had a 21 or older requirement for entering the premises. He also would like to know what the previous business use was for this property. Mr. Kirkman stated that he does not have that information.

For more information, Loray Averett stated that she has been out to the site a few times and the site can be accessed from Market Street. The zoning map on Exhibit 5-A shows 2025 E. Market Street and that accesses directly into the club parking lot. The property at 2025 E. Market Street is a restaurant or grill. There was a previous bar/club located there prior to the approval of the Teen Club license.

Ms. Childress stated that in looking at the history of privilege license for this property, she found that NC Live Events obtained a privilege license in June 29, 2012 and prior to that, on September 30, 2011, there was a night club named Utopia that obtained a privilege license.

Chair Huffman stated that Mr. Fleming could come to the podium to present his evidence. Mr. Fleming stated that he does run a teen establishment at this property and has different events at the property. He also rents the building out in the night and early morning hours for different events, those hours do have adults there. The primary purpose of the club is for teens. He has had the building for 2 years and has had many teen parties, birthday parties, and different events at the building.

Mr. Forde pointed out that there have been reports submitted by the Police Department that there have been 15 different incidences of various things that have gone on at the club that are purported to have a lot of people there who were not teenagers. He asked if it is Mr. Fleming's contention that every time one of these events happened it was because he had the club rented out for a non-teen function? Mr. Fleming stated, yes. Mr. Forde then asked Mr. Fleming what nights and what teen functions he has had at the club in the past 30 days. Mr. Fleming stated that he has not had any, as he has actually closed the club.

Mr. Forde stated that at the last meeting, in November, Mr. Fleming had stated that he wanted to continue the case because he wanted to continue the operation of his business. Mr. Forde asked Mr. Fleming why he is appealing the revocation of the privilege license if he is no longer operating the club. Mr. Fleming stated that he is continuing with the appeal because at the time that he was here before in November, he was in the process of making a decision of whether to close the club or to continue the club. It came to his attention afterwards that he has other legal issues to deal with, legally, and so he decided to close the club. Someone he knows went to get a business license for the club and they were informed by the City that they could not get a business license if the current license is revoked because of violations of the City Code. He decided to come before the Board anyway to present his case. The other person was told by City staff that they could not get a privilege license on the club if he loses at this hearing and did not appeal it further because they would ban the building by making it a nuisance.

Mr. Forde asked how many teen events were held at the club in the past year and how many teenagers came to each of those events, on average. Mr. Fleming stated that there were hundreds of teen events there in the past year and there were between 75 and 100 teenagers that attended. These events took place between 9:00 and 11:30 p.m. Mr. Forde stated that he has checked on FaceBook for Club Turnt Up 336 and there are 8 people who have responded and none of them seemed to be under the age of 18 and the only real comments were that this was "a dope little after-spot".

Mr. Forde pointed out that if this were a teen club with a lot of teens going there, it would seem to him that there would be at least one FaceBook hit from a teenager, but there aren't any. Mr. Fleming stated that he has over 300 followers on his FaceBook page, but in the past 2 months he has taken down his pictures, because he was contemplating closing the club. Mr. Forde asked City staff why this is being heard tonight if Mr. Fleming is no longer operating the teen club.

Counsel Jones stated that they have not received any information that the club has been shut down.

Mr. Fleming stated that, to him, it is the principle of the matter. He has been accused of not running his business in accordance with the law and he is saying that he is. He again stated that it is the principle and he has run a teen establishment under the Codes. Mr. Forde asked Mr. Fleming if he had any evidence, whatsoever, that he has operated a teen club, had events and advertised these events? What type of advertisement did he do to promote these events and what were the events? Ms. Hayworth stated that she would also like the answer to those same questions. Mr. Fleming stated that he could not bring in any kids showing that they have been to his club, but he is saying that he did operate a teen club. He has had plenty of events at the club that were teen events, hundreds, and he has a very popular teen club in the African-American community. People come to his club all the time. Mr. Forde asked if there was anything that could provide the Board with any evidence that this club on one occasion operated as a teen club. Mr. Fleming stated that he did not have any of that kind of evidence, but the crux of the matter is that he is being accused of having an after-hours club instead of a teen club establishment.



Ms. Hayworth asked what were some of the activities that took place at the club. Mr. Fleming stated that he held "twerking contests", dancing, K-Stylus has been to his club several times and he is a national recording artists, as well as local artist at his club. Ms. Hayworth pointed out that the Police officers have been by the location on several occasions in the hours before 1:00 a.m. and have not seen any evidence that there was any type of teen activity going on at the club. She also pointed out that within a 9 month period of time, the GPD got 50 calls for service at this location. She stated that if he was running a reputable club, why would the GPD be there 50 times? Mr. Fleming stated that at the time in which the Police came to the establishment, the building was either rented out for different events, after he had either had a teen party, maybe a teen birthday, and it was his understanding that he was allowed to do so, under Section 110. Ms. Hayworth asked if there was a cover charge at the club? Mr. Fleming stated that the cover charge was \$3.00 for girls and \$5.00 for boys.

Mr. Fleming stated that the reason why he chose not to open the business further is because he is on federal supervised release and if other or different charges are proven against him, that is a violation of his supervised release. So recently, he went to federal court and his supervision was revoked because of the amount of charges dealing with the club. He had to make a decision to either continue the club or face the judge and get sent to prison. He has received citations for 3 empty alcohol bottles on the outside of the club. He pointed out that those bottles could have been left by anyone.

Ms. Eckard asked Mr. Fleming if it was explained to him the repercussions and requirements he would have to meet to rent out the building to someone else for their events. Mr. Fleming stated that it was not explained to him. When he applied for the license, it came up as to whether he could rent the building out for non-teen events and he was told that he could and it fell under Section 110. He stated none of that information was explained to him. Ms. Hayworth asked why he is on federal supervision for a drug offense that dated back to over 20 years ago.

Mr. Cummings asked that in regard to the nighttime events that happened after 2:00 a.m., if there were any proceeds from those? Mr. Fleming stated that he did receive proceeds from those events and those proceeds were generated from a promoter who would pay him for the rental of the building. He was normally at the building during these events, supervising the events, but he was not working, he was only there to watch what was going on since he is responsible for the activities at the building. Mr. Cummings pointed out that there were more than 120 liters of alcohol confiscated from the premises and asked if Mr. Fleming was present during that confiscation? Mr. Fleming stated he was there on one occasion when he had rented out the club to someone and alcohol was found on the premises, not on the inside of the club. The District Attorney's office has dismissed that charge. They also dismissed the charge concerning the June 11, 2014, incident when there were 3 empty alcohol bottles on the outside of the building.

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

**Board Discussion:**

Mr. Marshall stated that he feels there was plenty of evidence based on personal knowledge for him to find that the privilege license should be revoked. He does have concerns about some of the Exhibits being hearsay evidence, other than what the officers testified to, from their personal knowledge.

Counsel Schnierer stated that these are government documents gathered in the course of government work, which clearly fall under the exception of the federal rules.

Mr. Forde stated that with respect to Mr. Marshall, Mr. Cummings, Ms. Schnierer and Ms. Jones, it seems that most of their objections could have been done away with if the Board had received copies of a bunch of Police reports. The Board is furnished with surveys all the time for mundane issues and the surveyors are not in attendance, so he feels that the rules are somewhat lax. There were two City staff persons present who are Police officers, both of whom were at the premises at various times and witnessed the activities of the establishment and testified that this establishment was not operating as a teen club. Mr. Fleming has not produced anything other than his own statement, which was contradicted that this ever operated as a teen club. He finds it incredulous to believe that every single time a violation occurred, was when the club was rented out for adults.

Ms. Hayworth stated she agrees with Mr. Forde and she finds it hard to think that a Police report is unreliable and is hearsay evidence. She would take their report as factual because they have to file a report after every call and to even insinuate that it is hearsay is offensive, as a citizen. She thinks that the privilege license should be revoked and there should be a cease and desist order against him.

Chair Huffman stated that she would be supporting the revocation of the license.

Ms. Eckard stated that she agrees with the previous Board members and she also agrees that she is disappointed that someone from ALE did not appear to support evidence with their report. She does feel that the Police officers did witness the activities as they testified to and they were doing their job. Mr. Fleming did not provide the Board with any information that would show that it was ever run as a teen club. She would support the license revocation.

Mr. Nimmer stated that he would also support the revocation of the license.

Mr. Cummings stated that process matters and this Board tries to make sure everyone is held to the same standards. He has concerns about the tone here and concerned that more time is spent based on personal opinion other, than to really find facts to get a real understanding of what the truth is. He believes that there is more than enough evidence that shows that the license should be revoked. He also pointed out that there was a substantial lack of evidence from the appellant to support his testimony.

Mr. Forde moved that in BOA-14-35, 2206 Stamey Street, that the appeal of the Notice of Revocation be denied and the Enforcement Officer be upheld, findings of fact to be incorporated into the record, based on the following: The Board accepts the following testimony and evidence as true, based on the testimony of the Greensboro Police Department representatives, Corporal Goodykoontz and Detective Calvert, it has been determined that the use of this facility is not a teen club. The appellant provided no evidence that the facility does or has operated as a teen club. The property is within the corporate limits of the City of Greensboro and is subject to its jurisdiction and application of its Ordinances. At the time of the revocation letter the use of the property did not meet the requirements to maintain specific license for the specified address as defined in the LDO. The appellant's use does not constitute a teen club as that term is defined in Article 15. The Zoning Administrator and the tax collector official did correctly interpret and apply the terms of the Ordinance to determine that the property was in violation of the Land Development Ordinance and the approved privilege license as filed by the applicant. The greater weight of the evidence presented shows the appellant's property does not comply with the Ordinance standards as supported in the staff Exhibits with the inclusion of the referenced LDO and the Greensboro Code of Ordinances, seconded by Ms. Hayworth. The Board voted 7-0 in favor of the motion. (Ayes: Huffman, Marshall, Forde, Hayworth, Cummings, Nimmer and Eckard. Nays: None.)

## **NEW BUSINESS**

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

- (a) BOA-14-38: **7806 BOEING DRIVE** Richard Greene, Attorney for JMB Golf and Travel, Inc. d.b.a. Treasure Club appeals the decision of a Notice of Incident for a sexually oriented business which is regulated by the Entertainment Facility Use Ordinance. Land Development Ordinance Section 30-8-13, Present Zoning-C-M (Commercial Medium), Cross Street-South Regional Road. **(CONTINUED TO JANUARY 2015 MEETING)**

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

- (a) BOA-14-39: **2109 LAFAYETTE AVENUE** Thomas E. Terrell, Jr, Attorney at Law, on behalf of Jason and Carol Bohrer who reside at 1003 Country Club Drive, and others appeal (1) the determination by the Zoning Administrator that the front setback line is 61.9 feet from the right-of-way, and (2) the authority and decision of the Planning Director to grant a Type 1 modification to a front setback for a proposed single-family dwelling to be built at 2109 Lafayette Avenue, 56 feet from the property line adjacent to the street right-of-way. A Building Permit was recently approved by Planning Staff for the property along with proper notification to the adjacent and nearby landowners that this modification had been granted concerning this property. Land Development Ordinance Section 30-4-27 (Appeal of Zoning Administrative Decision) and Section 30-4-7-1.4 (front setbacks for single family detached homes), Present Zoning-R-5 (Residential Single-family), Cross Street-Country Club Drive. **(WITHDRAWN)**

**OTHER BUSINESS: 2015 Board of Adjustment Schedule**

Loray Averett stated that a copy of the calendar of scheduled meetings for 2015 is included in the Board packets

**ACKNOWLEDGEMENT OF ABSENCES**

The absence of Ms. Wood was acknowledged as excused.

**ADJOURNMENT**

\* \* \* \* \*

There being no further business before the Board, the meeting was adjourned at 8:17 p.m.

Respectfully submitted,

Cheryl Huffman, Chairman  
Greensboro Board of Adjustment

CH/jd