

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
JANUARY 22, 2018**

The regular meeting of the Greensboro Board of Adjustment was held on Monday January 22, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth, Laura Blackstock, Deborah Bowers, Patti Eckard, Enyonam Williams, James Waddell and Mary Skenes. Representing the Planning Department was Shayna Thiel, Mike Kirkman, Lucas Carter; and Andrew Kelly, City Attorney's Office.

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 approval of the December 18, 2017 meeting minutes, as written, seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Hayworth, Williams, Bowers, Eckard, Blackstock, Skenes and Waddell. Nays: None.)

SWEARING IN OF STAFF

Shayna Thiel, Mike Kirkman and Lucas Carter were sworn in for their testimony in the following cases. All speakers were sworn in as to their testimony regarding their case of interest.

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

OLD BUSINESS

VARIANCE

- a. **BOA-17-53: 2500 SPRING GARDEN STREET** Marc L. Isaacson, on behalf of Joe A. McKinney LLC, requests two variances. **Variance #1:** The applicant requests a variance to allow an existing sex shop use and proposed expansion to be located within 708 feet from a public park and 0 (zero) feet from residentially-zoned property, when the required separation is 1,000 feet, as measured from property line to property line. Section 30-8-10.4(N)(2)(b). **Variance #2:** The applicant requests a variance to allow other principal uses to occupy the same building with a sexually oriented business. Section 30-8-10.4(N)(5). Zoning C-M (Commercial-Medium); Cross Street – Howard Street. **(GRANTED WITH CONDITIONS)**

Ms. Thiel stated that the applicant requests two variances. **Variance #1:** The applicant requests a variance to allow an existing sex shop use and proposed expansion at 2500 Spring Garden Street to be located within 708 feet from a public park and 0 (zero) feet from residentially-zoned property, when the required separation is 1,000 feet, as measured from property line to property line. **Variance #2:** The applicant requests a variance to allow other principal uses to occupy the same building with a sexually oriented

business. The lot is located on the north side of Spring Garden Street, west of Howard Street, and is zoned C-M. Tax records indicate the lot contains approximately 20,909 square feet and that the building housing the sex shop use was constructed in 1986. Adam & Eve (retail store) is considered a sex shop per the Land Development Ordinance definition contained in Section 30-15-18. The use is classified as nonconforming because it is too close to a public park and residentially-zoned property. Residentially-zoned properties are located adjacent to the subject property to the west, 52 feet to the north, 195 feet to the east and 174 feet to the south. The subject property is also located 708 feet from Lindley Park to the west. Adam & Eve (retail store) has occupied units 2500-D and 2500-E Spring Garden Street since 1984 and recently expanded into unit 2500-C Spring Garden Street. Per Section 30-2-3.2(C), a nonconforming use cannot be enlarged or occupy greater floor area. The building housing the sex shop use also contains other principal retail uses. Retail Sales/Service and Personal/Professional Services uses currently occupy units 2500-B and 2500-A Spring Garden Street, respectively. Per Section 30-8-10.4(N)(5), sexual oriented businesses are not allowed in the same building with other uses. The C-M, Commercial-Medium District is primarily intended to accommodate a wide range of retail, service and office uses. The district is typically located along thoroughfares in areas which have developed with minimal front setbacks.

Chair Hayworth asked how long the other service uses had been in spaces A and B and Mr. Kirkman stated that he wasn't sure but they have been there a long time.

Chair Hayworth asked if anyone wished to speak on this matter.

Marc Isaacson, 804 Green Valley Road, attorney representing the applicant, stated that he thinks there was a typographical error in the staff report regarding when the building was built.

Mr. Kirkman confirmed that the building was built in 1986 and the business started in 1987.

Mr. Isaacson stated further that he represents the owner of the property, Joe A. McKinney, who acquired the property last September. The variances are being requested to allow the business to re-expand within the premises. The Lindley Park Neighborhood Association Board representative was in attendance at the meeting to add two conditions to the application. The owners of the business and the leasing agent were also in attendance. The conditions read as follows: 1. Any sexually oriented business at the subject property shall be limited to retail uses. 2. Any sexually oriented business at the subject property shall be limited to being open for business during the following hours: Monday-Thursday 11am-10pm, Friday and Saturday 11am-11pm and Sunday 1pm-8pm.

Chair Hayworth asked how the conditions were brought forth. Mr. Isaacson stated that he initiated the conversation on potential concerns of the Neighborhood Association and these were the main issues found.

Ms. Skenes asked if the conditions would become part of the language of the variance requests. Mr. Kirkman stated that the Board would consider the conditions as part of approving the variances.

Ms. Skenes moved to approve the two conditions, seconded by Ms. Williams. The Board voted 7-0 in favor of the motion. (Ayes: Hayworth, Williams, Bowers, Eckard, Blackstock, Skenes and Waddell. Nays: None.)

Mr. Isaacson continued his presentation by saying that the other businesses, the Lindley Park Neighborhood Association and the property owner have agreed to the conditions. The majority of the sales at the store are apparel and not the types of items normally associated with a sex shop. The predecessor of the current business was called Night Dreams, and the current business is a franchise of

the Adam and Eve Company, which is a North Carolina company. Mr. Isaacson explained that the requests meet the tests of variance approval in that the business has been operating at the location for over 30 years and desires to re-expand into a space previously occupied a number of years ago. The business was not located at the site by the current owners, however, the location is part of the value of this business considering that it is well established there. Lastly, the variance requests are in harmony with the general intent of the ordinance and assure public welfare.

Ms. Williams asked if Mr. Isaacson was speaking on the first variance only. Mr. Isaacson stated that by limiting the use of the business to retail and limiting the hours of use, the legislative intent has been satisfied.

Adam Spivey, 706 Green Valley Road, stated that he represents the Lindley Park Neighborhood Association and that they are satisfied with the conditions that have been negotiated and agreed upon.

Chair Hayworth asked if there have been any nuisances at the location and Mr. Spivey stated that he wasn't aware of any.

Garth Miller, 1400 Battleground Avenue, stated in response to Chair Hayworth's question that it's hard to say how long a unit stays vacant in a strip center of this size and that the business in question has been a model tenant.

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

Jocelyn Pope, 814 Howard Street, stated that she lives behind the property in question and has lived there for about thirty years. Ms. Pope stated that there has been smoking and drinking behind the property and multiple calls have been made to the City. She is concerned with the expansion because there is a halfway house nearby.

Ms. Eckard asked if the convenience mart in the same shopping center as the sex shop had been a problem. Ms. Pope stated that it had.

Mr. Spivey returned to the podium and stated that his Association tried to reach all of the neighbors in the area around the request and he is sorry that Ms. Pope was missed.

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

Board Discussion:

The Board members had no further questions and indicated their support of the requests as this proposed expansion would not be intrusive to the surrounding area.

Ms. Williams moved that, in regard to BOA-17-53, 2500 Spring Garden Street, the Zoning Enforcement Officer be overruled and the two variances granted with the following conditions: 1. Any sexually oriented business at the subject property shall be limited to retail uses. 2. Any sexually oriented business at the subject property shall be limited to being open for business during the following hours: Monday-Thursday 11am-10pm, Friday and Saturday 11am-11pm and Sunday 1pm-8pm. If the applicant complies with the revisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the business has been in the location since 1987 and would be forced to relocate which would be difficult to do with these restrictions. Also, if the sex shop is allowed to stay then other businesses in the building would be forced to relocate.

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 shop existed before the restrictions were enacted and this community has traditionally embraced a variety of businesses nearby. Also, other businesses have occupied this same building with the sex shop for decades and it is too large for just the sex shop alone. The hardship is not the result of the applicant's own actions because this business predates the enactment of the ordinance and the current owners are not the original owners who chose that location. Also, other neighboring businesses within that building shared space with the sex shop prior to the ordinance that prohibited it. The variances are in harmony with the general purpose and intent of the ordinance, preserve its spirit and assures public safety, welfare and substantial justice because the expansion is contained within the current structure that it has occupied since 1987, which includes occupying the extra section on a previous occasion. Also, allowing other businesses to rent the extra units adjacent to the sex shop allows the property owner to use the building to its highest and best use, seconded by Ms. Blackstock. The Board voted 7-0 to grant the variances requested with conditions. (Ayes: Hayworth, Skenes, Williams, Bowers, Waddell, Eckard, Blackstock. Nays: None.)

NEW BUSINESS

VARIANCE

- a. **BOA-18-01: 1307 SUNSET DRIVE** Cary and Julia Keen request a variance to allow a proposed detached garage to be located in front of the front building line of the principal structure. Zoning R-3 (Residential Single-Family); Section 30-8-11.1(B)(1); Cross Street – Dellwood Drive. **(GRANTED)**

Ms. Thiel stated that the applicants request a variance to allow a proposed detached garage to be located in front of the front building line of the principal structure. The lot is located on the south side of Sunset Drive, west of Huntington Road, and is zoned R-3. Tax records indicate the lot contains approximately 26,572 square feet and the house was constructed in 1950. The existing house was built deep on the lot, approximately 192 feet back from the front property line. The back of the house is approximately 40 feet from the rear property line. The applicants propose to construct an 864 square foot (24 feet X 36 feet) detached garage in front of the front building line of the existing house and 110.6 feet from the front property line. The existing house is one-and-a-half stories. The applicants propose to construct a two-story detached garage that will be approximately 24 feet tall. The submitted elevation drawing demonstrates that it will appear shorter than and be subordinate to the existing house (approximately 23 feet tall) because of the slope of the property. 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.

Cary Keen, 1307 Sunset Drive, stated that he is proposing to build a detached garage in front of the property line. The house was built in 1950 and there is not enough room in the back to build the garage. The style of the garage will match the neighborhood and will not be an eyesore.

Mr. Waddell asked where the power source for the garage will come from. Mr. Keen stated that it will come directly from the house.

Ms. Eckard asked if there are any concerns from the neighbors. Mr. Keen stated that there are none.

Ms. Bowers asked if the second story of the garage would be used for living space. Mr. Keen stated that it would be used as a play space for the children.

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

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed garage expansion would not be intrusive to the surrounding area.

Ms. Skenes moved that, in regard to BOA-18-01, 1307 Sunset Drive, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 lot is long and narrow and the house sits closer to the rear property line making it unfeasible to build a garage on the rear. 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 house was built in 1950 toward the rear of the lot and the garage on the front will still be 110 feet from the front property line. The hardship is not the result of the applicant's own actions because the lot was developed and the house built in 1950 prior to the current owner's purchase. The variance is in harmony with the general purpose and intent of the ordinance, preserves its spirit and assures public safety, welfare and substantial justice because the proposed garage would be no closer to the street than some of the other houses on the same street and will add value to the subject property and the area, seconded by Ms. Blackstock. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Williams, Bowers, Waddell, Eckard, Blackstock. Nays: None.)

b. **BOA-18-02: 5706 WEST GATE CITY BOULEVARD** Thomas E. Terrell, Jr., on behalf of Harris Teeter Properties LLC, requests a variance to allow a proposed sign to exceed the maximum 6-foot height requirement by 9 feet. The proposed sign will be a 15-foot tall non-monument style sign. Zoning C-H (Commercial High); Section 30-14-7.3 - Table 14-2; Cross Street – Mackay Road. **(GRANTED)**

Mr. Carter stated that the applicant requests a variance to allow a proposed sign to exceed the maximum 6-foot height requirement by 9 feet. The proposed sign will be a 15-foot tall non-monument style sign. The lot is located on the north side of West Gate City Boulevard, north of Mackay Road, and is zoned C-H. Tax records indicate the lot contains approximately 49,223 square feet. The Adams Farm Shopping Center final plat was recorded on August 25, 2014, and the Harris Teeter Fuel Center was approved by the City's Technical Review Committee on March 14, 2017. The applicant proposes to install a 15-foot tall non-monument style sign that exceeds the 6-foot height requirement by 9 feet. The proposed sign is located outside of dedicated utility easements adjacent to street rights of way. The C-H (Commercial-High District) is 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 Hayworth asked how tall the Adams Farm shopping center sign is in the exhibit photo. Mr. Carter stated that he was not sure but the ordinance allowed for this type of sign to be up to 30 feet tall.

Ms. Skenes asked about the reason of the request. Mr. Kirkman stated it was for the signage rights to the outparcel for the fuel station associated with Harris Teeter.

Ms. Bowers asked whether the gas price sign in one of the photos was a permanent sign. Mr. Carter stated that it was a temporary sign.

Hayes Finley of Smith Moore Leatherwood, attorney representing the applicant, distributed a handout, oriented the Board to the property and explained the difficulty of the site related to sign placement using a PowerPoint presentation.

Chair Hayworth asked if it was possible to use a smaller sign on the site and if the proposed location would still be the only viable spot. Ms. Finley stated that it would be the only place because of the utility easements.

Ms. Eckard asked why the sign needs to be higher. Ms. Finley stated that it's so that the sign can be safely seen from the road by passing drivers.

Ms. Skenes asked if a 15-foot sign would be above the nearby Wendy's. Ms. Finley stated that she didn't think so because the Wendy's was built after this process was started.

Brian Konoff of Casco Signs, 199 Wilshire Avenue, Concord, NC, stated that Harris Teeter's typical signs are 20 feet tall. However, in this case, we are limiting the request to better conform with the code, while at the same time, requesting a feasible size that can be seen.

Ms. Bowers asked how tall the proposed sign is compared to the shopping center sign. Mr. Konoff stated that the proposed sign is 15 feet tall and that the shopping center sign is approximately 20-30 feet tall.

Mr. Waddell asked if there were other fuel centers in the area. Mr. Konoff stated that there is another one 2-3 miles to the south with a taller sign.

Ms. Blackstock asked why Mr. Konoff didn't request a variance for a 20 foot sign. Mr. Kirkman stated that because of notice requirement, another application would be required to allow signage taller than 15 feet.

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

Board Discussion:

The Board members had no further questions and indicated their support of the request as this 15-foot tall sign would not be intrusive to the surrounding area.

Ms. Bowers moved that, in regard to BOA-18-02, 5706 West Gate City Boulevard, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 without height and type variances, the only locations available for this sign prevent it from being reasonably seen by motorists from West Gate City Boulevard. It is understood that a 6-foot monument sign will be hidden by adjoining buildings, vegetation and curvature of the road for all motorists traveling south. The distance and visual blockage created by oncoming traffic would make it completely unseen by motorists traveling north in time for the motorists to safely commit to the left turning lane that accesses the Adams Farm Shopping Center. 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 tract is crisscrossed by water and sewer lines, and a Duke Power transmission line easement that severely limit sign placement and this appears to be the only location where the sign can go. There was a Wendy's built after the applicant made this application, and even so, this is the only location where the sign can be seen safely from the road. The hardship is not the result of the applicant's own actions because the LDO requires a small 6-foot monument sign and assumes a generic site with better placement options, and this is not a typical site with numerous placement options. The applicant did not create the situation where the sign can't be seen for the motorists or the situation with all the easements from the other folks on the property. The variance is in harmony with the general purpose and intent of the ordinance, preserves its spirit and assures public safety, welfare and substantial justice because it is consistent with and does not diminish the purposes of the LDO. It encourages the effective use of the signs as means of communicating the location and existence of the fuel center and the gas prices. It reduces traffic confusion and congestion because motorists can easily see the sign while traveling. It provides for adequate business identification, advertising and communication. It is not excessive in size as to obscure other signs, seconded by Ms. Skenes. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Williams, Bowers, Waddell, Eckard, Blackstock. Nays: None.)

- b. **BOA-18-03: 2101 TARRYWOOD DRIVE** Justin P. and Emily D. McCollum request three variances. **Variance #1:** The applicants request a variance to allow a proposed detached accessory dwelling unit to encroach 20.9 feet into a required 30-foot rear setback. The accessory dwelling unit will be 9.1 feet from the rear property line. Section 30-8-11.2(D) and Section 30-7-3.2 - Table 7-1. **Variance #2:** The applicants request a variance to allow a proposed detached accessory structure to take utility service from a separate meter instead of branching service from the principal dwelling. Section 30-8-11.1(G)(1). **Variance #3:** The applicants request a variance to allow a proposed detached accessory structure to encroach 1 foot into the required 10-foot separation requirement from other structures. The accessory structure will be 9 feet from the principal structure. Section 30-8-11.1(E)(2). Zoning R-3 (Residential Single-Family); Cross Street – Cottage Place. **(GRANTED)**

Ms. Thiel stated that the applicants request three variances. **Variance #1:** To allow a proposed detached accessory dwelling unit to encroach 21 feet into a required 30-foot rear setback. The accessory dwelling unit will be 9 feet from the rear property line. **Variance #2:** To allow a proposed detached accessory dwelling unit to take utility service from a separate meter. **Variance #3:** To allow a proposed detached accessory dwelling unit to encroach 1 foot into the required 10-foot structure separation. The accessory dwelling unit will be 9 feet from the principal dwelling. The lot is located on the south side of Tarrywood Drive, west of Cottage Place, and is zoned R-3. Tax records indicate the lot contains approximately 14,375 square feet and the house was constructed in 1977. The applicants propose to convert an existing 576 square foot (24 feet x 24 feet) detached garage into an accessory dwelling unit. The garage meets the accessory structure 3 foot rear setback requirement, but not the accessory dwelling unit 30-foot rear setback requirement. Utility service is already provided to the accessory structure by a separate meter. The applicants wish to continue receiving utility service in the same manner. The applicants also propose to add a 100 square foot unheated screen porch to the front of the accessory dwelling unit. This addition to the existing structure would increase the footprint above 600 square feet and thus increase the required separation distance between structures to 10 feet. The existing structure is only 9 feet away

from the principal dwelling. 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 Hayworth noted for the Board that a letter of support from a neighbor supporting the requests was not notarized.

Emily McCollum, 2101 Tarrywood Drive, stated that she has been in her house for about 10 years. When the home was purchased, it had an attached garage and a detached garage behind the house. The aim is to turn the detached garage into a dwelling space and build a screen porch.

Barb Oliver, 2105 Cottage Place, stated that she did indeed write the letter noted previously by Chair Hayworth and supports the applicants' requests.

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

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed conversion of garage to accessory dwelling unit and expansion would not be intrusive to the surrounding area.

Ms. Eckard moved, that in regard to BOA-18-03, 2101 Tarrywood Drive, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variances granted based on the following: 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 property owners would not be able to expand their livable space by converting their detached garage into an accessory dwelling unit and covered screen porch. 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 hardship results from the existing structure being built nine feet from the rear property line, which did meet the setback requirements, but does not meet setback requirements for accessory dwelling units. The hardship is not the result of the applicant's own actions because the detached garage and the separate meter were already in place when the owners purchased the property. The variances are in harmony with the general purpose and intent of the ordinance, preserves its spirit and assures public safety, welfare and substantial justice because the conversion of the existing detached structure should increase the property value, does not impact their neighbors or the public safety or welfare of the neighborhood, seconded by Ms. Skenes. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Williams, Bowers, Waddell, Eckard, Blackstock. Nays: None.)

- c. **BOA-18-04: 808 NORTHRIDGE STREET** Jean Dailey requests two variances. **Variance #1:** The applicant requests a variance to allow a proposed detached accessory dwelling unit to encroach 1.23 feet into a required 5-foot side setback. The accessory dwelling unit will be 3.77 feet from the side property line. Section 30-8-11.2(D) and Section 30-7-3.2 - Table 7-2. **Variance #2:** The applicant requests a variance from the requirement to provide an additional off-street parking space for a proposed detached accessory dwelling unit. Section 30-8-11.2(G). Zoning R-3 (Residential Single-Family); Cross Street – Spring Garden Street. **(GRANTED)**

Ms. Thiel stated that the applicant requests two variances. **Variance #1:** To allow a proposed detached accessory dwelling unit to encroach 1.23 feet into a required 5-foot side setback. The accessory dwelling

unit will be 3.77 feet from the side property line. **Variance #2:** To allow a variance from the requirement to provide an additional off-street parking space for a proposed detached accessory dwelling unit. The lot is located on the west side of Northridge Street, north of Spring Garden Street, and is zoned R-5. Tax records indicate the lot contains approximately 24,829 square feet and the house was constructed in 1914. The applicant operates a Tourist Home (Bed and Breakfast) on this property in accordance with a Special Use Permit approved on August 8, 2011. The applicant proposes to convert a 480 square foot portion of an existing detached garage into an accessory dwelling unit. The garage, which is 3.77 feet from the side property line, meets the accessory structure required 3-foot rear setback, but does not meet the accessory dwelling unit required 5-foot side setback. The LDO parking ratio for a Tourist Home is one space plus one per bedroom, and a proposed accessory dwelling unit requires that an additional off-street parking space be provided. The applicant proposes to provide 6 on-site parking spaces for personal use and for guests. Based on LDO parking ratios associated with the Tourist Home and proposed accessory dwelling unit, 7 spaces are required. The applicant indicates that the number of bedrooms available for rent will not change, remaining at 5, if the detached accessory garage is converted into an accessory dwelling unit. 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.

Jean Daily, 808 Northridge Street, stated that in 2011 she was approved to operate a Bed and Breakfast at this location and the business has grown. She would like to have a separate living space from her guests.

Chair Hayworth asked how many bedrooms would be in the accessory building. Ms. Daily stated that it would be just one.

Ms. Eckard asked if there would be a separate power meter. Ms. Daily stated that she would be using the one from the house.

Ms. Bowers asked if the applicant's bedroom and office were currently in the main house. Ms. Daily stated that they were.

Adam Spivey, representing Lindley Park Neighborhood Association, stated that there is no opposition to the variance requests.

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

Board Discussion:

The Board members had no further questions and indicated their support of the requests as this proposed conversion of garage to accessory dwelling unit would not be intrusive to the surrounding area.

Mr. Waddell moved that, in regard to BOA-18-04, 808 Northridge Street, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 without variances, the proposed detached dwelling unit would not be supported. 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 all infrastructure existed prior to the ordinance requirements. The home was constructed in 1914. The hardship is not the result of the applicant's own actions because the garage was constructed in the 1950's and does not meet size and setback requirements. The variances are in

harmony with the general purpose and intent of the ordinance, preserve its spirit and assure public safety, welfare and substantial justice because they are in harmony with the character of the neighborhood.

Mr. Kelly verified that the motion covers both variances and the motion was then seconded by Ms. Skenes. The Board voted 7-0 to grant the variances requested. (Ayes: Hayworth, Skenes, Williams, Bowers, Waddell, Eckard, Blackstock. Nays: None.)

- d. **BOA-18-05: 1802 GRIFFINS KNOLL COURT** Joshua and Marybeth Neckowitz request a variance to allow a proposed screen porch to encroach 7 feet into a required 20-foot rear setback. The screen porch will be 13 feet from the rear property line. Zoning CD-R-5 (Conditional District-Residential Single Family); Section 30-7-3.2 - Table 7.2; Cross Street – Bedstone Drive. **(GRANTED)**

Ms. Thiel stated that the applicants request a variance to allow a proposed screen porch to encroach 7 feet into a required 20-foot rear setback. The lot is located on the east side of Griffins Knoll Court, east of Bedstone Drive, and is zoned CD-R-5. Tax records indicate the lot contains approximately 7,841 square feet and the house was constructed in 2016. The lot is uniquely shaped and is not as deep as other lots in the neighborhood. Extensive open space borders the lot to the rear (east). Per Land Development Ordinance Section 30-7-3.2(L), if abutting open space is more than 30 feet in width, staff is able to administratively reduce the rear setback to 15 feet. The applicants propose to construct a screen porch in the same location as an existing patio, expanding it two feet closer to the rear property line. A corner of the screen porch will encroach 7 feet into a required 20-foot rear setback. The screen porch will be 13 feet from the rear property line. The applicants, as part of the residential building permit application, also propose to construct a new deck at the back of the house, adjacent to the screen porch. The deck meets the reduced setback and is, therefore, not subject to this variance request. On December 20, 2017, the Planning Board approved a request to release a portion of a 15-foot drainage easement along the rear property line that aligns with the same part of the proposed screen porch that encroaches into the rear setback. 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. Bowers asked if a separate variance was required for the deck also proposed in the building permit application. Ms. Thiel stated that it wouldn't.

Joshua Neckowitz, 1802 Griffins Knoll Court, stated that they moved into the house about a year ago and have wanted to add a screen in porch. The homeowner's association and neighbors approved the plans.

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

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed porch expansion would not be intrusive to the surrounding area.

Ms. Blackstock moved that, in regard to BOA-18-05, 1802 Griffins Knoll Court, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 extra two feet of the deck will still be fully on the applicant's property and only one corner will encroach upon the setback area.

The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the current deck space is limited by the small and odd shaped lot. The hardship is not the result of the applicant's own actions because the setback existed prior to the applicant's purchase of this property. The variance is in harmony with the general purpose and intent of the ordinance, preserves its spirit and assures public safety, welfare and substantial justice because the variance requested will have no impact on public safety and welfare. It will significantly improve the applicant's ability to enjoy the property, seconded by Ms. Eckard. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Williams, Bowers, Waddell, Eckard, Blackstock. Nays: None.)

OTHER BUSINESS

None

ACKNOWLEDGEMENT OF ABSENCES

The absence of Mr. Truby was acknowledged as excused.

ADJOURNMENT

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

Respectfully submitted,

Cyndy Hayworth, Chair
Greensboro Board of Adjustment

CH/jd;gm

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
FEBRUARY 26, 2018**

The regular meeting of the Greensboro Board of Adjustment was held on Monday February 26, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth, Laura Blackstock, Chuck Truby, Patti Eckard, Enyonam Williams, James Waddell and Mary Skenes. Representing the Planning Department were Shayna Thiel, Mike Kirkman, Lucas Carter; and Andrew Kelly, City Attorney's Office.

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 approval of the January 22, 2018 meeting minutes, as written, seconded by Ms. Williams. The Board voted 7-0 in favor of the motion. (Ayes: Hayworth, Williams, Truby, Eckard, Blackstock, Skenes and Waddell. Nays: None.)

SWEARING IN OF STAFF

Shayna Thiel, Mike Kirkman and Lucas Carter were sworn in for their testimony in the following cases. All speakers were sworn in as to their testimony regarding their case of interest.

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

OLD BUSINESS

None

NEW BUSINESS

VARIANCE

- a. **BOA-18-06: 4407 BRANDT RIDGE DRIVE** Penni H. Leite requests a variance to allow a proposed addition to encroach 2 feet into a required 10 foot separation from an existing structure (pool). The addition will be 8 feet from the pool. Zoning PUD (Planned Unit Development): Section 30-8-11.1(E)(2); Cross Street – Eddington Drive. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow a proposed addition to encroach 2 feet into a required 10-foot separation from an existing accessory structure (pool). The lot is located on the south side of Brandt Ridge Drive, east of Eddington Drive, and is zoned PUD (Planned Unit Development). Tax records indicate the lot contains approximately 10,454 square feet, and the house was originally constructed in 1994. The property contains a 2-story dwelling that is located in the center of the lot with a 648 square foot pool

directly behind it. The applicant proposes to construct an addition to the house that would encroach 2 feet into a required 10-foot separation from the existing pool. The proposed addition will be 8 feet from the edge of the existing pool and contain 273 square feet (19.5 feet by 14 feet). In June 2017, a contractor applied for a building permit to construct a screen porch in the same location as proposed by the applicant's current variance request. The permit (201711304) was not approved because the proposed porch appeared too close to the existing pool. However, the contractor started work, as shown in Exhibit D. Since then, the permit was cancelled and the contractor was credited the permit fee. The property owner (applicant) now wishes to complete the work that was started, along with an additional deck area that will meet the 10-foot separation requirement, with required City approvals. The PUD (Planned Unit Development) District is intended to allow a diverse mixture of residential and/or nonresidential uses and structures that function as cohesive and unified project. The district encourages innovation by allowing flexibility in permitted use, design, and layout requirements in accordance with a Unified Development Plan.

Chair Hayworth asked if anyone wished to speak on this matter.

Penni Leite, 4407 Brandt Ridge Drive, the applicant, stated that they had originally hired a contracting company, however the company went bankrupt and left a half-built structure without a permit. Another company needs to be hired, and Ms. Leite stated that she would like to have the project completed as soon as possible since she has a young child.

Ms. Skenes asked Ms. Leite to clarify her request and asked if she would like to complete the project. Ms. Leite stated that she would indeed like to complete it as is.

Paul Leite, 4407 Brandt Ridge Drive, stated that it would be a hardship to move the deck to meet separation requirements and would cost thousands of dollars and hopes to be granted the variance.

Ms. Skenes asked if the variance is for the screened porch or the deck. Ms. Leite stated that they had originally wanted a screened porch, but when the company filed bankruptcy, they decided to be content with the deck.

Ms. Skenes asked if the pool was on the property when the property was bought. Mr. Leite stated that he had it installed around 2003, and at that time, only a small deck existed on the property.

Ms. Eckard asked if there was a picture of the pool and the deck and asked to see it.

Ms. Hayworth asked staff if the variance is granted, would the couple have to come back if they decided to upgrade to a screened porch. Staff stated that any work would require a building permit.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request. No one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed addition would not be intrusive to the surrounding area.

Ms. Skenes moved that in regard to BOA-18-06, 4407 Brandt Ridge Drive, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 partially started project would not be able to be completed. 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 unbeknownst to the owner, the deck construction was being done by a contractor without proper permits from the City. The hardship is not the result of the applicant's own actions because the contractor is the one who began the construction without proper approval. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because a partially completed project would be able to be completed and current safety factors would be eliminated, seconded by Ms. Blackstock. The Board voted 7-0 to grant the requested variance. (Ayes: Hayworth, Skenes, Williams, Truby, Waddell, Eckard, Blackstock. Nays: None.)

- b. **BOA-18-07: 106 KEMP ROAD EAST** Mark M. and Amy P. Wicker request a variance to allow a detached accessory structure to take utility service from a separate meter instead of branching services from the principal dwelling. Zoning R-3 (Residential Single Family); Section 30-8-11.1(G)(1); Cross Street – Starmount Drive. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a detached accessory structure to take utility service from a separate meter instead of branching service from the principal dwelling. The lot is located on the east side of Kemp Road East, north of Starmount Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 22,216 square feet, and the house was originally constructed in 1965. The property contains a 1-story dwelling. The house is located in the center of the lot, and the recently permitted detached accessory garage is being built 15 feet behind the house, closer to the rear lot line. Exhibit 4 shows the approved building permit application (201704797) for the construction of an 825 square foot detached accessory garage. The detached garage will be 10 feet from the east (rear) property line and 10 feet from the north (side) property line. Per the applicants, the detached accessory garage will contain several pieces of equipment that require three-phase power. The regular house current will not handle the load or run the equipment. The applicants indicated that Duke Energy installed a three-phase power pole approximately 10 feet from the back of the detached accessory garage and that Duke Energy specified that the safest way to provide necessary power to the accessory structure is by separate meter. The applicants also stated that Duke Energy required the permission of adjoining neighbors as part of the process for installing the new power pole. 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 Hayworth asked if anyone wished to speak on this matter.

Mark Wicker, 106 Kemp Road East, the applicant, stated that he is building a detached garage in his backyard and that there is a three-phase power line running behind the garage that he would like to connect directly to his garage.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request. No one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed separate power meter would not be intrusive to the surrounding area.

Ms. Skenes moved that in regard to BOA-18-07, 106 Kemp Road East, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 a three-phase power pole installed by Duke Energy is ten feet from the back of the garage. Without a separate meter, the line will need to be buried 75 feet from the pole, inside breakers would need to be re-phased, the house would have to accommodate a three-phase line. 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 garage will have several pieces of equipment requiring the three-phase power. The current meter could not handle the load or run the equipment. The hardship is not the result of the applicant's own actions because the Duke Energy pole is ten feet from the garage. Per Duke Energy this equipment would require a strong current of the three-phase power. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because a separate meter on the back of the garage will not be seen and is the safest way to provide power to the garage and as a part of the process Duke Energy did obtain permission and positive response from adjoining neighbors, thus assuring public safety, seconded by Ms. Blackstock. The Board voted 7-0 to grant the requested variance. (Ayes: Hayworth, Skenes, Williams, Truby, Waddell, Eckard, Blackstock. Nays: None.)

- c. **BOA-18-08: 5101 WEST MARKET STREET** Joseph A. Ponzi, on behalf of Beeninga Properties LLC, requests a variance to allow a proposed outdoor advertising sign to encroach 165 feet into a required 300 foot separation from any residential zoning district. The outdoor advertising sign will be 135 feet from any residential zoning, excluding street right-of-way width. Zoning C-M (Commercial Medium; Section 30-14-9.5(B). Cross Street – South Walnut Circle. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow a proposed outdoor advertising sign to encroach 165 feet into a required 300-foot separation from any residential zoning district. The lot is located on the south side of West Market Street, east of South Walnut Circle, and is zoned C-M (Commercial-Medium). Tax records indicate the lot contains approximately 48,787 square feet, and the building was constructed in 2008. To achieve the proposed outdoor sign location, the applicant submitted two easement release requests for consideration by the Planning Board, as shown in Exhibit 4. On May 17, 2017, the Board granted a release for a 15 foot by 15 foot square in the northeast corner of the property. On December 20, 2017, the Board granted a release for an additional area, making the total release area 20 feet by 15 feet. The submitted site plan (Exhibit B) shows the proposed outdoor advertising sign to be located 135 feet from residential zoning, not including street right-of-way width, when the required separation is 300 feet. The site plan also shows the proposed outdoor advertising sign's post to be 17 feet from the front property line along West Market Street, meeting the required 15 foot setback requirement. Images of the proposed outdoor advertising sign in Exhibit D show it to be 378 square feet. The applicant indicates that the height of the proposed outdoor advertising sign will not exceed the maximum 40-foot height requirement. The C-M (Commercial-Medium) District is primarily intended to accommodate a wide range of retail, service and office uses. The district is typically located along thoroughfares in areas which have developed with minimal front setbacks.

Chair Hayworth asked if anyone wished to speak on this matter.

Joseph Ponzi, 230 North Elm Street, on behalf of the applicant, stated that he is requesting a variance that would allow an outdoor advertising sign. The basis of the variance is that due to the topography of the property, an advertising sign is the only beneficial use for a substantial portion of the property. The variance is justified because the nearest residential structure is over 300 feet away. The name of the business is Triad Auto Solutions, which is actively operating on the site. The issue is that the ordinance requires a 300 foot setback for an outdoor advertising sign to areas zoned residential. There is also a creek that runs through the property which makes that part of the property unusable as far as development. A denial of the variance would effectively preclude any practical use of a large portion of the property. The requested variance is consistent with existing and contemplated future uses of the area and would have minimal impact on the limited number of residences that are in the area. The proposed sign would not change the skyline and is consistent with the buildings that are already in place, not towering over the other buildings in the area or the residences. The sign face would be perpendicular to the road so it would not face the nearby residences.

Mr. Truby asked if the sign would have an electronic or digital display. Mr. Ponzi stated that the sign would be contemplated as an electronic display. Mr. Truby stated that that could be a concern for adjoining property owners.

Ms. Hayworth asked who would own the sign and if it would be leased out. Mr. Ponzi stated that the owners would be Beeninga Properties LLC, and that the sign would be leased out to advertisers.

Ms. Hayworth asked how many other billboards or signs are within a 3-mile radius. Mr. Ponzi stated that there are other signs in the area, but he wasn't sure how many.

Mr. Kirkman stated that all the residential properties that front West Market Street did get notice, and that the house in question is just beyond the radius of required advertising.

Mr. Waddell stated that he didn't have a problem with the sign, but was concerned about the light that the sign would produce.

Ms. Skenes asked who would enforce a condition requiring the lights to be turned off at night. Mr. Kirkman stated that would fall under the authority of Planning and Zoning Code Enforcement, if the Board chose to add that condition.

Mr. Waddell asked if anyone knew the height of the nearby trees, compared to the height of the sign. Mr. Ponzi stated that trees on one side of the sign are substantial.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request. No one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed advertising sign would not be intrusive to the surrounding area.

Ms. Williams moved that in regard to BOA-18-08, 5101 West Market Street, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 owner will not be able use the eastern side of the property, which is unsuitable for structures. 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 eastern side of the property slopes down into a creek, is in a flood zone and has an easement limiting its use. Also, the nearby residential zone includes a vacant lot that will likely transition to mixed use commercial, so this is not the typical case where houses are impacted. The hardship is not the result of the applicant's own actions because the owner bought the property in 2008 and has not caused any limitations to the other uses. Instead, the owner is trying to use the property to the fullest extent. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice the nearest residential structure is more than 300 feet away and the adjacent residential zone is a vacant lot that will likely become commercial. Other residences are separated by foliage and topography, therefore this will allow the property to be used to its highest and best use, seconded by Ms. Skenes. The Board voted 7-0 to grant the requested variance. (Ayes: Hayworth, Skenes, Williams, Truby, Waddell, Eckard, Blackstock. Nays: None.)

SPECIAL EXCEPTION:

- a. **BOA-18-09: 112 FISHER PARK CIRCLE** Sally B. Cone requests three special exceptions. Special Exception #1: The applicant requested a special exception to allow a proposed detached accessory structure to encroach 0.2 feet into a required 3-foot side setback. The accessory structure will be 2.8 feet from the side property line. Section 30-8-11.1(C)(2). Special Exception #2: The applicant requests a special exception to allow a proposed detached accessory structure to encroach 2.2 feet into a required 3-foot rear setback. The accessory structure will be 0.8 feet from the rear property line. Section 30-8-11.1(C)(2). Special Exception #3: The applicant requests a special exception to allow a proposed fence to exceed the maximum 7-foot height requirement by 4 feet. The fence will be 11 feet tall. Section 30-9-4.6(A). Zoning R-5 (Residential Single Family); Cross Street – West Hendrix Street. **(GRANTED)**

Shayna Thiel stated that the applicant requests three special exceptions. Special Exception #1: The applicant requests a special exception to allow a proposed detached accessory structure to encroach 0.2 feet into a required 3-foot side setback. The accessory structure will be 2.8 feet from the side property line. Section 30-8-11.1(C)(2). Special Exception #2: The applicant requests a special exception to allow a proposed detached accessory structure to encroach 2.2 feet into a required 3-foot rear setback. The accessory structure will be 0.8 feet from the rear property line. Section 30-8-11.1(C)(2). Special Exception #3: The applicant requests a special exception to allow a proposed fence to exceed the maximum 7-foot height requirement by 4 feet. The fence will be 11 feet tall. Section 30-9-4.6(A). Zoning R-5 (Residential Single Family); Cross Street – West Hendrix Street

Sally Cone, 112 Fisher Park Circle, stated she purchased the home in July of 2017. There is an existing carport that it is in poor condition, and she wishes to tear it down and build a new one. It currently encroaches by a few inches along the side property line on the right and by a little over 2 feet along the back property line. Ms. Cone also stated that she desires to build a privacy fence in her backyard that would exceed the 7-foot height requirement.

Mike Cowhig, Staff Administrator of the Historic Preservation Commission, stated that the Commission has approved a Certificate of Appropriateness for this project and indicated that the special exception would help meet the guidelines for the Historic District.

Ms. Eckard asked if the fence would go in front of the retaining wall. Mr. Cowhig stated that it would.

Jesse Arnett, 3024 Shatner Drive, stated that he is the carport designer and that the fence would be located on Ms. Cone's property. The fence would be the same height as the fence of the adjoining property owner.

Board Discussion:

The Board members had no further questions and indicated their support of the requests as these proposed Special Exceptions would not be intrusive to the surrounding area.

Mr. Truby moved that in regard to BOA-18-09, 112 Fisher Park Circle, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the Special Exceptions 1, 2 and 3 be granted based on the following: 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 carport will be located the same distance from the side of the property lines as the existing carport and the fence will be the same height as the existing fence. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the new carport will improve the property's appearance, will add value and has been issued a Certificate of Appropriateness from the Historic Preservation Commission, and the fence will be used, seconded by Ms. Eckard. The Board voted 7-0 to grant the requested variance. (Ayes: Hayworth, Skenes, Williams, Truby, Waddell, Eckard, Blackstock. Nays: None.)

OTHER BUSINESS

None

ACKNOWLEDGEMENT OF ABSENCES

None

ADJOURNMENT

There being no further business before the Board, the meeting ended at 7:06 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair
Greensboro Board of Adjustment

CH/jd;gm

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
MARCH 26, 2018**

The regular meeting of the Greensboro Board of Adjustment was held on Monday February 26, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth, Laura Blackstock, Chuck Truby, Patti Eckard, Enyonam Williams, James Waddell and Mary Skenes. Representing the Planning Department were Shayna Thiel, Mike Kirkman, Lucas Carter; and Andrew Kelly and Terri Jones, City Attorney's Office.

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 approval of the February 26, 2018 meeting minutes, as written, seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Hayworth, Williams, Truby, Eckard, Blackstock, Skenes and Waddell. Nays: None.)

SWEARING IN OF STAFF

Shayna Thiel, Mike Kirkman and Lucas Carter were sworn in for their testimony in the following cases. All speakers were sworn in as to their testimony regarding their case of interest.

CONTINUANCES/WITHDRAWALS

Mike Kirkman stated that there were no continuances or withdrawals.

OLD BUSINESS

VARIANCE

a. BOA-17-44: 4501 FOXCROFT ROAD Janet M. Soyars requests a variance to allow an existing fence within 15 feet of a public street right-of-way to exceed the maximum height of 4-feet by 1 foot. The fence is 5 feet tall. Zoning R-3 (Residential Single-Family); Section 30-9-4.6(A); Cross Street – Starmount Drive.
(GRANTED)

Lucas Carter stated that the applicant requests a variance to allow an existing fence to exceed the maximum 4 foot height requirement within 15 feet of a public street right-of way by 1 foot. The fence is 5 feet tall. The property is a corner lot located at the southwestern intersection of Foxcroft Road and Starmount Drive and is zoned R-3. Tax records indicate the lot contains approximately 18,295 square feet, and the house was constructed in 1958. On August 3, 2017, the applicant was issued a Notice of Violation for installing a fence that exceeded 4 feet in height within 15 feet of a public street right-of-way (Exhibit B). On September 1, 2017, the applicant filed an appeal of the Notice of Violation (Exhibit C).

On September 22, 2017, the applicant withdrew the appeal (Exhibit D) and filed a variance request to allow a fence to exceed the maximum 4-foot height requirement within 15 feet of a public right-of way by 1 foot. The fence is 5 feet tall and is located along Foxcroft Road and Starmount Drive, which are both classified as collector streets. On October 19, 2017, the City surveyed the property lines along Foxcroft Road and Starmount Drive. The survey markers indicated that parts of the fence along the collector streets were located in the public right-of-way. On October 23, 2017, the original variance request was withdrawn from the Board of Adjustment's agenda. On February 9, 2018, the applicant indicated to staff that the fence was relocated and wished to proceed with the variance request. 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 Hayworth asked if anyone wished to speak on this matter.

Janet Soyars Wallace, 4501 Foxcroft Road, the applicant, was sworn in and stated approximately two years ago they started thinking about fencing the property. It is a corner lot, not perfectly square and is in a high traffic area. When the median was installed on Friendly Avenue, Starmount Drive to Friendly Avenue does have an opening the median so people can turn left, otherwise a vehicle would have to go up to Westridge Road and make a U-turn or go back into the neighborhood to Kemp Road to make a left on Friendly from the neighborhood. Since the medium was installed there has been a significant increase in traffic near her house. Sometimes people walk and cut-across the property leaving trash. She has two dogs and would feel safer having her yard fenced in. They installed a chain-link fence in July 2017, so it does not create any sight issues and it blends well into the background and surrounding area. A five-foot fence provides more reasonable privacy and protection. Adding the fence to their property has not had a detrimental impact on property values within the neighborhood. She asked that the Board allow them to retain the 5-foot fence. In response to questions from the Board, Ms. Wallace stated that she got quotes from three different fence companies and none of them mentioned anything about any restrictions on a 5-foot fence being installed, so she was unaware of that restriction. She has had many compliments on the fence.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed fencing would not be intrusive to the neighborhood and surrounding area.

Mr. Waddell moved that in regard to BOA-17-44, 4501 Foxcroft Road, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 they comply with the provisions of the ordinance it would require the fence to be 4-feet. 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 a corner lot and subject to additional pedestrian traffic in the community. The hardship is not the result of the applicant's own actions because the ordinance does not allow for a 5-foot fence height within 15- feet of the public-right-of-way. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it does not interfere with the line of sight for the safety of drivers and pedestrians, seconded by Mr. Truby. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Williams, Truby, Waddell, Eckard, Blackstock. Nays: None.)

NEW BUSINESS**VARIANCE**

a. **BOA-18-10: 216 ELMWOOD DRIVE** Tyler B. and Lori D. Richardson request a variance to allow a proposed addition to encroach 1.73 feet into a required 5-foot side setback. The addition will be 3.27 feet from the side property line. Zoning R-5 (Residential Single-Family); Section 30-7-3.2 – Table 7-2; Cross Street – West Newlyn Street. **(GRANTED)**

Lucas Carter stated that the applicant requests a variance to allow a proposed addition to an existing house to encroach 1.73 feet into a required 5-foot side setback. The addition will be 3.27 feet from the side property line. The lot is located on the north side of Elmwood Drive, south of West Newlyn Street, and is zoned R-5. Tax records indicate the lot contains approximately 11,761 square feet and the house was constructed in 1946. A detached accessory structure, described as a raised patio with storage underneath, was completed in December 2017. The applicant proposes to construct a two-story addition to the principal house that will include a garage, storage area, two bedrooms and one bathroom. The addition will connect to the second story patio of the existing detached accessory structure via steps. The proposed addition will encroach 1.73 feet into a required 5-foot side setback and be 3.27 from the side property line. The Board of Adjustment granted a variance to the applicant for the same 1.73-foot encroachment on December 19, 2016, but that variance expired since construction did not commence within 12 months of approval. 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 Hayworth asked if anyone wished to speak on this matter.

Tyler Richardson, 216 Elmwood Drive, the applicant, was sworn in and stated that late last year he and his wife found out that they were expecting twins in addition to their other three children and two large dogs. They love this neighborhood and would like to stay there with an addition to the house.

In response to questions from the Board members, Mr. Richardson submitted a notarized letter from one of the neighbors showing his support of the addition and several other neighbors have stated that they also support the request for the addition.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed addition would not be intrusive to the surrounding area.

Ms. Eckard moved that in regard to BOA-18-19, 216 Elmwood Drive, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 based on the location of the house and property and the current driveway, the addition will be in the most logical location on the property. 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 presents a problem to the rear with any additional structures. The hardship is not the result of the applicant's own actions because the existing house and driveway were built in 1946, prior to the current land ordinances

and when the addition was designed it was assumed the retaining wall was the property line. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the variance will help create value to the property which will also conceal the raised patio. Therefore, assuring the safety and welfare of the neighborhood, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Williams, Truby, Waddell, Eckard, Blackstock. Nays: None.)

b. BOA-18-11: 2311 NORTH ELM STREET Rebecca D. Causey requests a variance to allow a proposed addition to encroach 1 foot into a required 10-foot side setback. The addition will be 9 feet from the side property line. Zoning R-3 (Residential Single-Family); Section 30-7-3.2 – Table 7.1; Cross Street – Kimberly Drive. **(GRANTED)**

Lucas Carter stated that the applicant requests a variance to allow a proposed addition to an existing house to encroach 1 foot into a required 10-foot side setback. The addition will be 9 feet from the side property line. The lot is located on the west side of North Elm Street, north of Kimberly Drive, and is zoned R-3. Tax records indicate the lot contains approximately 15,682 square feet and the house was constructed in 1957. The applicant proposes an addition that will encroach 1 foot into a required 10-foot side setback. The addition will be 9 feet from the side property line. The existing house was not constructed exactly parallel to the side property line, so the front portion meets the required 10-foot side setback, but the proposed addition will not, even though it is aligned with the building line of the existing house. The R-3 (Residential Single-Family) District is primarily intended to accommodate low density single-family detached residential development. The overall gross density in R-3 will typically be 3.0 units per acre or less.

Chair Hayworth asked if anyone wished to speak on this matter.

Brooks Rice, from High Point worked with Rebecca Causey on this project and Rebecca Causey, 2311 North Elm Street, the applicant, were sworn in.

Mr. Rice stated that when the plans were drawn by the architect, they did not know that it would come so close to the side lines. A surveyor came out and he said it would encroach 7/10 of one foot if they used those plans. To change it would require changing all of the architectural plans of the building plan. In response to questions posed by the Board, Mr. Rice stated that the architect assumed that the house was square to the lot and only when the surveyor came out is when they found out about the difference in the lot line.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed addition would not be intrusive to the surrounding area.

Ms. Skenes moved that in regard to BOA-18-11, 2311 North Elm Street, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 due to the house being

built at a slight angle, the addition could not be built in the proposed footprint to line up with the existing house. 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 house was built in 1957 and follows the southern property line which means the house is at a slight angle creating the need for a one-foot variance at the rear portion of the proposed addition. The hardship is not the result of the applicant's own actions because the applicant did not build the existing house. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the requested variance is less than one foot and only effects a small portion of the proposed addition. The addition will align with the existing house to create uniformity, seconded by Ms. Blackstock. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Williams, Truby, Waddell, Eckard, Blackstock. Nays: None.)

SPECIAL EXCEPTION

a. BOA-18-13: 609 SOUTH MENDENHALL STREET Richard A. and Jane M. Green request a special exception to allow a proposed house to encroach 8.3 feet into a required 20-foot front setback. The house will be 11.7 feet from the front property line. Zoning R-7 (Residential Single-Family); Section 30-7-3.2 – Table 3-2; Cross Street – Spring Garden Street. **(GRANTED)**

Shayna Thiel stated that the applicants request a Special Exception to allow a proposed house to encroach 8.3 feet into a required 20-foot front setback. The house will be 11.7 feet from the front property line. The property is located on the east side of South Mendenhall Street, south of Spring Garden Street. An alley is located adjacent to the north property line. The property is zoned R-7 (Residential Single-Family) and is located within the College Hill Historic District Overlay. The lot is currently vacant and is considered a nonconforming lot. It contains approximately 3,400 square feet, when the minimum lot size in the R-7 district is 5,000 square feet. One single-family dwelling may be built on a nonconforming lot in a residential zoning district if compliance is achieved with regard to all ordinance requirements except for lot area or width. Per the submitted building permit application, the applicants propose to construct a one-story house containing approximately 925 square feet with a 313 square foot covered front porch. The proposed new house will encroach 8.3 feet into a required 20-foot front setback and be 11.7 feet from the front property line. On February 28, 2018, the Historic Preservation Commission approved changes to an existing Certificate of Appropriateness dated May 31, 2017 covering the proposed new house. The R-7, Residential Single-Family District is primarily intended to accommodate low to moderate density single-family detached residential development. The overall gross density in R-7 will typically be 7.0 units per acre or less.

Chair Hayworth asked if anyone wished to speak on this matter.

Arlen Nicolls, 216 S. Mendenhall Street, realtor for the applicant, was sworn in and stated she is a resident of the College Hill Neighborhood Association and is a member of the Executive Board of the CHNA, and she is here as the agent for the applicant.

Jane Green, 3701 Morris Farm Drive, the applicant, stated that she and her husband have always had high interest in this historic neighborhood, so when her realtor told them about this property they were very excited. They have already invested time and money on this proposed project. They have retained a builder and a designer who have all worked diligently to design a home that not only fits on this small

parcel of land, but will also compliment the College Hill neighborhood. They hope the Board will support them to move forward to become part of the College Hill Community.

Arlen Nicolls stated that the applicants have complied with design guidelines working with the College Hill Neighborhood Association, who was the seller of this parcel of land. They can take this parcel as it sits today and construct an appropriate historic dwelling. This would add to the tax base for the City and instead of it being a magnet for trash and dumping, it will be a home designed to complement the neighborhood. The home design and how it is situated on the parcel are in harmony with the neighborhood and in keeping with the spirit of the College Hill Historic District Guidelines. The home would be 925 square feet and it is an age-in-place home for the applicant. It is within the allowable new construction foot print perimeters. The size of the porch is a little bit larger and was required by the CHNA with the columns so that this house will meet design guidelines in the neighborhood. When they looked at the parcel, it is not a perfect rectangle. It matches other properties within the neighborhood.

Dan Curry, 305 S. Mendenhall Street, was sworn in and stated that he is a Board member of College Hill Neighborhood Association and he stated full support of this project

Mike Cowhig, Planning Department, stated that he is available to answer any questions about the Historic Preservation Commission's role and the Certificate of Appropriateness. He thinks the previous speakers have covered everything else very well.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as it complies with historic district guidelines and supports the historic residential community.

Ms. Blackstock moved that in regard to BOA-18-13, 609 South Mendenhall Street, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the Special Exception granted based on the following: The Special Exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the owners will comply and design the home related to approvals approved by the Greensboro Historic Preservation Commission, along with working with City staff. The granting of the Special Exception assures the public safety and welfare and does substantial justice because no harm will come to the public upon approval of this Exception, seconded by Mr. Truby. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Williams, Truby, Waddell, Eckard, Blackstock. Nays: None.)

At this time, there was a short break from 6:45 until 6:55 p.m.

b. BOA-18-14: 3207 DELMONTE DRIVE Greg Heafner, on behalf of Oxford House, requests a special exception to allow an existing chartered home to be located within ½-mile of another existing chartered home. The home is located 1,514 feet from 1208 West Vandalia Road, when 2,640 feet is required. Zoning R-5 (Residential Single-Family); Section 30-8-10.1(O)(1); Cross Street – Shallowford Drive. **(GRANTED)**

Shayna Thiel stated that the applicant requests a special exception to allow an existing chartered home to be located within ½-mile of another existing chartered home. The home is located 1,514 feet from 1208 West Vandalia Road, when 2,640 feet is required. Zoning R-5 (Residential Single-Family); Section 30-8-10.1(O)(1); Cross Street – Shallowford Drive. The lot is located on the south side of Delmonte Drive, north of Shallowford Drive, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 10,890 square feet, and the house was constructed in 1968. The applicant requests a special exception to allow an existing chartered home to continue operating at 3207 Delmonte Drive, which is within ½-mile of another existing chartered home. The home is located 1,514 feet from another chartered home at 1208 West Vandalia Road, when 2,640 feet is required. Per Land Development Ordinance Section 30-15-4, a chartered home is defined as a facility of a private, charitable, non-profit or commercial home care provider receiving funding under 42 U.S.C. 300x-25 for use as a family environment residence by persons who receive room and board, personal care, and habilitation services. Per Land Development Ordinance Section 30-8-10.1(O)(1), no new chartered home may be located within one-half mile of an existing chartered home (property separation), unless a Special Exception is granted by the Board of Adjustment for reduced separation. 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 Hayworth asked for an explanation of the difference between a chartered home and a group home. Mike Kirkman responded that the specific distinction with a chartered home is in the name. It is chartered under a specific federal regulation, 42-300X25, which is a specific portion of federal legislation that sets up a specific funding path that goes through the state to organizations to organize these types of facilities. Group homes are not tied to these specific federal regulations, as charter homes are.

Chair Hayworth asked if anyone wished to speak on this matter.

Greg Heafner, Counsel representing Oxford House, was sworn in and stated that Oxford Houses have been located in Greensboro for over 20 years. About 6 years ago, the City enacted its Chartered Home ordinance. Before that there was no ordinance that applied to Oxford Homes. At that time, Oxford House took exception to whether that definition applied to them and in addition to that, there was some turnover in Oxford House staff, and as a result this house and the other two that will come before the Board later in the meeting, were opened prior to City approvals. He has worked with Mike Kirkman and they have resolved other concerns and compliance issues. They are hoping for a resolution to the remaining three locations tonight. The house located at 3207 Delmonte Drive is home to 6 women, and as with all Oxford Houses, they live together and they are recovering from either alcohol or drug addiction of some sort. They do not drink and they do not use drugs anymore. This house is about 1,000 feet short of the ½ mile separation that the ordinance has for Chartered Homes. The ordinance also allows the Board of Adjustment to reduce that separation, so they are asking for that reduction tonight. In order to find that the request should be granted, the Board has to find the following: This home being 1,500 feet from another Chartered Home will not reduce interaction of the members of that home with the community; The reduction of distance will not impair the residents' recovery in some way; The reduction in distance will not create an unreasonable risk or harm to the health and safety of the residents. All three of these requirements is aimed to protect the residents of the Oxford House. Chartered Homes are permitted as a matter of right in this R-5 zoning district and the reduction in separation is available through the ordinance. Evidence will be shown that all three of these factors are met. He explained that Oxford Houses are self-supporting and provide services for people recovering from alcoholism or drug addiction. There

are over two thousand Oxford Houses in the United States and they date back to 1975 and there are over 200 Oxford Homes in the State of North Carolina, with about 20 in the City of Greensboro. Oxford House has contracted with the State of North Carolina since 1990 to start and assist Oxford Houses in this state. To become an Oxford House, three conditions have to be met. 1) The house has to be democratically run, it is not run by any in-house staff. They have a set of officers that are elected among themselves. Any decisions they make are made at a group meeting. 2) The house is self-supporting. The residents all have jobs and they pay their equal share of the rent and utilities each month. 3) If any resident is determined to be using alcohol or drugs, they are immediately expelled from the house. This type of mutual support and friendship, in a family-like environment, is what they rely on to stay clean and sober. There is an organization called, Oxford House Incorporated, which is an umbrella organization which gives the Charter to an Oxford House if it is started. All these houses before the Board tonight have been chartered by Oxford House Incorporated and they are assured to run on the three principles previously mentioned.

In response to a question posed by Chair Hayworth concerning why they went ahead and opened the house, even though they knew about the separation requirement, Counsel Heafner stated that he has been involved with Oxford House since 1984 and has been their lawyer here in this state since 1995. In 2010 or 2011, the city received a complaint against an Oxford House and the result was that they issued a violation saying it was a half-way house or a family care home. When it was explained what an Oxford House was, that violation was withdrawn. Oxford House filed a lawsuit in federal court against the City of Greensboro in 2011, and a complaint with HUD. He prosecuted that lawsuit and that complaint and that lawsuit went on for a year or two and it was settled. As part of the settlement, the City enacted this ordinance to provide more compliance with the federal law. His argument was that Oxford House did not fit that definition because a Chartered Home is a home that, among other things, provides rehabilitation services, room and board, or some kind of care, and he argued that Oxford Houses are unique as they don't provide any of that. The lawsuit finally settled and they opened these three houses through ignorance/misunderstanding that there was still a separation requirement in the ordinance. These houses are extremely important to the residents of these houses.

Chair Hayworth asked who monitors the residents to make sure they are complying with the rules and not using drugs and/or alcohol. Counsel Heafner responded that there are house monitors that are appointed in each house and there are employees of Oxford House Incorporated that oversee the houses and check on them to make sure that they are operating under the Oxford House principles. There is a Home Manual that is very lengthy and tells how to hold their house meetings, rules of the house, division of rents, etc. In response to a question by Ms. Skenes, Counsel Heafner stated that there is a Revolving Loan Fund, as many years ago in the late '70s somebody lobbied the U.S. Government to enact legislation that gives each state \$100,000 as a grant that was used to loan \$3,000 to people who wanted to start an Oxford House. All Oxford Houses are leased and not owned, so this money could be used for first and last month's rent, security deposit, and utilities. He pointed out that these circumstances also relate to the other houses that will be discussed later in the meeting.

Will Madison, 6924 Shauna Lane, Climax, NC, stated that he is an outreach broker for Oxford House and he is the person the Oxford House Inc. employs to monitor the existing houses for compliance concerning the Chartered requirements. He personally opened this particular house and knows the neighborhood and knows where the other house is located. The house at 3207 Delmonte Drive is in a traditional neighborhood as there is a centralized park in the area, basketball court and the residents of the house are part of that neighborhood. This subject property is not within that neighborhood and these two

houses are separated by a four-lane busy roadway being Vandalia Road. Therefore, there is no clustering of houses and not overloading any one particular neighborhood. There is also a large creek that separates the houses, so to get from one house to the other, you would physically have to get on the roadway and make your way to the other house. The individuals living in the houses for recovery is enhanced by being in this location. If this house closes there would be six women who will be homeless and they moved into this house to better themselves, better their lives and get their lives back on track. That is a very dangerous place for someone who is in recovery to be. Mr. Madison stated that he is a product of Oxford House and knows all the ins and outs, and how it works, so he is very familiar with how the Oxford House model works in these houses. There is no threat to other residents of the neighborhood, the house meets all the minimum housing standards so there is no threat to persons living in the house. There are four large bedrooms, two large bathrooms and there are six women living in that house. Two of the rooms are shared rooms and two of the rooms are single rooms so it is not overcrowded. The two houses do not mingle or associate with one another. It is unlikely that the residents of the two houses even know each other. When he opened the house he was unaware that the City had this separation ordinance and they were definitely not trying to violate any city ordinance. They have worked with the City to get things resolved and they hope that this particular house can remain open for these women who need to continue in their recovery.

In response to a question by Mr. Waddell concerning how a location for an Oxford House is determined, Mr. Madison stated that he would be responsible for locating an appropriate house, checking to make sure that it is suitable and in a good neighborhood and speak with the homeowner to talk about renting to Oxford House. He now knows to make sure he is familiar with the separation between a possible location and another existing house of this type. With the epidemic of opioid addiction that is rampant today, there is a great need for these kinds of houses and he feels sure that more houses are going to be needed within the City of Greensboro and throughout the country, as a whole. The information on compliance would be passed along to any future monitors so they will be aware of it. He pointed out that there have been no complaints from other neighbors in this area related to 3207 Delmonte Drive.

Curtis Taylor, 3938 Patriot Ridge Court, Raleigh, NC, Executive Director of the Alcohol Drug Council of North Carolina and is registered with NC Practice Board as a Certified Substance Abuse Counselor. He is currently a student at Shaw University pursuing his Bachelors of Social Work degree. He has thoroughly researched Oxford House and is also a product of Oxford House and is in long-term recovery and has not used alcohol or any other drug in over 15 years. The Oxford House living environment has been a huge part of his journey and the success of his recovery journey. It is absolutely unique and extremely difficult to put the definition of an Oxford House in a box. It is the only evidence-based recovery home model in the world. Data states from peer-review research studies in 80% – 87% success rate for people who reside in Oxford House for at least one year. That is unheard of in the treatment, prevention or recovery field. Oxford House is extremely different from 4 or 5 guys just deciding to rent a house together.

There is a standardized system of operations, there is a house president, treasurer, secretary, comptroller, chore coordinator. Residents are voted in by a mandated 80% majority vote, and if someone relapses, they are not just kicked out in the street, they are taken to get some help through another recovery venue. There is definitely a therapeutic value for 6 to 14 individuals living together under this particular recovery home model that provides the therapeutic engagement and family support that also takes place in group therapy. The six residents for this particular home are already in compliance with that number. In regard to spacing and separation from other homes, the City of Raleigh's ordinance is now ¼ mile instead of ½

mile as they recognize the need for these kinds of houses and those houses function extremely well. People's recovery in Wake county is extremely strong and probably the strongest in the state.

Teri Spears, 7008 McLeansville Road, Browns Summit, NC, stated that she is the Coordinator of the Spartan Recovery Program, a collegiate recovery community at UNCG. They started the fall semester of 2016 with 4 members, currently there are 53 members, an increase of over 800%. The over-all GPA of their members in the past 3 semesters is 3.68, 3.56 and 3.47 with 14 students earning a 4.0 this past semester. They continue to grow thanks, primarily, to the Young Adult Recovery community here in Greensboro. Most of the members have lived in Oxford Houses or still reside in Oxford Houses. Many of these members have lost their driver's licenses and walk to campus because these houses are close enough for that. Many of them have jobs on campus for the same reason. Most of the referrals and visits she gets are referrals from folks living in Oxford Houses, now that they have found recovery, they have restored capacity to come back and finish what they started or continue with their dreams of getting their education. They offer hope to the current epidemic that people do recover and they are amazing, contributing members to society and the community. They are education members, future teachers, nursing majors, MBA candidates and the majority are Social Work majors, because these folks want to give back. Many of them are already working the field and they will be giving back their entire lives. Now is not the time to close recovery housing or to make it harder to open new locations. UNCG Spartan Recovery members could fill at least 8 more houses right now and they need to keep them close to campus to continue this opportunity.

Marshall Hurley, 2400 Freeman Mill Road, stated that he is not representing anyone, but he is proud and thankful that his daughter is a resident at the Delmonte Drive location, where she is in recovery. She is not unique, as all their resident face similar obstacles. You can ride down any residential street in Greensboro and look at front doors and not know what is going on behind those doors, but if you go by and look at an Oxford House, you will know that people are there working hard, seriously hard, to recover. They are taking drug tests on a regular basis. He asked that the Board seriously consider allowing this Oxford House to continue on its mission for its residents.

Chase Holloman, 828 N. Elm Street, Unit B-6, is a Clinical Social Worker and Clinical Addiction Specialist and also a product of Oxford House, as five years ago he was living homeless and could not stop using drugs. His time at Oxford House gave him the foundation to re-build his life. He is now a partner with Guilford County EMS and a number of other agencies in the County helping folks who are at high risk for drug overdose. Oxford House saved his life and this is a golden opportunity for a lot of folks in this community if they can stay in a house.

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

James Womack, 3203 Delmonte Drive, with his friend Ervin Milton, who are both ministers, stated that their heart has really been touched by everything they have heard pertaining to Oxford House.

It is a very noble concept. He is here to speak on behalf of the Green Tree Subdivision. The property under consideration is located within the Green Tree Subdivision neighborhood. The president, Katherine Williams, has informed that she could not attend the meeting tonight, but asked that he speak on behalf of the residents. The Green Tree Subdivision has a number of retirees who would prefer to keep the existing community free of the Special Exception to allow an existing Chartered Home to be located within ½ mile of another existing Chartered Home. The Oxford House intended use of the property is very noble,

but some of the occupants perhaps may not have always lived up to the intended purpose. If the Board decides to keep the ordinance intact, these persons who live there would be able to find another place to reside. There is a place off West Gate City Boulevard which is about 5 or 6 blocks from there, called Teen Challenge. The people that occupy Teen Challenge apartments, are not always teenagers, they are adults also.

Ervin Milton, 3214 Shallowford Drive, which is four houses from this house on Delmonte Drive. This house is in a neighborhood where residents have lived for a long time and now they are concerned about property values of their homes. He applied for a 2nd mortgage on his home last fall and found that the market value is far less than the tax value. While he is an advocate for folks who are in rehab and trying to live their lives, the struggle is how do they maintain developments where people have put their hard-earned money and years in to live with folks around them and that kind of atmosphere is taken from you. The house being discussed is one of the larger houses in this development and next to other houses and how do they maintain some caring, not only for the folks in rehab, but also folks who are homeowners who have lived there many, many years. The ordinance is in place to protect the neighborhood. He pointed out that there were issues there.

In response to questions, Mr. Milton stated that there have been cars parked in front of the house late at night, and he has seen people leave the house going across the park and coming back. Cars come through the street and stop there. It seems that it might be a nuisance in the area.

Board Discussion:

Ms. Eckard, Mr. Truby, Ms. Skenes, Ms. Williams, and Ms. Hayworth stated that they would support the request, although there were mixed feelings for some of the Board members. Mr. Waddell and Ms. Blackstock stated that they could not support due to comments by the existing neighbors.

Ms. Williams moved that in regard to BOA-18-14, 3207 Delmonte Drive, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the Special Exception granted based on the following: The separation will not promote clustering of residents in the home which could develop in reducing interaction with members of the community who are not residents of a Chartered Home because the houses are 1,514 feet apart and orient from different neighborhoods and is divided by a major thoroughfare. The reduced separation will not result in the therapeutic benefit that the resident persons seek by residing in the community because the major therapeutic benefit derived from the mutual support of the residents living in the house itself. The reduced separation does not present an unreasonable risk or harm to the health and safety of the persons who will reside at the Chartered Home seeking the Special Exception because being allowed to live together actually aids the health and safety of the residents by providing housing and full recovery support, seconded by Ms. Skenes. The Board voted 5-2 to grant the Special Exception requested. (Ayes: Hayworth, Skenes, Williams, Truby, Eckard. Nays: Waddell and Blackstock.)

c. BOA-18-15: 1205 WEST FRIENDLY AVENUE Greg Heafner, on behalf of Oxford House, requests two special exceptions.

Special Exception #1: The applicant requests a special exception to allow an existing chartered home to be located within ½-mile of another existing chartered home. The home is located 2,551 feet from 14 Springdale Court, when 2,640 feet is required. Section 30-8-10.1(O)(1). **(GRANTED)**

Special Exception #2: The applicant requests a special exception to allow an existing chartered home to exceed the maximum 6 resident persons allowed in R- residential single-family districts by 2 resident persons (total of up to 8 residents). Section 30-8-10.1(O)(2). Zoning R-5 (Residential Single-Family); Cross Street – East Lake Drive. **(DENIED)**

Shayna Thiel stated that the applicant requests two Special Exceptions. Special Exception #1: To allow an existing chartered home to be located within ½-mile of another existing chartered home. The home is located 2,551 feet from 14 Springdale Court, when 2,640 feet is required. Section 30-8-10.1(O)(1).

Special Exception #2: To allow an existing chartered home to exceed the maximum 6 resident persons allowed in R- residential single-family districts by 2 resident persons (total of up to 8 residents). Section 30-8-10.1(O)(2). Zoning R-5 (Residential Single-Family); Cross Street – East Lake Drive.

The lot is located on the south side of West Friendly Avenue, west of East Lake Drive, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 6,970 square feet, and the house was constructed in 1931. The applicant requests two Special Exceptions to allow an existing chartered home to continue operating at 1205 West Friendly Avenue, which is within ½-mile of another existing chartered home. The home is located 2,551 feet from another chartered home at 14 Springdale Court, when 2,640 feet is required. The applicant also requests a special exception to allow an existing chartered home to provide residence for up to 8 persons, when no more than 6 resident persons in R- residential single-family districts are permitted. Per Land Development Ordinance Section 30-15-4, a chartered home is defined as a facility of a private, charitable, non-profit or commercial home care provider receiving funding under 42 U.S.C. 300x-25 for use as a family environment residence by persons who receive room and board, personal care, and habilitation services. Per Land Development Ordinance Section 30-8-10.1(O)(1), no new chartered home may be located within one-half mile of an existing chartered home (property separation), unless a Special Exception is granted by the Board of Adjustment for reduced separation. Per Land Development Ordinance Section 30-8-10.1(O)(1), a chartered home may have up to 6 resident persons in residential single-family zoning districts, unless a Special Exception is granted by the Board of Adjustment. 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 Hayworth asked if anyone wished to speak on this matter.

Counsel Kelly stated that, basically, the same information as presented with the previous request would relate to this request in regard to structure, funding and purpose of the Special Exception request.

Greg Heafner, the applicant, was previously sworn in and stated this house was started in the same vein as the last request. They have worked diligently with staff to try to resolve the issues. In this case, there are two exceptions being asked for; one is the distance separation which is only approximately 100 feet short of the required separation. He stated that there is a Google Maps exhibit which shows the distance. In regard to adding two other people, that is allowed under the City ordinance if a Special Exception is granted by the Board. The Board would need to find that allowing the additional residents is reasonably necessary and directly related to the therapeutic needs of the residents and would not be an impairment to them. It will not present an unreasonable risk of health or safety to the residents and it will not result

in adverse impact on adjacent properties. Studies have shown that there is no data showing that the additional two people would have any such negative impacts.

Will Madison, 6924 Shauna Lane, Climax, NC, was previously sworn in and stated that the same kind of thing applies with spacing and with this particular house it would 89 feet shy of the City ordinance, which is again, separated by a major roadway, W. Market Street. There are several other roadways between the two houses and the UNCG campus. This house has been in operation for over two years with eight residents in the home with no adverse impact to the surrounding neighborhood. All the minimum housing standards are met. The therapeutic benefit is increased by having more residents in the house to offer support for other residents.

Curtis Taylor, 3938 Patriot Ridge Court, Raleigh, NC, was previously sworn in and stated that he wished to speak to the therapeutic value of having these two extra individuals as opposed to six residents in the home. Research studies have shown that, especially with men's housing, the more residents within the house, the higher the success rate of those particular houses. There are properties that it would be impossible for only 6 individuals to afford to live there, as opposed to 8. This being a 7-bedroom home allows the house to accommodate 8 residents with only one bedroom being shared. If the request is denied, there would be a very negative impact on the current residents as they would have to find somewhere else to live.

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

Bud Colgan, 1023 Jefferson Road, was sworn in and stated that he congratulates the applicants for taking responsibility and for what they are doing for the community. Drug addiction epidemic is definitely growing. His concern is in their wanting to go from 6 to 8 people in the house. They already knew that they were out of compliance and it worries him to think that there could actually be a lot more residents than what are being reported. This could cause more vehicular traffic along with more pedestrian traffic for the neighborhood.

There being no other speakers the public hearing was closed.

Board Discussion:

Special Exception #1: Mr. Waddell stated that he would not support the spacing issue for this request. What troubles him is setting a precedence for future cases to come. Ms. Skenes stated that she would support the request as this is a very small exception of the distance requirement. Ms. Blackstock, Mr. Truby, Ms. Eckard, Ms. Hayworth and Ms. Williams stated that they would also support the request.

Ms. Williams moved that in regard to BOA-18-15, 1205 West Friendly Avenue, Special Exception Request #1, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the Special Exception granted based on the following: The reduced separation will not promote the cloistering of resident persons and/or homes which could result in reduced interaction with members of the community who are not residents of a chartered family or group care home because the spacing shortfall he is approximately 89 feet and the houses exist in different neighborhoods that are separated by UNCG. A reduced separation will not otherwise result in impairment to the therapeutic benefit resident persons seek by residing in the community because the major therapeutic benefit is derived from the mutual support and bonding of the residents within the house itself as they aid each other in their recovery. A reduced separation does not present an unreasonable risk of harm to the health and safety

of the persons who will reside at the chartered home seeking the special exception because being allowed to live together actually aids the health and safety of the residents by providing housing and mutual recovery support, seconded by Mr. Truby. The Board voted 6-1 to grant the Special Exception requested. (Ayes: Hayworth, Skenes, Williams, Truby, Eckard, Blackstock. Nays: Waddell.)

Special Exception #2: Ms. Eckard stated that she would not support this request as she feels that it would set a precedence for future requests. Mr. Truby, Ms. Blackstock, Mr. Waddell and Ms. Hayworth would not support the request for the same reasons as Ms. Eckard. Ms. Skenes stated that she would support the request because this area is very heavily student occupied and this house has been open for 2 years and has 7 bedrooms with 8 residents occupying it with apparently no issues or complaints from the neighbors. Ms. Williams stated that she would also support the request. Everything has to be looked at on a case-by-case basis and for this particular house - in this location she agrees with Ms. Skenes.

Ms. Williams moved that regard to BOA-18-15, 1205 West Friendly Avenue, Special Exception Request #2, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the Special Exception granted based on the following: An increased number of persons is reasonably necessary and directly related to meeting the therapeutic needs of the resident persons and will not otherwise result in impairment to the resident persons by residing in the community because the higher number of residents adds to the therapeutic benefit derived from mutual support and bonding which aids in their recovery. An increased number of persons does not present an unreasonable risk of harm to the health and safety of the residents residing at the chartered home seeking the special exception by ensuring the housing structure meets the minimum code requirement necessary to support the total number of proposed residents because the house has 7 bedrooms and 2 bathrooms and the actual structure meets City Code requirements. An increase in the number of persons does not result in significant adverse impacts to adjacent properties or the neighborhood where the chartered home is located because there is often one vacancy in each Oxford House and this particular house is very close to UNCG and located in a block with houses that have multiple student renters residing there. This house also has adequate parking, seconded by Ms. Skenes. The Board voted 2-5 to approve the Special Exception. As a result, the request was denied. (Ayes: Skenes and Williams. Nays: Hayworth, Truby, Eckard, Blackstock, Waddell.)

d. BOA-18-16: 1014 JEFFERSON ROAD Greg Heafner, on behalf of Oxford House, requests a special exception to allow an existing chartered home to exceed the maximum 6 resident persons allowed in R- residential single-family districts by 2 resident persons (total of up to 8 residents). Zoning R-3 (Residential Single Family); Section 30-8-10.1(O)(2); Cross Street – Somerset Place. **(DENIED)**

Shayna Thiel stated that the applicant requests a Special Exception to allow an existing chartered home to exceed the maximum 6 resident persons allowed in R- residential single-family districts by 2 resident persons (total of up to 8 residents). Zoning R-3 (Residential Single-Family); Section 30-8-10.1(O)(2); Cross Street – Somerset Place. The lot is located on the east side of Jefferson Road, north of Somerset Place, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 17,860 square feet, and the house was constructed in 1977. The applicant requests a Special Exception to allow an existing chartered home to provide residence for up to 8 persons, when no more than 6 resident persons in R- residential single-family districts are permitted. Per Land Development Ordinance Section 30-15-4, a chartered home is defined as a facility of a private, charitable, non-profit or commercial home care provider receiving funding under 42 U.S.C. 300x-25 for use as a family environment residence by

persons who receive room and board, personal care, and habilitation services. Per Land Development Ordinance Section 30-8-10.1(O)(1), a chartered home may have up to 6 resident persons in residential single-family zoning districts, unless a Special Exception is granted by the Board of Adjustment. 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 Hayworth asked if anyone wished to speak on this matter.

Greg Hefner, the applicant, was previously sworn in and stated this case asks for an exception to allow two more people (8 instead of 6), in a home that has approximately 3,000 square feet, with 4 bedrooms, 3 bathrooms. The testimony given earlier related to the number of residents also applies to this request.

Will Madison was previously sworn in and stated that as in the last request, they are asking for an increase in the number of residents from 6 to 8. They feel that there is a significant therapeutic benefit to have a greater number of residents.

Chair Hayworth pointed out that the burden is complying with the ordinance and if the program does not work with 6 residents, then every house opened in Greensboro is going to need a Special Exception.

Mr. Truby asked why there couldn't be a text amendment that would increase the number of residents required. The Board should not have to go through this process every time they or other applicants wish to open a chartered home in Greensboro. Mike Kirkman responded that this is the function that the ordinance sets that there is a cap set and if an applicant wants to go beyond that, then they can petition to have the additional residents. Ms. Skenes stated from what she can remember, 6 was the number chosen because that was also the maximum number dictated by the state for other types of homes.

Curtis Taylor was previously sworn in and stated that in regard to the therapeutic value of the number of 8 residents as opposed to 6 residents, not just the DePaul Study, but all research shows that the group dynamic is more powerful, there is more benefit with the number being 8.

Dr. Philip Haigh, 413 S. Chapman Street, was sworn in and stated that he visits the property on a monthly basis to get the rent check. He is always welcomed at the door, the house is always in order and very clean and tidy. The house smells good and is always in good shape. The rent check is usually ready before the 1st of the month. These are men that are doing their level best to achieve a new life and take care of their responsibilities. The residents volunteer to make minor repairs in and around the house. The addition of two more people in this house would offer a dynamic that works and is more supportive for the residents.

Mary Walker, 413 S. Chapman Street, was sworn in and stated that she is also a co-owner of the 1014 Jefferson Road house. She stated the house is unusual because they added a 1,000 square foot addition when her parents were brought in to live with them. She has always been welcomed to the house and found it to be very well taken care of. She feels that the community is doing a disservice when not being tolerant of people with drug and alcohol addictions.

Carlos Vilorio, 1705 Three Meadows Road, was sworn in and stated that he is a previous resident of this house and he now works for Oxford House. He has a passion for the work that is done in these houses in allowing residents to continue their recovery in a safe, worthwhile house. Other living arrangements could be near crack houses and other drug houses, which would be detrimental to the recovery of these

residents. There is a zero tolerance for drug or alcohol use while living in one of the Oxford Houses. They try to be the good, quiet neighbor and not cause undue problems within a neighborhood.

Michael Gorson, 1014 Jefferson Road, was sworn in and stated that he currently lives in the house and they have fantastic neighbors. This is now his home and he lives with six other guys and they attend supportive meetings for drug and alcohol abuse. They have to answer to the house monitor for their activities and there are very high expectations so their recovery stays on track.

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

Alisha Mills, 1016 Jefferson Road, was sworn in and stated that she is the one that filed the zoning complaint last July. She came home from the beach with her three daughters and noticed that the owners were moving out. She was notified that it had become an Oxford House and learned what that meant to her neighborhood. Currently, there are at least 8 cars on that property all the time. There are only one or two residents that have been at the house the entire time, the rest come and go frequently. She does not feel safe for her and her daughters. She has watched different women going in and out of the house and has smelled pot being smoked, all of which is against their guidelines. She is all for people getting help but does not feel this is the right place for it.

Bud Colgan, 1023 Jefferson Road, stated that he went on-line and read some information about Oxford House and found out that for this location there are currently 9 total beds and no vacancies. He feels that this is a matter of trust for these people. He wants to be a good neighbor but feels that they have already breached the trust issue. He stated that there are cars parked all over the front yard and it looks terrible.

Sherry Colven, 1023 Jefferson Road, was sworn in and stated that she thinks the obligation of the Board is to consider the impact of this Oxford House to the adjacent homes and residents. They do see all the cars at the property and the house is already over legal capacity. She doesn't feel it is necessary to allow eight people to live there, as six is what is permitted.

Dale Lesreard, 1007 Kemp Road, was sworn in and stated that he agrees with the previous speakers, in regard to all the cars on the property. It is difficult to see if you have to back out of another driveway onto Jefferson Road because of all the vehicles.

Alisha Mills returned to the podium and stated that last week her family was leaving their house before 7:00 p.m. and there was a vehicle parked on the subject property with the engine running and very dark tinted windows and big rims on it. To her, it looked like a drug dealer's car. She obtained the license plate number and in running the plates, the record reflected that registrant of the vehicle resides in Kernersville. Further research showed this same person has numerous drug charges pending.

Bob Perry, 1009 Jefferson Road, was sworn in and stated that he wanted to add that Jefferson Road is a very busy road with a lot of traffic. As typical, the residents have to back out of their driveways. It is unsafe and difficult to see because of the many vehicles on the subject property. If they are allowed to have more residents, it is only going to make parking at that property more difficult. He is concerned about the possibility of a traffic accident in this immediate area. He feels that there needs to be more monitoring and supervision of the residents and the neighbors would not be smelling dope and being worried about their children's safety.

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

Ms. Eckard asked if there is a maximum number of vehicles that can park in the yard on gravel. Mike Kirkman stated that there is not a maximum number of vehicles allowed but the amount of surface that can be paved or graveled is 40% of the lot, otherwise they would need to seek either a Type II Modification with the Technical Review Committee or potentially a variance for a greater amount than that. He cannot speak to how much of the front yard is covered at this point without doing further investigation.

Board Discussion:

The Board members all stated their concerns regarding this particular property and all stated that they would not support the request to increase the number of residents from 6 to 8 people. They thanked all the speakers for voicing their concerns. They felt that there is a parking problem that needs to be addressed. There has not been ample evidence to support increasing the number from 6 to 8 residents. It would also be very helpful for future reference, if someone from the Oxford House organization would have a meet and greet with the neighbors of a potential residence to inform these residents of what is proposed for a property in their neighborhood.

Ms. Williams moved that in regard to BOA-18-16, 1014 Jefferson Road, that the findings of fact be incorporated into the record and the Enforcement Officer be upheld and the Special Exception denied based on the following: An increased number of persons does result in significant adverse impacts to adjacent properties or the neighborhood where the chartered home is located because there is inadequate parking for the numerous vehicles present when there is a high number of occupants and there are allegations of behavior that violate Oxford House rules, seconded by Ms. Eckard. The Board voted 7-0 to deny the Special Exception requested. (Ayes: Hayworth, Skenes, Williams, Truby, Eckard, Blackstock, Waddell. Nays: None.)

There was a short break from 10:05 until 10:12 p.m.

APPEAL OF ZONING ADMINISTRATIVE DECISION

- a. BOA-18-17: **900 HAYWOOD STREET** Marsh Prause, on behalf of Preservation Greensboro Development Fund Inc., appeals an administrative decision by the Zoning Administrator that a variance may not be granted that would have the effect of allowing a use with a density exceeding the maximum allowed density. The applicant wishes to relocate an existing duplex to the vacant lot at 900 Haywood Street. In the RM-12 zoning district, duplexes are only permitted on lots having a minimum lot area of 7,500 square feet and a minimum lot width of 80 feet. The subject lot contains 6,825 square feet and is 65 feet wide. Zoning RM-12 (Residential Multifamily); Section 30-4-13.1(D); Cross Street – Gregory Street. **(OVERTURNED)**

Shayna Thiel stated that Marsh Prause, on behalf of Preservation Greensboro Development Fund, Inc. appeals a Zoning Administrative decision. The applicant requests an appeal of the Zoning Administrator's decision that no variance may be granted that would have the effect of allowing a residential density greater than the district's development standards allow for a duplex use, as existing lot area and lot width will only support a single-family use. The property is a corner lot located at the northwestern intersection of Haywood Street and Gregory Street and is zoned RM-12. The applicant's plot plan indicates the lot contains 6,825 square feet. The applicant requests to locate a duplex on the subject property. A duplex is a permitted use in the RM-12 district provided the minimum lot area and width standards are met.

Based on Exhibit 3, the existing lot does not meet minimum standards for a duplex. (a) For a duplex use, a lot must be a minimum of 7,500 square feet of lot area and have a minimum lot width of 80 feet. (b) The subject property only contains 6,825 square feet and is only 65 feet wide along the Haywood Street right-of-way. By comparison, the minimum lot area and width for a single-family dwelling in RM-12 only requires 5,000 square feet in area and lot width of 58 feet. On October 5, 2017, the Zoning Administrator made the initial determination that the lot did not meet minimum standards for duplex use. Following the initial determination of the Zoning Administrator in October 2017, the applicant was advised that a duplex could be allowed with additional property to meet minimum lot area and width. The applicant was also advised that a duplex could be allowed with a rezoning to a district that permits the appropriate density. On January 23, 2018, the Zoning Administrator confirmed his previous decision that a duplex use for this property would exceed the maximum density allowed in the RM-12 district, based on minimum development standards. If the Board of Adjustment takes action to overturn the Zoning Administrator's Decision, the applicant plans to seek variance requests related to lot area and lot width for duplex development at a future Board of Adjustment meeting. The RM-12 (Residential Multifamily) District is primarily intended to accommodate multi-family and other residential uses at a density of 12.0 units per acre or less.

Counsel Terri Jones, City Attorney's Office, stated that on behalf of the City, she would call Mike Kirkman, Zoning Administrator, to answer questions posed.

Mike Kirkman stated that he is the Zoning Administrator for the City of Greensboro and the Co-Manager of current Planning. He has been employed by the City for approximately 11 ½ years. His primary functions would be to oversee the administration and interpretation of the Land Development Ordinance, which regulates all types of development in the City, as Chapter 30, a section of the City Code of Ordinances. He has rendered an interpretation regarding an application for a variance for the property known at 900 Haywood Street. Section 30-4-2.1 authorizes the Planning Director to make interpretations concerning the provisions of the LDO and he is considered an officer that is charged with enforcing the ordinance and as part of those duties he also makes sure that the Planning Director is aware of his decisions and reasons for those decisions. In regard to the variance application process, typically, those conversations come up and they include some type of a pre-submittal application where they talk about what the different aspects are that are trying to be achieved by a variance application. As part of that conversation staff looks to see if there are other options, besides a variance, that can be accomplished by other means. Typically, they get into discussions about rezoning and modifications, if those are allowed, or other means under the ordinance.

The zoning district for this property is RM-12, Residential Multifamily. This district would allow a variety of residential uses, typically more of a moderate intensity, by definition, it also allows for non-residential uses which could include churches, schools, as well as governmental facilities and day care centers. The owner would like to relocate a duplex on this property, which is permitted, in general, in the RM-12 district but there are development standards that talk to a minimum amount of acreage that is necessary for duplex use. The lot size needs to be at least 7,500 square feet in size with a minimum lot width of at least 80 feet, based on a corner lot. The application was rejected because it was determined that there is not enough land associated with the property for use as a duplex use, that the effect was to allow a use not allowed in the RM-12 district or a density allowed in the district based on those standards. The LDO does not provide for variances to density.

The City Council has limited the Board of Adjustment's authority to grant variances, as there are specific provisions that speak to the Board not granting variances related to use or density. A copy of Section 30-4-13.1 has been provided to the Board as Exhibit #4, for their review. Subsection D was read into the record: "No variance may be granted that would have the effect of allowing a use that is not permitted in the subject district or a density exceeding the maximum allowed in the subject district". He explained that as noted on Exhibit #4, for duplex use, the ordinance prescribes that there must be at least 7,500 square feet to allow a duplex use in the RM-12 district and that the lot must be at least 80 feet in width. Because the lot does not meet either, granting a variance would effectively allow for a use that is not allowed, currently, in the RM-12 district. On the Table 7-6, which is part of Exhibit #4, there are different dimensional requirements or minimum sizes of lots and dimensions for different types of uses. A duplex use has a different minimum lot size from a multifamily unit, which would typically be 3 units, as a different size from a single family unit. Based upon the available square footage and the number of units requested the density would exceed the maximum allowed in the RM-12 district for a duplex to be placed on 900 Haywood Street. At a square footage of 6,825 feet, 1.88 units would be allowed, but any partial unit is not counted effectively, so only 1 would be allowed. The minimum lot size requirements can be waived by some provisions in the LDO, for single family residential dwellings. There are provisions that get into contextual infill standards, and there is also, in situations where there is a non-conforming lot of record, that a single dwelling unit could be built if it met certain dimensional requirements which can be varied. The LDO does not contain any similar waivers for duplexes. Section 30-4-13.1(a) does authorize the Board of Adjustment to vary certain requirements in harmony with the general purpose of the regulations where special conditions applicable to the subject property would result in a hardship in making reasonable use of the property. City Council has insured that there can be reasonable use of property such as 900 Haywood Street, and there is an option for use. On Table 7-6, a single family residential dwelling only requires a minimum of 5,000 square feet and a lot width of only 58 feet, both of which the lot could meet at 900 Haywood Street. The general purpose of the LDO is to establish both the allowance for different types of residential uses and also to establish minimum requirements, so effectively, each district establishes minimum densities based upon the amount of land that is available and the intensity of the proposed development. Section 30-6-2.2 of the LDO outlines the primary intent of the residential multifamily districts and that provision states, "In general, the primary intent of the RM (Residential Multifamily) district is to accommodate multifamily residential development. The number of the district title represents the approximate density per acre, however, actual development densities will vary based on district dimensional standards and other ordinance requirements, as well as the unique characteristics of the development site." The residential districts, themselves, again, are based upon each district having an established density based upon a minimum amount of land and a minimum number of units within that. To vary those would cause issues in terms of the function of the Zoning Commission, which is the body that is established to evaluate changes in zoning, which are generally a function of density. City staff does have the authority to review applications and determine if they are sufficient in nature and also has the ability to determine if there is an issue on whether the appropriate Board is being assigned to that issue. There are multiple Boards and Commissions that serve different functions. i.e. the Historic Preservation Commission deals with issues in the historic districts; the Zoning Commission addresses issues of zoning; Planning Board typically deals with either technical matters or matters of longer range planning and neighborhood developments. So it is part of their job, as staff, to determine the appropriate venue for an application, in addition to general sufficient information to be able to process that application. That analysis can sometimes occur after a variance application has been accepted. The process is set up to do full analysis, usually with additional staff persons after an application is submitted.

It is a way for staff to delve further into it and make sure that they are evaluating an application and that it is sufficient in nature and is being routed to the appropriate process. The language of the LDO related to the Board of Adjustment and to variances is crafted on State legislation and is consistent with that legislation. In regard to NC General Statute, Section 160(A)-381, this is the basic enabling legislation for zoning for cities within the state. Subsection B1 states: "These regulations may provide that a Board of Adjustment may determine and vary their application in harmony with the general purpose and intent and in accordance with the general or specific rules that are contained, provided no change in permitted uses may be authorized by variance." This provision limits a Board of Adjustment's authority to grant variances. It specifically authorizes the governing body, the City Council, to also adopt general or specific rules regarding variances. City staff properly interpreted the LDO, by the Planning Director or any other authorized officer charged with enforcing the ordinance. He made this interpretation in consultation with his co-Manager, as well as the Planning Director. He stated that the LDO is clear that no variance may be granted that would have the effect of allowing a use not permitted in the subject district or a density exceeding the maximum allowed in the subject district. In regard to the applicant wanting to place a duplex on this property, there are two options that were discussed with the applicant – one, because they do not have the minimum amount of land available for a duplex use, they could look to reconfigure existing lots adjacent to it and add land to this, thereby meeting the minimum amount of land required; another option that was discussed was a rezoning to a different district that could then allow for the duplex use based upon the available land that was there; and they also discussed that the amount of land that is available does support a single family dwelling on this property.

Counsel Marsh Prause then posed several questions to Mike Kirkman for his answers. In response to some of these questions, Mr. Kirkman stated that he was not aware of this particular conversation. When he and Mr. Prause had a discussion, it was about whether they could request a variance for lot area and lot width, and then there were some additional clarifications to try to determine who the parties would be that would sign the application since it was owned by Capital Facilities and who would represent. At some point, Mr. Prause had discussions with Mike Kirkman and Steve Galanti and Loray Averett, concerning the variance application and staff received a check in the amount of \$400.00. Mr. Prause was advised that this matter was going to be on the agenda for the October 2017 meeting of the Board of Adjustment. Preservation Greensboro also vetted this issue through pre-development review with the Technical Review Committee (TRC) on this property, which occurred around June 23, 2017. Several City staff persons were at the TRC for this review. Typically, those meetings would include approximately eight to ten City staff from different departments. He is not aware of whether any information was given to Preservation Greensboro that the variances to allow a duplex use would not be allowed to be presented to the Board of Adjustment. Staff caught this later in the review process. Termination came after further analysis after the application was submitted. Mr. Prause asked why it was missed in pre-development review and missed by employees with over 40 years of experience. Mike Kirkman stated that he could not speak to the pre-development since he wasn't in that conversation, but he can speak to staff receiving applications based upon their best knowledge at the time. Part of their challenge is for staff persons to review applications and make sure they are not missing anything and they do make mistakes sometimes. When they looked at this application further, probably based on the uniqueness of the situation they discussed previously, they realized that this was a conflict and that it appeared that the Board of Adjustment was not the appropriate venue for this conversation. Counsel Prause stated that the rub of this issue is the LDO provision identified as 30-4-13.1 Sub D, and that provision actually has two parts to it. Mike Kirkman stated that it is written as a phrase related to use and one phrase related to density. There are two

circumstances where a variance cannot be granted but there is some overlap. This provision does not indicate that an applicant shall be denied access to the Board of Adjustment with a variance application. It is staff's job, as Administrative Officials to determine what can go forward and his determination is subject to appeal, which is why they are here this evening.

Counsel Prause asked where it says that in 30-4-13.1(d), that it is Mr. Kirkman's prerogative to keep matters from the Board of Adjustment that he deems unsatisfactory for consideration by the Board of Adjustment. Mike Kirkman stated it is his prerogative to read the ordinance as it is written and it is written that "no variance may be granted for the following, therefore, the Board of Adjustment is not in that role to grant variances, therefore, the determination was made that it was not the appropriate venue. There is other authority allowed, as an Administrative Official in terms of reading the ordinance and making interpretations, and it says in plain language as it is. He will concede that the Board of Adjustment has no reasonable means to hear this case, it does not say that from several things in the ordinance about specific Boards, so it is staff's reasonable interpretation.

Counsel Prause referred to 30-4-13.3 under "Filing" for the Board of Adjustment, the LDO states, "An application for a variance must be prepared in accordance with the common review procedures of 30-4.1 and submitted to the Planning Department at least 30 days before the Board of Adjustment meeting." Mike Kirkman stated that establishes the deadline in which to file an application before the Board of Adjustment can hear the case. Counsel Prause stated that it very specifically states, "the procedure for filing an application for a variance is controlled by 30-4-1." He asked Mr. Kirkman to refer to Section 30-4-1 which governs the procedures for applications for the Board of Adjustment, and asked if these are the actual procedures that are specifically identified as the procedures by which applications to the Board of Adjustment are handled, and Mr. Kirkman agreed that these are the general application procedures for all of the different Boards and Commissions and specifically identified as applying for applications to the Board of Adjustment. Counsel Prause asked where, in that section, does it give City staff the authority to keep applicants from the Board of Adjustment under any circumstances? Mike Kirkman responded that it is not address there, but is addressed under another section of the ordinance, which is the broader authority that is in 30-3-12.1, speaking to the powers and duties of the Planning Director, that speaks to review and recommendation authority for the following: variances are one of the many items that are listed under that. Counsel Prause asked if that refers to review and recommendation authority and Mr. Kirkman responded that it did. Counsel Prause stated that this is not a review and recommendation, it is a denial of access to the Board of Adjustment. Mr. Kirkman stated this was a determination that because of the provision in 30-4-13.1, that the variance could not be grated based on this use.

Counsel Prause asked Mr. Kirkman to point to a single provision in the City of Greensboro's LDO that gives City staff the authority to keep an applicant from the Board of Adjustment. Mr. Kirkman responded that he would refer back to Section 30-4-2, which talks about "interpretation of the ordinance, the Planning Director or any Officer charged with enforcing this ordinance is authorized to make interpretations concerning the provisions of this ordinance. An appeal of that official interpretation can go to the Board of Adjustment in accordance with the appeal procedures of 30-4-27."

Counsel Prause directed Mr. Kirkman's attention to Section 30-4-13.4 which refers to the Board of Adjustment Decision Section, which states, "The Board of Adjustment must hold a public hearing of all variance applications, notice of the hearing must be provided in accordance with Section 30-4-1.5", which is the General Advertising procedures for public hearings." Counsel Prause pointed out that the first part of that sentence states, "the Board of Adjustment must hold a public hearing of all variance applications."

He further stated that it does not say that the public hearing is only for applications that staff deems worthy. Counsel Prause then asked if it is fair to say that this is the Board's authority to hear matters.

Mike Kirkman stated they were discussing the ability to grant variances, which is the purview of the Board of Adjustment. Counsel Prause stated that they are not here tonight to decide a variance and Mr. Kirkman stated that this is more of a determination of the decision by staff that the Board is not the appropriate venue for this conversation and, therefore, because the Board could not grant a variance application.

Counsel Prause asked if the \$400 application fee tendered by Preservation Greensboro was returned to Preservation Greensboro. Mr. Kirkman stated that the application fee was not returned by mutual consent as they agreed to move this forward to cover costs related to this particular conversation. Counsel Prause stated that staff's refusal to allow the Board of Adjustment to hear the variance application has resulted in Preservation Greensboro incurring an additional \$400 fee. Mr. Kirkman stated that they made the offer to return the fee, so that is not a fair statement. Counsel Prause stated that Preservation Greensboro could have gotten the fee back if it had been willing to abandon its variance. He asked if there is any provision in the LDO that says that City staff can implement that kind of system whereby City staff charges for access to the Board of Adjustment. Mr. Kirkman responded that the application fees are part of the application and it is staff's responsibility to determine the sufficiency of those applications. If an application is determined not to be sufficient, then they would have the authority to return those fees. Counsel Prause asked if, based on his experience in this area, would he agree that the City's authority to have a Board of Adjustment derives from North Carolina law. Mr. Kirkman stated that it did, as many of the zoning procedures come from State law. Counsel Prause then stated that the Section at issue of the LDO, Section 30-4-13(d), has two aspects to it. Both of those aspects identify circumstances in which a variance cannot be granted by the Board of Adjustment. Mr. Kirkman stated that was correct. Counsel Prause pointed out that circumstance number one says that, "No variance may be granted that would have the effect of allowing a use not permitted in the subject district." Mr. Kirkman agreed that was the first phrase. Counsel Prause asked if the use at issue here is a duplex use, and Mr. Kirkman agreed that it is a duplex use based upon a minimum amount of square footage. That is the distinction that was made by staff. Counsel Prause stated that the use at issue is a duplex and the prevailing zoning is RM-12, which allows having a duplex as long as there is a lot that is at least 7,500 square feet in size. Mr. Kirkman agreed with that statement. Counsel Prause stated that is one circumstance there provided for in which an applicant can be granted a variance by the Board of Adjustment, and Mr. Kirkman agreed with that statement. Counsel Prause stated the second one says, "a variance cannot be granted if it would have the effect of creating a density exceeding the maximum allowed in the subject district." Mr. Kirkman agreed with that statement. Counsel Prause pointed out that the North Carolina enabling Legislation that gives the City the authority to create this Board, only addresses one of those two circumstances and Mr. Kirkman responded that was correct, that 168(A)388 Sub-Part (d), states, "No change in permitted uses may be authorized by variance." Counsel Prause pointed out that there is no change in permitted uses authorized by a variance and asked if there was anywhere that says that no increase in density may be authorized by variance. Mr. Kirkman stated that it does not say it there, however, as was noted earlier, in Section 160(a)381, which is the granting of power to the City for zoning purposes, that you could meet the general purpose and intent in accordance with general or specific rules therein contained, i.e., that there City may adopt additional provisions relative to zoning. Counsel Prause asked Mr. Kirkman, based on his 10+ years of experience in this area, was he familiar with the canon of construction that says that a more specific statutory provision takes precedence over a more general statutory provision? Mr. Kirkman stated that he does not have that specific scenario exactly, but he does understand that there is

that discussion that there are specific provisions relative to general provisions. Counsel Prause asked Mr. Kirkman if he is willing to concede that the more specific provision here relating to Boards of Adjustment is 160(a)-388, and Mr. Kirkman responded that 160(a)-388, which specifically talks to the Board of Adjustment, does indeed, say that phrase, just on use. Counsel Prause directed Mr. Kirkman's attention to the very first sentence in Sub-Part "d", "when unnecessary hardships will result from carrying out the strict letter of a zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following... Counsel Prause pointed out that the statement is, "The Board of Adjustment SHALL vary, (that is mandatory), and Mr. Kirkman agreed that wording would indicate, yes, if those findings are made. Counsel Prause argued that this is state law saying that the City of Greensboro Board of Adjustment SHALL (as in mandatory), vary ANY of the provisions of the ordinance. He felt it is mandatory and expansive. Mr. Kirkman stated that as long as no change of permitted uses may be authorized by Variance, is added at the end.

Counsel Prause stated that in this case the permitted use in an RM-12 zoning allows for a duplex, according to the Permitted Use Table in the zoning ordinance. Mr. Kirkman stated that it allows for a duplex use with the minimum lot size of 7,500 square feet. There is not dispute that this lot is less than 7,500 square feet. Counsel Prause stated that Mr. Kirkman's position is that even though it is 7% less than that, this Board cannot give forbearance such that the lot can be used for a duplex. Mr. Kirkman stated that based upon the fact that the variance cannot be granted that allows a use not permitted in the district or the density exceeding what is allowed. Counsel Prause stated that what Mr. Kirkman referred to was from the LDO and it was just established that it does not comply with North Carolina state law. Counsel Teri Jones objected to the question as it asks for a legal conclusion and there have been two separate provisions of state law, so he should rephrase the question. Counsel Prause stated that the testimony has been all about legal conclusions and Mr. Kirkman made a legal conclusion that his non-profit organization could not access this Board. Counsel Prause asked the Chair to require an answer to that question. Mr. Kirkman stated that the ruling he made was based upon the LDO provisions that said a variance could not be granted for these two types of uses. Counsel Prause pointed out that NC state law only mentions one of these restrictions. Mr. Kirkman stated that the section in 160(a)-388 specifically mentions permitted uses, that was correct. Counsel Prause asked it is fair to say the City's position about the provision at issue, is that a variance can be used to attain a density exceeding the maximum allowed in the subject district? Mr. Kirkman stated that is one of the purposes, yes and to enforce that, you would have to know what density it is. Counsel Prause asked where in the ordinance, density is defined. Mr. Kirkman stated that there is not a specific definition in their "Definitions" section, so the ordinance would then refer to a general common understanding of density, which is typically going to be units per land area.

Ms. Williams stated that it seemed, initially, that the Board is to determine whether to uphold or overturn the Zoning Enforcement Officer's decision, and then during the questioning it seems that the Board is not there to determine that, but instead they are there to determine whether or not they should have come before the Board sooner. Mike Kirkman stated that staff made an interpretation based upon the provisions of the LDO for 30-4-13.1, which says that, "A variance cannot be granted that has the effect of allowing a use not permitted in the subject district or a density exceeding the maximum allowed in the subject district." This was the determination because it got to the question about what is the appropriate venue for the conversation. The lot that is being requested for duplex use is currently vacant and there is nothing on that lot. The request is to move a duplex use to establish a new use on that lot and it is staff's determination that a variance cannot be granted based upon the fact that there is not enough acreage on that lot, therefore, it is not the purview of the Board of Adjustment rather it is the purview of the Zoning

Commission through a rezoning process or the purview of the property owner to seek to remedy that situation, i.e., get additional land and do a reconfiguration, or to establish a single family dwelling which is allowed, by right, and there is sufficient amount of land to do so. That is staff's interpretation and that is what has been appealed by the applicant.

Chair Hayworth asked if the Board is here to determine that they have the right to come before the Board to determine if the duplex can be put on this lot. Both Counsel Prause and Mr. Kirkman stated that was correct. Mr. Kirkman pointed out that any variance request would come based upon what the Board decides for this request tonight. This is not to consider an actual variance of the property. Mr. Kirkman pointed out that staff's determination is that it cannot be granted as it violates that provision of the LDO and a variance cannot be granted and a duplex use cannot be allowed there based on the provision. They have rights to install a family dwelling by right now, based upon on how much land they have available.

Chair Hayworth stated that was not what the Board members' information says.

Counsel Andrew Kelly stated that what the Board has before them is that there is an appeal of Mr. Kirkman's decision, which is summed up in the Board's Administrative decision structure as to whether or not the proposed duplex use is allowed in the RM-12 zoning district. If the applicant wants to request a variance to rezone a property, knowing upon its sufficiency review, staff has said the Board of Adjustment is not a proper venue and take something to the Board of Adjustment that they do not have the ability to rule on is likely to be denied. Before the applicant goes there, he is appealing staff's decision that this use is not allowed. Counsel Prause stated that the most succinct way he can put this is, they are here arguing tonight just so they can have the right to come back to the Board of Adjustment and present their variance to the Board at a future meeting. Staff made the determination that his client cannot even present the variance to the Board and that is what they are appealing.

In response to a question by Ms. Skenes, Mike Kirkman stated that based upon the acreage available they can only do 1.88 units on the property and cannot do 2. Ms. Skenes pointed out that duplexes are allowed in RM-12 districts and the density is 2 and it is a duplex and it is 2. Counsel Terri Jones stated that the purpose of the RM-12 Residential Multifamily district defines what the density is. It says, "intended to accommodate multifamily and other residential uses at a density of 12 units per acre or less." So it is not that you get 2, you have to have the acreage to support it to meet the density. While there is not a definition of density in there, this zoning district does have a definition of what the appropriate density is. Because the applicant does not have an acre, they have much less than an acre, they don't support 2 units on this particular lot. Ms. Skenes stated that it reads, "or more." She asked if there has been any discussion about changing this to a twin home instead of a duplex. Counsel Prause stated that he would address that when he does his Direct Examination of Mr. Cooke, so the Board will hear a lot more about it. This is a 100+ year old structure that they are moving to avoid demolition of the structure by UNCG as part of its campus expansion. It is not possible to reconfigure it as a twin home. The ironic thing is, it is currently a quadplex and they are decreasing the density of it to a duplex, so it is going from 4 units to 2, as a practical matter. That does not alleviate the technical issues here, but that is the summary of the project they want to undertake, which is why they want to have permission to get the variance in front of the Board so that it can be considered. Ms. Skenes pointed out that under a twin home you don't configure the house differently, all you do is run a line down the middle of the lot. It has to do with the ownership of property.

Mike Kirkman stated that if you run a property line you run into building code issues.

Mr. Truby asked if the City's ordinance goes against what the State statute says. Mike Kirkman stated that he would argue that it does not but Mr. Prause would argue that it does.

Counsel Jones stated that the Board also has to read Section 381 in conjunction with 388. Counsel Prause stated that 381 is not as specific and is not written just about the Board of Adjustment, whereas, 160 is focused exclusively on the Board of Adjustment. Counsel Jones pointed out that (b)1, Section 160(a) says, "These regulations, (meaning zoning and development regulations) may provide that a Board of Adjustment MAY determine and vary the application in harmony with the general purpose and intent and in accordance with general or specific rules contained therein." This is about the entire adoption of a Land Development Ordinance. This is the authorized enabling statute. Once the Board is authorized to do a variance, then, yes, 388 controls the process of that, controls the standard of review, so that the variances need 4/5 majority. But first, City Council can decide what variances the Board of Adjustment can and cannot hear and that is what has been done in this case. There is nothing in the State enabling law that does not say the City cannot be more restrictive. Counsel Prause argued that is nothing in the enabling law that authorizes the City to be more restrictive. They are dealing with a body that has a remedial purpose. Counsel Jones stated that (a) clearly says that, "the zoning ordinance adopted can control the density of population." So density is allowed to be part of a Land Development Ordinance's zoning ordinance. Counsel Prause stated that they do not disagree with that, although they do point out that the term "density" is undefined by the LDO which would make it very difficult for City staff to fairly apply a standard that says if you are increasing the density you cannot get a variance.

Counsel Prause stated he wished to re-open his Cross Examination briefly based on the additional testimony just heard by Mr. Kirkman. He asked if in consultation with him, after him denying access to the Board, that he suggested that they pursue a rezoning instead for this parcel that is less than 7,500 square feet in size. Mr. Kirkman responded that was one option that would be available to them. Counsel Prause asked if Mr. Kirkman was aware of any decisions by the NC Court of Appeals of the NC Supreme Court that have held the rezoning of a parcel of less than 1 acre to be spot zoning and struck down. Mr. Kirkman responded that he was not familiar with that. To clarify for the Board, there is a difference between spot zoning and illegal spot zoning for clarify for the record. He would defer to his legal counsel on that. Counsel Prause stated that he had nothing further.

Counsel Jones stated, to clarify this issue, if a variance application came in that wanted an industrial use in the RM-12 zoning district, would that be presented to the Board of Adjustment. Mr. Kirkman stated that it would not. It would not be a use that would be allowed in that district. Counsel Jones stated that another hypothetical, this zoning district, RM-12, requires 12 units or less per acre and they want 12.1, would that be accepted? Mr. Kirkman stated that it would be recommended for a rezoning because other districts exist to support density increases. Counsel Jones asked if a rezoning becomes a legislative act rather than a quasi-judicial decision, and Mr. Kirkman agreed that was correct. The City Council in this case has granted a different Board, not the Board of Adjustment, the authority to grant rezoning applications. Mike Kirkman responded that the Zoning Commission is the body authorized to address rezoning applications. He is familiar with cases for Historical Preservation purposes, a rezoning was pursued to allow for the intended use of the property to be able to be effectuated by the property owner. He said the most recent one was at 507 N. Church Street where a rezoning was pursued to the Planned Unit Development (PUD) district in order to allow for re-use of two historic properties. Counsel Jones stated she had no further questions.

Counsel Prause, on Re-Direct, stated that earlier, Mr. Kirkman had read from 30-6-2.2, which is titled, RM (Residential Multifamily Districts), and was it fair to say that the number in the district title, which would be 12 here, represents the approximate density per acre. Actual development densities will vary. Mr. Kirkman responded, that yes, that is correct and is based on a square footage per unit, which is found on the associated Development Tables with the Development Standards, but this is a guide to tell that this is going to be approximate, to give a range to work from. In many cases this is exactly correct, but staff does refer directly to those tables for the final determination. Counsel Prause asked it if was fair to say that the provision really at issue here, 30-4-13.1(d), refers to the density of the district? Mr. Kirkman responded that it refers to the density of the district that is assigned to that parcel, yes. Counsel Prause stated he had no further questions of Mr. Kirkman.

Counsel Jones stated that the City would rest its case at this time.

Counsel Prause called Scott Millman, who is an employee of UNCG and a Director of the Capital Facilities Foundation, Inc.

Scott Millman, UNCG, was sworn in and stated that he is involved with the non-profit foundation called, The Capital Facilities Foundation, Inc., as the Director of that Foundation. They are the owner of the property at issue in this matter. In response to questions, Mr. Millman stated that CFF is partnering with Preservation Greensboro to attempt to enable this project to move this house to save it. They have previously partnered with Preservation Greensboro to relocate other houses in the Glenwood neighborhood with much success. They have no objection to Preservation Greensboro's appeal of City staff's determination that it cannot bring this variance before the Board of Adjustment. Counsel Prause stated he had no further questions for this witness.

Counsel Jones asked Mr. Millman, as a representative of Capital Facilities Foundation, that owns this particular parcel, how is the lot located at 900 Haywood Street configured. Mr. Millman responded that it is configured as empty land right now. Counsel Jones asked if there was a time with this was a bigger lot. Mr. Millman stated he did not know the answer to that. In response to questions, Mr. Millman stated that the required lot size is 7,500 square feet and needs to have at least 80 feet along the edges of the property. He discussed this with Mr. Prause prior to coming to the meeting when they submitted the first application in October. There are other lots that are owned by Capital Facilities Foundation that are larger than 6,000 square feet that are currently vacant but they are under lease to the University of North Carolina at Greensboro (UNCG) and with plans to transfer them over to the University in June. They do not own the properties that are adjacent to 900 Haywood Street. There have previously been situations where there were other houses that have been moved to other lots. He does not know whether a variance was required on those lots. Counsel Jones stated that she had no further questions.

Counsel Prause called Michael Cooke as another witness.

Michael Raeford Cooke, II, 2416 Sherwood Street, was sworn in and stated that he works as a general contractor and is familiar with building issues, construction issues and some zoning issues to a certain extent. He has lived in Greensboro for many years. He currently serves on the Planning Board for the City of Greensboro and is involved with Preservation Greensboro Development Fund, Sports Council, and Crescent Rotary. In regard to his involvement with Preservation Greensboro Development Fund, he originally got involved with PGDF when he was helping Rittenbach and working on the Cascade Saloon together. He is Vice Chair of PGDF and is here tonight to represent the Board of Trustees of PGDF. He is

familiar with the decision-making of the Board of Trustees regarding this appeal and the underlying project. PGDF seeks to preserve structures, sometimes on the Historic Register, sometimes not and sometimes in the vein of neighborhood preservation and sometimes more in the vein of pure historic preservation. Typically, they work with owners, architects, and municipalities sometimes to preserve and place typically historic preservation easements on properties so that their preserved. PGDF does not have any paid employees and he is not being paid to be here tonight. PGDF is also not paying Counsel Prause to represent the organization tonight. PGDF operates through volunteers only. He is very familiar with the project PGDF is exploring in Glenwood that would involve moving a structure from 711 Silver Street to the property at issue in this appeal. When he first came onto the Board of PGDF, they needed someone that had experience with blue-collar construction experience. The partnership between PGDF and UNCG and Capital Facilities Foundation in Glenwood began before he got involved, but he participated in the end and they moved 810, 812 and 814 Haywood Street which are in close proximity to 900 Haywood Street and sits directly adjacent on the opposite curb. The current use of the house that would be relocated is currently vacant but the last use was a large boarding house for a non-profit that UNCG was helping sponsor, called "Think House." It is his understanding that UNCG wishes to move this structure to further development at some point in the future. PGDF has been involved in searching for relocation sites for this house and they were unable to locate any other workable relocation site for this house. He believes that UNCG approached the PGDF Board with this proposition versus the other way around. If allowed, the structure would not be torn down and lost and if there is a preservative benefit and there would also be more habitable affordable housing available in the area. The other three houses that were relocated are also affordable housing. The lot at 900 Haywood Street is a corner lot and backs up to a vacant lot that is within UNCG's Spartan Village. PGDF paid an architect to draw up a plot plan for the property, which is included in the Board's information packet. It clearly says it is for a two-story duplex and lays out the streets of Haywood and Gregory, and they thought they would be seeking a variance as to side and front setbacks and it was taken to the Pre-development Committee and their concerns were brought up with each of their respective departments, i.e. water, et cetera. Subsequent to that Pre-development review on June 23, 2017, PGDF presented \$400 as an application fee along with the variance application to the City of Greensboro on September 22, 2017. He was informed that PGDF would be on the October agenda of the Board of Adjustment with the variances. He found out afterward that staff had reversed that position and he felt that they have worked for year-and-a-half on this property to move the house that they felt and had relied upon City data and then had the rug pulled out from under them at the 11th hour. They never agreed with staff's reversal of its position and the Board of PGDF voted unanimously to appeal the decision and that is why they are here tonight. He is aware that PGDF's Board is concerned that a rezoning of this single 7,500 square foot parcel to get around to this issue could be challenged as spot zoning. Counsel Prause stated that he had no further questions.

Counsel Jones clarified that Mr. Millman had testified that CFF does not own the adjacent parcels but Mr. Cooke had just stated that they did own a vacant lot and Spartan Village is next to that. Mr. Millman stated that he was referring to adjacent side-to-side parcels and Capital Facilities Foundation actually does own 816 Gregory and it is under a Capital lease to the State of North Carolina and the lease does say that when the lease runs its course of 30 years or is ended by the University, with obligations for the lease, all property becomes property of the State of North Carolina. So for all intents and purposes, it is promised to the state. Counsel Jones asked if 900 Haywood Street has been promised to the state and Mr. Millman stated that was correct. When they created the MOU with the neighborhood under which properties the University would wind up owning, and which ones they would not own, 900 Gregory fell outside the RVP,

the Residential Vision Plan (RVP), for that and so it was never intended to be transferred to the state of North Carolina. They have always had to find somebody to purchase that property. As part of their agreement with the people who are moving houses, the University has pledged to give either cash or other things of value that would equal the amount that they would have to spend to demolish the property. He is unsure how that transaction would go but part of that value would be the 900 Haywood Street property. In the RVP, 900 Haywood was planned to be used in a purpose consistent with the neighborhood plan. Counsel Jones asked why the house is not being converted to a single family dwelling. Mr. Millman stated that originally it was a duplex and when they partnered with the "Think House" they wanted to change it from a duplex to a multi-room domicile for students to reside in and so they changed it from the actual duplex it was to that. So the University did not change it, they just allowed them to use in a way that would serve the purpose. They were trying to save a house. Since the house is a quadplex now, Counsel Jones asked why not move it to the property as a quadplex and ask for a variance to the minimum lot area which is 10,890 plus another 3,630 square feet. Counsel Prause stated that Counsel Jones is asking for a legal conclusion. Counsel Jones stated that they wanted to move the structure from Silver Avenue because they want to use that property for some other use. Mr. Millman stated that want the structure relocated because the MOU with the neighborhood says that they will attempt to try to preserve that houses and so the first issue is to try and preserve the house. They could demolish the house but they are trying to save it. Counsel Jones stated she had no further questions for Mr. Millman but she does have additional questions for Mr. Cooke. In response to questions posed by Counsel Jones, Mr. Cooke stated that there is no guarantee that a variance will be granted when the application is submitted. PGDF has not been denied anything at this stage, but in his opinion, they have been denied a hearing before the Board of Adjustment and that is what is being discussed right now. Counsel Jones asked why they don't just put the quadplex on the property and not convert the property any more. Mr. Cooke stated that the property was a quadplex and UNCG converted the property to a large, open boarding house that probably 12 or 13 people were living in, so it still has four front doors and has been a quadplex and a duplex, but most recently was a big boarding house. If they wanted as much density as possible, they would submit it as a quadplex. The reason that the property does not work as a single family house is that they cannot find a realtor that will pay about \$180,000 for a single family house that is relocated from 711 Silver Avenue to the property at 900 Haywood Street. The total cost of development is about \$165,000 depending on how much the foundation will cost, so the economics of the situation really lend itself to the value that a duplex would bring from an investor rather than a single family home. Counsel Prause stated that Counsel Jones is arguing why they should get a variance and they are appealing the right to be able to argue the variance before the Board. In response to a question posed by Counsel Jones, Mr. Cooke stated that there are certain parameters on duplexes that are not in the LDO on single family dwellings. He stated that was why they are here, they are here seeking a variance for that. Counsel Jones stated she had no further questions for Mr. Cooke.

Counsel Prause stated that he had no Re-Direct questions for Mr. Cooke and he had no further witnesses.

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

Bulent Bediz, 808 Lexington Avenue, was sworn in and stated that he has been a resident there for 43 years. He is very well-versed with what is being discussed here and has opinions he would like to share. He feels that this is nonsense what is going on here but what Preservation Greensboro and Capital Facilities Foundation is presenting here is full of falsehoods and he can give details that would make your

head spin. They have come to the neighborhood, wolves in sheep's clothing, Preservation Greensboro not in the business of preserving properties and helping neighborhoods, they are helping themselves. The only reason Preservation Greensboro Development Fund is in Glenwood is because they profited from it and they are trying to profit even more. That house that is in question that is being moved 711 Silver Avenue is huge. It was a crack house and he knows it very well because the Police has been there many times. That house had more than 14 people living in it. He has addressed Community Foundation of Greater Greensboro with a request back in 2016, when the house that was at 900 Haywood Street was being considered to be demolished. This was the house that was at 900 Haywood Street. He pleaded with anybody who would listen, the University, Community Foundation of Greensboro, Preservation Greensboro and asked why are they tearing this house down? This house could have been rehabbed for such little money. He had investors lined up to put in the effort and preserve that house, but it did not go anywhere. He has all the email correspondence from 2016, where all these organizations claimed to be do-gooders and were going to help the neighborhood and preserve the houses and everything and that is wrong and he has everything in full detail and would be more than happy to provide copies to any Board member that would like to see it. There is more to the story than just this. Capital Facilities Foundation stole property from him and he is going to sue them for that, and Preservation Greensboro was complacent in that. Before the Board does anything more, he asked that they dig into this some more because there is more to this than what appears on the surface.

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

Closing Arguments:

Counsel Jones stated that this is a very important case to be decided. The state Enabling Law in Section 160(a)-381 of the North Carolina General Statutes that authorizes the City to have zoning regulation ordinances. The City of Greensboro has not chosen to do a straight zoning ordinance. A straight zoning ordinance would be industrial uses are in industrial districts; commercial uses in commercial districts; residential uses in residential districts. There is a Land Development Ordinance (LDO) and in a LDO there are development standards that go along with uses, so you will see in the RM-12 that a duplex requires a minimum size and it also requires a minimum width. These are certain dimensional standards that City Council, not only has chosen for this particular zoning district, and all properties within this district, but has also chosen not to caveat that or not to provide waivers of that, that is does for single family uses because some lots are just too small and do not support every use that might otherwise be allowed in that zoning district. These are development standards to regulate the density of population, which is something the state Enabling Law allows to do. Now it is true that in both this provision and in Section 160(a)-388, they both use the term "provided no change in permitted uses may be authorized by variance." Mr. Kirkman has testified that this duplex is not a permitted use for this particular property because it does not meet the minimum lot size. Single family dwellings may be allowed throughout the RM-12 zoning district on very small lots, but not duplexes - not certain other uses. This would require a use variance. The entire structure of the City's LDO, when you look at the residential districts, you divide it up by a number and that number says what is the maximum number of units per acre. It also says that not every property will support that maximum number. There may be other site constraints and development standards that have to be met, i.e. setbacks and things like that. This is an unusual case because we are here arguing that you do not have authority to do something, but let's think about where this might lead to. Lots of applications come in, under the appellant's view, every application for a variance would be submitted to the Board for review, even though the use is nowhere found on the development.

There has to be some control or the Board would be inundated with variance applications. It is true, as Mr. Kirkman testified, that applicants are encouraged to meet with staff and go through pre-development conferences to figure out what is the best solution for the proposed use of the property. That is what was done in this case. It is regrettable that the variance request was accepted but there's really been no harm other than time, but the fee that they would have provided for the variance is the same fee that they provided for the appeal. So they are really not out that money. They haven't been harmed because this is a vacant lot that they do not even own at this point in time. The applicant does not own this property. Capital Facilities is cooperating with this, but unfortunately, although it is laudable to try to preserve it, this is a structure that has been reconfigured multiple times, perhaps moved, or just reconfigured from a duplex to a quadplex to another institutional type use. And now they want to take a piece of raw land and move something to it that you would not be able to build from the ground up. A duplex would not be able to be built on this property. While the City wants to promote historic preservation and promote affordable housing, this is just not what the Board can grant. The Board has some limits on its authority, the State Enabling Law allows the City Council to choose those. Unfortunately, this is a case where you just cannot get a variance because it will allow for a use, a duplex, which is not allowed in the district because this district clearly says there are minimum requirements. And these are minimum requirements that cannot be varied with other minimum requirements. Putting two units on a lot that is only .15 or .16 acre clearly exceeds the RM-12, which the purpose states, is to be 12 units per acre or less. She asked that, in this case, the Board affirm the decision of the Zoning Administrator and determine that the Board is without the authority to grant a variance when it would allow for a use not permitted or exceeds the density. She did do research and there is one case on point, Sherrill v. Wrightsville Beach which was decided in 1985 and is in the NC Appellant Report at page 646. The Court found that the Zoning Board properly declined to issue a variance because under the general statutes, 160(a)- 388, that it was without authority to do so. The Court reasoned that granting the variance would violate the spirit of the zoning ordinance, said ordinance was designed to limit density. It relied on a case which was Lee v. Board of Adjustment found at 226, the NC Reporter, one of seven from 1946 that says, "A nonconforming building or use that conflicts with the general purpose or spirit of the zoning ordinance can only be authorized by the Board of Aldermen acting in their Legislative capacity to rezone, not under the guise of a variance permit. The Court reasoned that such a substantial departure from the zoning ordinance did violate the spirit of the ordinance and, therefore, could only be achieved through rezoning, not through the variance process.

Counsel Prause stated that it is mind-boggling to him that the City is saying that their organization has suffered no harm from this. They could have been going on this project 6 months ago and it is not just about time, it's about executing on a non-profit mission. And is certainly not just about money, but instead of working productively and deploying their resources 6 months ago, they are now sitting here 6 months later, begging the Board not to cede the authority to City staff so that they can actually plead their case on the variance to the Board. If this lot was 4 feet wider and 4 feet deeper, then they would not be here, this is a very minimal deficiency in a lot and the Board of Adjustment is a remedial Board that's purpose is to address exactly this type of short-coming and NC's Enable Legislation provides extremely broadly, and this is the 388(d) provision, that says, "the Board of Adjustment SHALL (that's mandatory), vary any of the provisions of the ordinance upon a showing of those four factors." They will talk about those four factors if they are allowed to come back and argue the variance, but that does not matter for tonight. Tonight, what matters is that NC Law creates a mandate that you SHALL vary provisions of the ordinance and it says, "Any of the provisions of the ordinance." And then the law has one single exception, which is they cannot use a variance to put multifamily housing in a single family zone; they cannot use a variance

to put Heavy Industrial in Light Industrial; they cannot use the variance to get a use of the property that would not be allowed otherwise in the district." In the case, this is an RM-12 district and the duplex use is clearly allowed as a right, per the Permitted Use Table. There have been a lot of semantics and he appreciates the Board hanging in there with them at the late hour, but what it comes down to is the drafters of the City's LDO could have very plainly stated, "in addition to this thing about not being able to change the use", they could have very easily stated that, "the Board of Adjustment cannot grant a variance from lot size minimums." That is not what it says, that is nowhere in the ordinance. Just like it is nowhere in the LDO that City staff is entitled to keep variance applications from the Board. Counsel for the City just raised a floodgate argument about how if the Board rules in their favor, there will be a flood of variance applications. He does not feel that is going to be a problem as a practical matter because it costs an applicant \$400 to get in for the privilege. So that is just an untenable argument but what is really wrong about it that they City's own Code of Ordinances says, "The Board of Adjustment must hold a public hearing on all variance applications." And it does give staff the ability to confirm that a variance application is complete, but does not give staff authority to determine, on its own and to substitute its judgment for the Board's judgment, as to whether a variance application is meritorious. All these factors are at work here, and City staff is also saying that their determination is based on density, which is a term that is not even defined in the LDO. There is also the fact that City staff, with 40 years of collective experience, missed this on two separate occasions. If it was that clear, how could they have missed it. The thing is, it is not clear, not the least bit clear and that is why they missed it and why it would be so wrong for the Board to disregard the State Enabling Legislation and disregard the LDO which says that the Board of Adjustment must hold a public hearing on all variance applications and rule in favor of upholding the determination. For those reasons, they respectfully ask that the Board overrule the determination that was made here by the City. He has great respect for these people and deals with them a lot and this is very difficult. He wished they did not to be here, but in this case they got it wrong and it is threatening to kill a project that they care very deeply about.

Board Discussion:

Ms. Skenes stated that she was one of the drafters of the LDO and there were many, many hours spent on this particular Exhibit #4, and one of the reasons that 7,500 came up as a minimum lot size is because they did not conceive of a two-story duplex, it was assumed it would be a traditional duplex with two people living in and ownership being based on that one lot. She looks back at the twin home differentiation and it only requires 3,500 and that was because the ownership was going to be different. Taking the same small lot, split it down the middle and the ownership was for each person for their half. She feels there is an issue here as to a minimum size on a duplex because they were thinking a one-story structure, not two-story. It sounds like there were some missteps in the process but she also reads, "No variance can be granted..." and she has a major problem with it is a use that is permitted and they are back to density and what does that mean? A duplex is allowed in the district and she is not sure, even after listening to all the legal conversations that the Board shouldn't be hearing the case. She thinks the Board should hear it for a number of reasons and part of that might be what might be an error in the way the LDO was put together and in defining density. Mr. Truby stated that he is also having a struggle with the density because he deals with this every day and density is units per acre. The thing is that under the RM-12 chart it is not talking about density, it has a not applicable about density and it says they would be asking for a waiver of lot size, not of density. So that is where the difference comes in. If they were asking for more density, he would agree you could not get a variance for that, but they are not asking for density, they're asking for a waiver of the actual lot size. He feels they have a valid argument and it should be

heard by the Board. Mr. Waddell stated that he agrees with Mr. Truby and Ms. Skenes on their input. He is inclined to support the decision that the case should be heard. Ms. Williams stated that she feels the Board should hear the case. Ms. Blackstock stated that he agrees with Mr. Truby. Ms. Eckard stated she feels the Board should hear the case.

Mr. Truby moved that in regard to BOA-18-17, 900 Haywood Street, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the Zoning Administrative Decision be overturned and allow a variance request to be heard for the minimum lot size and minimum lot width. In support of the motion to overturn, the Board finds the following: The property located at 900 Haywood Street is within the corporate limits of the City of Greensboro and subject to its jurisdiction and application of its ordinances. The City of Greensboro Land Development Ordinance (LDO) applies to the property. At the time the Administrative decision was made, the proposed plot plan showing a duplex structure was submitted by the applicant for the property. The Board accepts the following testimony and evidence as true and in support of its decision to hear the minimum lot size and minimum lot width variance because the duplex column does not use density in its calculation of the duplex and uses the minimum lot size as a criteria, therefore, the Board of Adjustment can hear the case, seconded by Ms. Eckard. The Board voted 7-0 to overturn the Administrative decision of the Zoning Administrator. (Ayes: Hayworth, Skenes, Williams, Truby, Waddell, Eckard, Blackstock. Nays: None.)

OTHER BUSINESS

None. Mike Kirkman thanked the Board members for their participation in the long evening with a lot of complicated issues.

ACKNOWLEDGEMENT OF ABSENCES

None.

ADJOURNMENT

There being no further business before the Board, the meeting ended at 12:07 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair

Greensboro Board of Adjustments

CH/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

APRIL 23, 2018

The regular meeting of the Greensboro Board of Adjustment was held on Monday April 23, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair Cyndy Hayworth, Laura Blackstock, Chuck Truby, Patti Eckard, James Waddell and Mary Skenes. Representing the Planning Department were Shayna Thiel, Mike Kirkman, Lucas Carter; and Andrew Kelly and Terri Jones, City Attorney's Office.

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 approval of the March 26, 2018 meeting minutes, as submitted, seconded by Mr. Waddell. The Board voted 6-0 to approve the minutes. (Ayes: Hayworth, Skenes, Truby, Waddell, Eckard, Blackstock. Nays: None.)

SWEARING IN OF STAFF

Shayna Thiel, Lucas Carter and Mike Kirkman were sworn in for their testimony in the following cases. All speakers were sworn in as to their testimony regarding their case of interest.

CONTINUANCES/WITHDRAWALS

Shayna Thiel stated that there has been a request by the applicant for BOA-18-19, 615 Woodland Drive, to be withdrawn from the agenda. No action by the Board is required.

NEW BUSINESS

VARIANCE

- a. **BOA-18-18: 45 KEMP ROAD EAST** J. Edward Kitchen and Emily F. Kitchen request a variance to allow a proposed detached accessory carport to take utility service from a separate meter instead of branching service from the principal dwelling. Zoning R-3 (Residential Single-Family); Section 30-8-11.1(G)(1); Cross Street – Henderson Road. **(GRANTED)**

Shayna Thiel stated that J. Edward Kitchen and Emily F. Kitchen are the applicants and request a variance to allow a proposed detached accessory carport to take utility service from a separate meter instead of branching service from the principal dwelling. The lot is located on the west side of Kemp Road East, north of Henderson Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 19,166 square feet, and the two-story house was originally constructed in 1968. The applicants wish to construct a detached accessory carport in the rear yard, as shown on the submitted site plan (Exhibit B). The carport will be 10.5 feet from the side property line, 13 feet from the rear property line

and 38.7 feet from the principal dwelling. The applicants indicate that the existing shed (pergola) shown along the side property line and adjacent to the proposed detached accessory carport on the site plan will be removed. Per the applicants, an existing utility pole is located near the rear property line, close to the proposed detached accessory carport. 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 Hayworth asked if anyone wished to speak on this matter.

Ed Kitchen, 45 Kemp Road East, the applicant stated that staff has covered the information regarding their request. They want to have a separate meter for the carport as it would be easier to hook up to the closest utility pole at the rear of the property, rather than tearing out concrete and landscaping. This would not violate any intent of the ordinance. The carport would be less than 15 feet tall and may be shifted slightly closer to the property line on the south side of the property.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed power hook-up for the carport would not be intrusive to the neighborhood and surrounding area.

Mr. Waddell moved that in regard to BOA-18-18, 45 Kemp Road East, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 applicant complies with the ordinance they could not proceed with the project. 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 ordinance allows one meter to be included in the infrastructure and the power supply behind the structure will be the most reasonable location. The hardship is not the result of the applicant's own actions because there is existing infrastructure on the lot which impacts the hardship. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because if the variance is granted no harm will come to the public, seconded by Mr. Truby. The Board voted 6-0 to grant the requested variance. (Ayes: Hayworth, Skenes, Truby, Waddell, Eckard, Blackstock. Nays: None.)

- b. **BOA-18-19: 615 WOODLAND DRIVE** Marc L. Isaacson, on behalf of A.Macauley Aron Jr. and Catharine R. Aron, requests a variance to allow a proposed single-family dwelling to encroach 14.67 feet into a required 58 foot front setback. The dwelling will be 43.33 feet from the front property line. Zoning R-3 (Residential Single-Family); Section 30-7-1.4(A)(1)(B); Cross Street – Cleburne Street. **(WITHDRAWN)**
- c. **BOA-18-20: 899 EAST LINDSAY STREET** Katherine E. Ross, on behalf of Crown Castle, requests four variances. **Variance #1:** To allow a proposed wireless telecommunication tower to encroach 26.2 feet into a required 160 foot setback from the west property line and from the abutting residentially zoned property, and 85.3 feet into a required 320 foot setback from buildings containing a residential use. The tower will be 133.8 feet from the west property line and from the abutting residentially zoned property, and 234.7 feet from buildings containing a residential use. Section 30-8-10.2(K)(2)(b)(i) and

Section 30-8-10.2(K)(2)(b)(ii). **Variance #2:** To allow a proposed wireless telecommunication tower to encroach 83.7 feet into a required 160 foot setback from the south property line. The tower will be 76.3 feet from the south property line. Section 30-8-10.2(K)(2)(b)(i). **Variance #3:** To allow a proposed wireless telecommunication tower to encroach 96.9 feet into a required 160 foot setback from the east property line. The tower will be 63.1 feet from the east property line. Section 30-8-10.2(K)(2)(b)(i). **Variance #4:** To allow a wireless telecommunication facility compound and related appurtenances to encroach 1.24 feet into a required 25 foot building setback (LI zoning). The compound and related appurtenances will be 23.76 feet from the property line. Section 30-8-10.2(K)(2)(b)(iii). Zoning LI (Light Industrial); Cross Street – East Bessemer Street. **(GRANTED)**

Shayna Thiel stated that Katherine E. Ross, on behalf of Crown Castle, requests four variances. **Variance #1:** To allow a proposed wireless telecommunication tower to encroach 26.2 feet into a required 160 foot setback from the west property line and from abutting residentially zoned property, and 85.3 feet into a required 320 foot setback from buildings containing a residential use. The tower will be 133.8 feet from the west property line and from the abutting residentially zoned property, and 234.7 feet from buildings containing a residential use. **Variance #2:** To allow a proposed wireless telecommunication tower to encroach 83.7 feet into a required 160 foot setback from the south property line. The tower will be 76.3 feet from the south property line. **Variance #3:** To allow a proposed wireless telecommunication tower to encroach 96.9 feet into a required 160 foot setback from the east property line. The tower will be 63.1 feet from the east property line. **Variance #4:** To allow a wireless telecommunication facility compound and related appurtenances to encroach 1.24 feet into a required 25 foot building setback (LI zoning). The compound and related appurtenances will be 23.76 feet from the property line. The lot is located on the west side of East Lindsay Street, south of East Bessemer Avenue, and is zoned LI (Light Industrial). Tax records indicate the lot contains approximately 253,955 square feet, and the building was originally constructed in 1959. The applicant proposes to remove an existing nonconforming wireless telecommunication tower and replace it with a new 160 foot tall tower in the same compound, but more internal to the site and farther away from adjacent property lines. The submitted site plan and survey (Exhibits C and D), show the locations of the existing and proposed telecommunication towers and their relationship to each other, the site and to adjacent property lines. Per the applicant, the proposed wireless telecommunication tower will be substantially the same profile as the existing tower. As part of the Technical Review Committee review/approval process, which is required for the proposed project, the applicant will coordinate with the City's Urban Designer to provide fencing and vegetative buffer improvements on the site. The LI (Light Industrial) District is primarily intended to accommodate limited manufacturing, wholesaling, warehousing, research and development, and related commercial/service activities which in their normal operations, have little or no adverse effect upon adjoining properties.

Chair Hayworth asked if anyone wished to speak on this matter.

Katherine Ross, attorney representing the applicant and property owner, stated that Shayna has been wonderful to work with and very responsive to calls. A PowerPoint presentation was given showing the location of the communication tower and the surrounding area. In response to a question, they feel that the first tower was constructed on the property in approximately 1995. It is their understanding that this is a legal non-conforming use for the property involved and met any requirements that were in place at that time.

In response to a question, Mike Kirkman noted that the current ordinance language regarding this request was adopted in May 2014.

Ms. Ross added that this is a fairly simple variance request as it only relates to the setbacks. An aerial overview was shown for clarification. She feels that this location is appropriate, even given the variances, for this replacement tower. The current tower will be removed and a new tower will be constructed. Crown Castle looked at this site and identified the most convenient location for constructing the replacement tower, while working with the current property owner. A site plan was also presented for clarification of the request.

Sarah Brown, representing Crown Castle, 3530 Torrington Way, Charlotte, NC, stated that she is a real estate specialist with Crown Castle and has the primary responsibility of coordinating the redevelopment of the site at 899 E. Lindsay Street. She has been working on the redevelopment of this site for about 6 months with a team of colleagues at Crown Castle and various consultants. She has reviewed the site in detail, including making site visits, reviewing surveys and various site plans, working with structural engineers, engineering designers and other consultants. The current use of the property is a commercial building and the current tower is owned by Crown Castle. The current tower is an existing legal non-conforming use. The tower was constructed in the mid-1990s, well before the current ordinance. The existing tower was built in compliance with the then-existing ordinance requirements. The current tower is 160 feet tall and has three customers. The replacement tower is necessary to support the co-location of a new fourth carrier, Verizon, and to support modifications requested by two of the current customers, T-Mobile and Sprint. Crown performed a structural analysis on the current tower to determine if it could handle the co-location of Verizon and the modifications requested by T-Mobile and Sprint. The current tower cannot structurally handle the co-location of Verizon and the necessary modifications. A structural engineer can provide more information on the structural aspects of the current and proposed tower. Crown has determined that a replacement tower is needed. Crown has worked with the current landlord, Cinco, Inc. (Roger Tornero), and is able to construct the replacement tower in an already existing compound on the site. The replacement tower will also be 160 feet in height. The strict application of the ordinance would create a hardship as there are no viable alternatives for the location of the tower. There is nowhere on the property that the tower can be located and meet all the setbacks. If the current site cannot be used for the replacement tower, a new tower site would be sought to accommodate the new carrier, thus, resulting in an increase in the tower counts within the City. The inability to meet the setbacks and continued reasonable use of the property is not a situation created by the applicant, rather it is the result of unique aspects of the property and changes to the ordinance requirements over the years. The variance is in harmony with the purpose and intent of the ordinance. The co-location of the new carrier at the existing site is desirable for Crown Castle, the City and the public, meeting the City's policy of encouraging co-location. The replacement tower not only allows the co-location of Verizon, it would be constructed to allow the future co-locators and modifications by the three current carriers, if needed, thus reducing the likelihood of a need for a new tower at this site. She thanked staff for their cooperation and assistance while moving through this process, as they have been very accessible and helpful.

Mike Oglesby, 421 Fayetteville Street, #660, Raleigh, NC, stated that he is a structural engineer for Kimley-Horn and Associates. He has a civil engineering degree from NC State University and is a licensed Civil Engineer in 46 states, a certified tower climber and rescue trainer. He has been in the wireless industry for over 10 years, and specializes in the design, analysis and reinforcement of telecommunication structures.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed replacement telecommunication tower would not be intrusive to the neighborhood and surrounding area.

Mr. Truby moved that in regard to BOA-18-20, 899 East Lindsay Street, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 existing tower was constructed in compliance with ordinance requirements at that time on the southwest corner of the property. The shape and existing use of the property dictate that the tower be constructed in a location close to the existing tower. 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 original tower was constructed in the 1990s and complied with the then-existing ordinance requirements. The hardship is not the result of the applicant's own actions because the applicant did not create the shape of the property or location of the existing tower. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the new tower would be located further away from the residences to the west of the property and further away from the stream located at the southwest corner of the property. His motion addresses all four (4) variance requests. Ms. Blackstock seconded the motion. The Board voted 6-0 to grant the four (4) requested variances. (Ayes: Hayworth, Skenes, Truby, Waddell, Eckard, Blackstock. Nays: None.)

- d. **BOA-18-21: 900 HAYWOOD STREET** Marsh Prause, on behalf of Preservation Greensboro Development Fund Inc., requests two variances. **Variance #1:** To allow a proposed duplex to be located on a lot that contains 25 square feet less than the required 7,500 square feet minimum for duplex use. The lot contains 6,825 square feet. **Variance #2:** To allow a proposed duplex to be located on a lot that has 15 feet less lot width than the required 80 foot minimum for duplex use. The lot width is 65 feet. Zoning RM-12 (Residential Multifamily); Section 30-7-3.2 – Table 7-6; Cross Street – Gregory Street. **(DENIED)**

Shayna Thiel stated that Marsh Prause, on behalf of Preservation Greensboro Development Fund, Inc. requests two variances. **Variance #1:** To allow a proposed duplex to be located on a lot that contains 625 square feet less than the required 7,500 square feet minimum for duplex use. The lot contains 6,825 square feet. **Variance #2:** To allow a proposed duplex to be located on a lot that has 15 feet less lot width than the required 80-foot minimum for duplex use. The lot width is 65 feet. The property is a corner lot located at the northwestern intersection of Haywood Street and Gregory Street and is zoned RM-12. The applicant's plot plan indicates the lot contains 6,825 square feet. The applicant requests to locate a duplex on the subject property. A duplex is a permitted use in the RM-12 district provided the minimum lot area and width standards are met. Based on the submitted plot plan shown as Exhibit 3, the existing lot does not meet minimum standards for a duplex. (a) For a duplex use, a lot must be a minimum of 7,500 square feet of lot area and have a minimum lot width of 80 feet. (b) The subject property only contains 6,825 square feet and is only 65 feet wide along the Haywood Street right-of-way. By comparison, the minimum lot area and width for a single-family dwelling in RM-12 is 5,000 square feet in area and 58 feet in lot width. On October 5, 2017, the Zoning Administrator made the initial determination that the lot did not meet minimum standards for duplex use. Following the initial determination of the Zoning Administrator in October 2017, the applicant was advised that a duplex could be allowed with additional property to meet minimum lot area and width. The applicant was also advised that a duplex could be allowed with a rezoning to a district that permits the

appropriate density. On January 23, 2018, the Zoning Administrator confirmed his previous decision that a duplex use for this property would exceed the maximum density allowed in the RM-12 district, based on minimum development standards, and thus a variance could not be requested. On March 26, 2018, the Board of Adjustment overturned the Zoning Administrator's Decision that a variance for lot area and width could not be requested. Section 30-4-13.1(D) states that no variance may be granted that would have the effect of allowing a use not permitted in the subject district or a density exceeding the maximum allowed in the subject district. Section 30-15-1 states that words and terms used in this ordinance have the specific meanings assigned in this article. Words and terms that are not defined in this ordinance have the meaning given in the latest edition of Merriam-Webster's Unabridged Dictionary. As shown in Exhibit 4, the Merriam-Webster's Unabridged Dictionary defines density as the average number of individuals or units per acre. The RM-12 (Residential Multifamily) District is primarily intended to accommodate multi-family and other residential uses at a density of 12.0 units per acre or less.

Chair Hayworth asked if anyone wished to speak on this matter.

Marsh Prause, 516 Woodlawn Avenue, stated that he is a member of the Board of Trustees of the applicant, which is the non-profit Preservation Greensboro Development Fund, Inc. He asked that they be allowed 3 minutes of rebuttal. He thanked everyone for their time at the last meeting, since it lasted much longer than most cases heard by the Board. He stated that there is a house located at 711 Silver Street in the Glenwood Neighborhood, which was used as a boarding house and before that it was used as a quadraplex. It is a historic structure believed to be built in the 1920s. It is sound and UNCG has put a substantial amount of money into it. Preservation Greensboro has a history of working with UNCG to relocate historic houses in the Glenwood Neighborhood and in particular, their objective has been to create a residential buffer between Haywood Street and the edge of the campus where it has expanded across Gate City Boulevard. They have already moved three houses and this would be the fourth, if allowed. There is a vacant lot at 900 Haywood Street, unfortunately, it is a little too narrow and a little too small to accommodate the proposed house and accommodate a duplex in RM-12 zoning. A duplex is allowed in RM-12 zoning; that is not the issue. The issue is the fact that this lot would need to be 4 feet wider and 4 feet deeper. Overall on the width, it is a corner lot but its width is 15 feet narrower than the LDO says that you have to be to allow a duplex structure. I am requesting a variance for both lot size and lot width on that basis. If Preservation Greensboro Development Fund, Inc. cannot move this house, it would have to be demolished and go to the landfill. The neighborhood would lose a historic asset, and the lot at 900 Haywood Street, which could be brought back to life, will remain a vacant lot. There is no profit issue here, this is just about feasibility of the project. The revenue that a single-family home would generate here is not enough to justify the moving costs. There is no organization in Greensboro that has more experience in moving houses than they do. In addition to the three they have moved in this neighborhood, they have moved others in the last ten years and are very familiar with the process for scouting relocation sites, and they looked very hard to try to match the house with a suitable site. They have determined that there is no feasible alternative relocation site for this structure. The hardship is the size of the lot and the fact that if this variance is not granted, the community will lose the historic asset. Also, the duplex would be affordable housing for the neighborhood. There are a number of duplexes, quadraplexes and triplexes within the neighborhood. There is an unnecessary hardship from the strict application of the ordinance because it relates to the peculiar conditions of the property because this lot is smaller than a number of other lots in the neighborhood. Several years ago UNCG did a combination plat where they chopped a number of lots up and put them together to create the space for their campus expansion. When they did that, they truncated and made smaller lots, including this one. This is consistent with the purposes of the development ordinance and in the interest of stability in the Glenwood

Neighborhood, maintaining the historic fabric, creating life on Haywood Street and would be an anchor on that corner. In response to a question, Mr. Prause presented a photograph of the house currently located at 711 Silver Street. He stated that the exterior appearance of the house would stay the same.

Mike Cooke, 2416 Sherwood Street, in response to a question by Mr. Truby, presented drawings and photographs and stated that they will have to take out some of the brick from the chimney to lower it so it will go below the power lines. A drawing showed the route that will be taken to move the house from the current location to the proposed location at 900 Haywood Street. He stated that the house currently has four front doors to access each of the units. It was previously used as a Think House for UNCG. Drawings presented also showed the interior of the subdivided house and the location of the front doors.

Scott Millman, 517 Lusan Drive, Director of Capital Facilities Foundation, stated that he is also Assistant Vice Chancellor for Campus Enterprises in Real Estate for UNCG. The property located at 711 Silver Avenue was purchase by Capital Facilities Foundation with no immediate need for the property use and their future plan does call for other uses there. They have developed a Memo of Understanding (MOU) with the neighborhood on how they would handle properties that were gained for the future use of the University that were not going to be needed. The MOU calls for them to work with organizations such as Preservation Greensboro. In fact, they tried to programmatically stand up the house at 711 Silver Avenue. They partnered with a group called Think House out of Raleigh, NC and they were going to house students at that house to gain entrepreneurial skills, and hopefully, spin off businesses out of there. That did not work because the program did not receive the oversight that they were told they would receive; and some of the walls that were removed caused structural issues within the building. So they could not have people living in there as it was unsafe. After the initial investment by Capital Facilities Foundation, they were not ready to invest more money in the building with no program to go into it. The option at that point was either to demolish the building or to try to find somebody they could work with to move the building. They sought out Preservation Greensboro and they have come up with an arrangement that would use the funds that would be used to demolish the building would be diverted in order to save the building and their goal is to help try to save the building, which is consistent with the MOU to try to preserve the architecture significant to the neighborhood.

Mr. Prause returned to the podium and showed evidence of the three houses that they have previously moved. The houses are currently owner-occupied, provide affordable housing and work well in the Glenwood neighborhood. If they had not saved and moved these houses, they would have been demolished and lost.

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

Nancy Lenk, 1005 S. Aycock Street, stated that she urges the Board to deny these variance requests. Haywood Street is a street of single-family residences. This big house will change the nature of the neighborhood. Granted, this house is already in the neighborhood, but it is located on Silver Avenue, which is a very wide street. Haywood Street is a two-lane road with only single-family houses on it. This house is bigger than a typical duplex and has previously been a quadraplex. At any given time, there have been as many as fourteen (14) people living in the house. The house is owned by the Capital Facilities Foundation and she asked how someone that does not actually own the property, 900 Haywood Street, can ask for a variance on the property. Preservation Greensboro does not own it, and Capital Facilities only owns the house on Silver Avenue. UNCG is making it sound like they want to preserve this house, but they have destroyed over 100 houses in the neighborhood already and they have no problem demolishing houses. Up until a year ago, there was a house on the property at 900 Haywood Street, a nice single-family house with a lattice porch and nice landscaping. When they set to demolish it, she was part of the Greater Glenwood Neighborhood

Association, and asked why they didn't just give it to the GGA so they could rehab it so someone could live there. They said it was too late and they were going to demolish it, so they knocked it down. Now they are making it sound like they have to put something on that lot. They created that vacant lot, and a really nice house that suited the neighborhood was destroyed. She has been in many, many meetings with UNCG and Capital Facilities Foundation. Scott Millman mentioned the MOU and it says, "UNCG sales of surplus property should include recording owner-occupancy deed restrictions if said property contains residential structures and is designated as residential in the Glenwood Neighborhood Future Land Use Plan Map." When the neighborhood representatives were talking with them, they wanted to create a balance of home ownership and rental properties, so they asked that when UNCG was selling surplus, they wanted homeowners to live in those homes, because that actually fixes their balance and lifts up the neighborhood. Now they want to put in a duplex, and she asked who is going to live there. Preservation Greensboro does not even own the house yet, and has provided no guarantee that they are not going to be violating the MOU. They really wanted owner-occupied units there. The GGA did give UNCG permission to allow Preservation Greensboro to sell it to someone who was going to lease it. That was a mistake, as it is owned by people that live out of town, and occasionally the property is overgrown. If homeowners had lived in it, it would be different, but it is a rental property that they allowed. She pointed out that this house is much too large for this particular lot. She presented a copy of the MOU to staff for their records.

Counsel Terri Jones, Deputy City Attorney, City Attorney's Office, stated that the City Council adopted the Land Development Ordinance pursuant to State Authority at North Carolina General Statutes 160(A)-381, subpart B1, which states, "These regulations may provide that a Board of Adjustment may determine and vary their application in harmony with the general purpose and intent and in accordance with the general or specific rules contained therein." The City Council limited the Board of Adjustment's authority to grant use and density variances. The Land Development Ordinance in Section 30-4-13A, indicated that the Planning Director has review and recommendation authority for variances. City staff recommends the denial of both of these variance requests. According to the LDO, in Section 30-1-9, "no building, premises or structure may be located, extended, altered, constructed, erected, modified, converted, occupied, placed, maintained or moved and no land use may be commenced, maintained or modified except as authorized by this ordinance and other applicable regulations." This lot in the RM-12 zoning district at 900 Haywood Street would support a single-family dwelling. It does not support a duplex, which exceeds the density of 12 units per acre for this particular lot. This lot at 6,825 square feet only supports 1.88 units per acre. A duplex would be two units on this lot, and therefore, exceed the density allowed in the RM-12 zoning district.

The purposes of the LDO are found in Section 30-1-3, in which one of those stated purposes, among others, is to implement policies and goals in the Comprehensive Plan and to protect the character of established residential neighborhoods. The LDO in Section 30-1-8.1 also indicates if there is any conflict with State law, if there is any inconsistency, the more restrictive provision governs. The more restrictive provision is the one that imposes greater restrictions or more stringent controls. The intent of the LDO is found in Section 30-6-2.2 and it says, "The number in the district title represents the approximate density per acre, however, actual development densities will vary based on district dimensional standards and other ordinance requirements and the unique characteristics of the development site." The intent of the RM-12 (Residential Multifamily-12) district, is primarily intended to accommodate multifamily and other residential uses at a density of 12.0 units per acre or less. The *Sherrill v. Wrightsville Beach* case found at 76NC Appellant Reporter, page 646, supports the City staffs' position. Opposing Counsel and the Board members were provided a copy of this case. The Zoning Board in this case properly declined issue of variance for a duplex because it was without authority to do so. The Court of Appeals found that the purpose of the R-1 designation is to limit density. The

purpose and effect of a duplex is to increase density. The Court further went on to say, "A non-conforming building or use that conflicts with the general purpose or spirit of the zoning ordinance, can only be authorized by a Board acting in its legislative capacity to rezone, not under the guise of a variance permit." She pointed out that the structure at 711 Silver Avenue is not a designated historic landmark, it is not currently located in a City of Greensboro Historic District, nor will it be relocated to a City of Greensboro Historic District. It is only historic by virtue of its age, but as the applicants testified, it has been modified over the course of the years in several ways, and therefore, the historic fabric of the structure has been altered. Even if the Board disagrees with the City's position that this would constitute a density variance, which is prohibited under the LDO, the applicant has failed to meet the statutory factors that are found both in the LDO and in State law. One of the statutory factors is that the applicant has to show that unnecessary hardship would result from strict application of the ordinance. The applicant has only claimed, both in their application and before you today, that it would not be economically viable to convert the structure to a single-family dwelling, which would be allowed as a right, on this particular lot in this particular zoning district. The applicant also has to show that the hardship results from conditions peculiar to the property such as location, size, or topography. And that the hardship does not result from personal circumstances. The property owner, UNCG – Capital Facilities Foundation, Inc., created the lot size deficiency in this case. The applicant also has to show that the hardship does not result from conditions common to the neighborhood or the general public. The lot size and lot width requirements apply to all lots in the RM-12 zoning district. The applicant also needs to show that the hardship did not result from actions taken by the applicant or the property owner. In the application, they merely say that this would be small, de minimis type of variances, but actually, the lot width variance requires a variance of 23% of the requirement and the lot size requirement would be 9% of the minimum lot size requirement. Neither of those are a de minimis change. The applicant has failed to show that the requested variance is consistent with the spirit, purpose and intent of the ordinance such that public safety is secured and substantial justice is achieved. The applicant merely says that it is not financially feasible for them, and that is not a criteria that can be used. The LDO Section 3-4-13.5(B) says, "The fact that the property may be utilized for greater profit is not considered adequate to justify the granting of a variance." Preservation Greensboro is a non-profit, UNCG and the Capital Facilities Foundation are state actors, however, they have repeatedly stated that the project does not work, the revenue generated from a single-family dwelling would not be sufficient to meet their lending and other costs. They are basing their entire variance application on financial matters. In LDO Section 30-4-13.5(c) says, "Neither the nonconforming use of lands, buildings or structures in the same zoning district, nor the permitted use of land, buildings or structures in other zoning districts, nor personal circumstances may be considered as grounds for the issuance of a variance. Mere financial hardship does not constitute grounds for granting a variance." City staff recommends denial of the variances requested in this case.

Mr. Truby pointed out Table 7-6 under the column that says, "Duplex" it says, "a minimum lot size of 7,500 square feet." "Area for dwelling units", "not applicable." If this is based on density, Mr. Truby said the table should have read "3,750 square feet per unit" instead of "not applicable." It appears to him that they are basing the duplex requirement on lot size and not on density, and that was the argument used to allow them to seek a variance. To him, the table is deceiving, that required area is 3,750 square feet, but the way it is written, it is not saying that. So, the duplex lot size area is just based on arbitrary lot size, not on density. He asked why it says "not applicable." In response, Counsel Jones stated that the area per dwelling unit applies to the lot area. A duplex, by its very nature, is two units on the same lot, unlike a twin home that would be two separate lots with the dwellings sharing a party wall. Twin homes each require 3,500, so this lot would be deficient for twin homes if they were able to subdivide this lot into two particular lots. This is a density requirement because it is a standard that is associated with that particular use. City Council, in adopting the

LDO, adopted these restrictions with respect to duplexes. It is not for the Board to question that determination, but yes, it creates a density that exceeds the RM-12 zoning district. Mr. Truby stated that it should read, under area per dwelling unit, 3,750 square feet for area per dwelling unit.

Mike Kirkman stated that he feels part of it is that the individual uses in that district on that Table, such as the single-family, the twin home, the duplex type, are all capped at a specific number. The townhomes and multifamily are not capped in a specific number, therefore, there is a certain square footage per unit. He feels that is the distinction that is made in the Table, and that appears to him, to be part of why there is not a square footage per unit listed there, as it's a fixed unit count. Mr. Truby stated that he would make the argument that he does not believe this Board approved granting a density increase, because that's not what they're talking about here. They are talking about lot size. Ms. Skenes stated that she agrees with Mr. Truby's comments. Counsel Jones stated that even though some of the Board members may not think it is density, the applicants have not met the statutory factors for a lot size variance either. In addition, they would require lot width also for this particular case. Typically, the City has not taken a position, however, it is the Planning Director's purview to review and make a recommendation as to variances. Yes, the City is preserving its options in the event it wishes to appeal the previous decision. But a determination of that appeal has not occurred at this time. Her job is to create a record in the event that City Council does authorize an appeal of either decision.

In rebuttal, Marsh Prause stated that he objects to a lot of what Counsel Jones said and would like to strike it from the record because she is trying to re-argue what was decided a month ago and tonight that is immaterial for purposes of the Board's consideration. He feels that she is attempting to prejudice the Board's vote against them on the legitimate variance factors that are here for a determination. They also take issue with her trying to tell the Board that they cannot consider financial considerations. It is true that profit cannot be considered and they cannot request a variance to seek more profit, but that is not what they are doing, they are a non-profit and they do not make profit. It is not just about whether they can do it, but no one can do it, no one can move this house and have that be financially viable without it being able to be a duplex. The peculiarity of the situation involves the fact that this house will be demolished and has to be moved and this is the only lot that it can be moved to. That is not true of any other house or any other lot in the Glenwood neighborhood. They meet that factor. They have shown the hardship, shown that this was not due to the applicant's own fault and shown that it is in the interest of the general welfare and public safety and all the other factors and rationale behind. Counsel Jones indicated that the interior of the house has been changed, that is true, it has been changed, but that is not a probative factor from the perspective of the National Parks Service which determines what structures can be put on the National Register of Historic Places. There are all kinds of historic structures in Greensboro that have been preserved and the touchstone for that is their exterior preservation. All the projects they have been involved with, including most recently the Cascade Saloon, the interior was not preserved in historic fashion, but the exterior was and the project got state and federal tax credits. So it is misleading for Counsel Jones to suggest that this property's historic significance is lost on a regulatory level just because the interior has been modified, although that is true, it has been modified. It is categorically untrue to state that the only thing on Haywood Street are single-family residences. As a matter of fact, right across the street from 900 Haywood there is a duplex structure that also contains a store called the Convenient Mart. Also, Ms. Lenk had mentioned that as many as 14 people lived in this house before, and as a duplex only at most, eight (8) people will be able to live in it, so that will affect a decrease in the number of people who will live there. There was some issue raised as to why Capital Facilities Foundation isn't the applicant, they are here at the meeting and they concur with the application as the property owner and signed off on it. There was a previous house on the lot and it had been condemned and

was in horrible shape and they would have liked to save it but it was just too far gone. There was evidence that it had also been used for multiple living quarters and their position is that the house that was on the property before actually had multiple groups of people living in it. There has been discussion about the UNCG MOU and Ms. Lenk suggested that what they are doing is somehow inconsistent with that MOU. The MOU was modified or amended in agreement between the Glenwood Neighborhood and UNCG that was signed in 2015, by Elizabeth Keathley as President of the Glenwood Neighborhood Association. UNCG discovered that it was impossible to save these structures if there had to be an owner-occupancy covenant on them, so this amendment that was agreed to by Glenwood in 2015 acknowledged that the properties need to have a preservation easement requiring renovation of the property, which will be the case if they are allowed to proceed with this property, but they do not have to have an owner-occupied covenant.

Mike Cooke also returned in rebuttal and stated that the total development costs is estimated between \$150,000 and \$160,000. What this is about from the City's perspective, is a fear of the erosion of the discretion of the zoning officers. The City fears that approval of this variance would open some kind of watershed to other people who are trying to put duplexes in certain places. The facts are that you cannot approve a variance that would allow a use otherwise not allowed in the subject district. The subject district is RM-12 and a duplex is a use in the subject district.

Chair Hayworth asked if the opposition would like to speak in rebuttal.

Nancy Lenk stated that the document that Mr. Prause produced was related to the house on Lexington Avenue, it was not a blanket agreement.

Marsh Prause stated that the document speaks for itself and does not present itself as being limited to a single instance only. He was involved in discussions about that agreement and that was his understanding.

Counsel Kelly stated that in regard to financial hardship, cost is not determinate, which means the applicant must show that there is substantial, undue nature of that additional cost, as compared to others subject to the same restriction. Cost in and of itself is not a determinate.

There being no other speakers the public hearing was closed.

Board Discussion:

The Board members had no further questions and some members indicated their support of the request as this proposed use of the property for a duplex would not be intrusive to the neighborhood and surrounding area. Several other members also felt that they could not support the request. Members did feel that it would have been helpful if some of the neighborhood residents had come forward to voice their concerns and any issues they might have.

Ms. Skenes moved that in regard to BOA-18-21, 900 Haywood Street, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and both variances granted based on the following: 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, without a variance, the historic house Preservation Greensboro is attempting to save could not be moved to the subject site. Preservation Greensboro has indicated that they could not find another viable site. 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 house being moved is a duplex, which under the terms of the ordinance requires a slightly larger lot. If the subject house was a single-family house it would not be an issue. The hardship is not the result of the applicant's own actions because the applicant is attempting to save a house

that happens to be a duplex. The subject lot is only 675 square feet smaller and 15 less in width than required by the ordinance. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because moving the duplex will increase housing availability. Duplexes are permitted in this zoning district, the property will be updated and will be moved up to current building standards, seconded by Mr. Truby. The Board voted 3-3 and the requested variances were denied. (Ayes: Hayworth, Skenes, Truby. Nays: Waddell, Eckard, Blackstock.)

- e. **BOA-18-22: 3409 HENDERSON ROAD** Kyle E. Jackson and Sally L. Pagliai request two variances. **Variance #1:** To allow a proposed addition to encroach 6 feet into a required 10-foot side setback. The addition will be 4 feet from the side property line. Section 30-73.2 – Table 7-1. **Variance #2:** To allow a proposed addition to encroach 12 feet into a required 30 foot rear setback. The addition will be 18 feet from the rear property line. Section 30-73.2 – Table 7-1. Zoning R-3 (Residential Single-Family); Cross Street – Westbourne Road
(GRANTED)

Shayna Thiel stated that Kyle E. Jackson and Sally L. Pagliai are the applicants and request two variances.

Variance #1: To allow a proposed addition to an existing house to encroach 6 feet into a required 10-foot side setback. The addition will be 4 feet from the side property line. **Variance #2:** To allow a proposed addition to an existing house to encroach 12 feet into a required 30-foot rear setback. The addition will be 18 feet from the rear property line. The lot is located on the west side of Henderson Road, south of Westbourne Road, and is zoned R-3. Tax records indicate the lot contains approximately 19,602 square feet and the house was constructed in 1966. Based on the site plan submitted as Exhibit B, the applicants propose many renovations, including room addition, covered breezeway, screened porch, carport to garage conversion and storage. The applicants propose to convert an existing detached carport into a garage and attach it via covered breezeway to the principal dwelling, becoming part of that principal dwelling. The existing detached carport complies with the 3-foot side setback for accessory structures. However, when converted to an attached garage, becoming part of the principal dwelling, it will encroach 6 feet into a required 10-foot side setback and remain 4 feet from the side property line. The applicants also propose to expand the proposed garage to be used for additional storage. The expanded area will encroach 12 feet into the required 30-foot rear setback and be 18 feet from the rear property line. 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 Hayworth asked if anyone wished to speak on this matter.

Sally Pagliai, 2702 Turner Grove Drive South, stated that there is an existing carport and the positioning of it is where the new garage needs to be because it is a very tight property. Once they add to the carport, they would like to put in a screened porch and a connector between the house and the screened porch and connect to the garage. If they were to move the garage structure within the 10-foot setback, you cannot get a vehicle into the left bay of the garage. They want to save as much of the landscaping and land as possible. They have a lot of bicycles, kayaks and other outdoor equipment they need to store. They have met all three of their neighbors and explained their plans for the addition and there were no issues or concerns raised. Notarized letters from the neighbors were submitted as evidence. Drawings of the proposed addition were also submitted as evidence.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed garage addition would not be intrusive to the neighborhood and surrounding area.

Ms. Eckard moved that in regard to BOA-18-22, 3409 Henderson Road, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 living and parking areas in the current arrangement does not cause convenience to the homeowners. 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 owners want to work with the current location due to the close proximity of the house. The homeowners also want to preserve as many trees as possible as well as a garden area. The hardship is not the result of the applicant's own actions because current setbacks prohibit adding the additional space. The lot and the house were established when the house was previously built. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the addition will be constructed to complement the materials to the existing house, landscaping will soften the addition structure and will be within scale and character of the neighborhood, seconded by Ms. Blackstock. The Board voted 6-0 to grant the requested variances. (Ayes: Hayworth, Skenes, Truby, Waddell, Eckard, Blackstock. Nays: None.)

OTHER BUSINESS

None.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Williams was acknowledged as excused.

ADJOURNMENT

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

Respectfully submitted,

Cyndy Hayworth, Chair

Greensboro Board of Adjustment

CH/jd

**SPECIAL MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

MAY 14, 2018

The Special meeting of the Greensboro Board of Adjustment was held on Monday May 14, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth; Laura Blackstock; Chuck Truby; Patti Eckard; Enyonam Williams; James Waddell; and Mary Skenes. Representing the Planning Department staff was Shayna Thiel; Mike Kirkman; and Andrew Kelly, City Attorney's Office.

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.

SWEARING IN OF STAFF

Shayna Thiel and Mike Kirkman, Planning Department, were sworn in for their testimony in the following case.

NEW BUSINESS

VARIANCE

a. BOA-18-23: 408 BANNER AVENUE Thomas H. Johnson, Jr., on behalf of American Towers, LLC, requests two variances. **(GRANTED WITH CONDITION)**

- i. Variance #1: To allow a proposed wireless telecommunication tower to encroach 114 feet into a required 154 foot setback (based on tower height) from the north property line. The tower will be 40 feet from the north property line. Section 30-8-10.2(k)(2)(b)(i)
- ii. Variance #2: To allow a proposed wireless telecommunication tower to encroach 112 feet into a required 154 foot setback (based on tower height) from the west property line. The tower will be 42 feet from the west property line. Section 30-8-10.2(k)(2)(b)(i).

In the case of BOA-18-23 at 408 Banner Avenue, Shayna Thiel stated that Thomas H. Johnson, Jr., on behalf of American Towers, LLC, is requesting two variances. Variance #1: To allow a proposed wireless telecommunication tower to encroach 114 feet into a required 154 foot setback (based on tower height) from the north property line. The tower will be 40 feet from the north property line. Variance #2: To allow a proposed wireless telecommunication tower to encroach 112 feet into a required 154 foot setback (based on tower height) from the west property line. The tower will be 42 feet from the west property line.

The lot is located on the west side of Banner Avenue, north of Apache Street, and is zoned LI (Light Industrial) and RM-18 (Residential Multifamily). Tax records indicate the lot contains approximately 359,806 square feet, and the buildings were constructed in 1961 and 1969. The applicant proposes to replace an existing nonconforming wireless telecommunication tower that was damaged by a recent tornado with a new tower in the same location as the existing one. The applicant confirmed that the replacement tower will be the same height (154 feet) as

the previous one. The site plan submitted as Exhibit C shows the existing/proposed telecommunication tower and the setbacks from adjacent property lines. The replacement tower will be 40 feet from the north property line and 42 feet from the west property line.

The LI (Light Industrial) District is primarily intended to accommodate limited manufacturing, wholesaling, warehousing, research and development, and related commercial/service activities which in their normal operations, have little or no adverse effect upon adjoining properties. The RM-18 (Residential Multifamily) District is primarily intended to accommodate multifamily and other residential uses at a density of 18.0 units per acre or less.

Chair Hayworth asked if anyone wished to speak on this matter.

Swearing In of Speakers:

Tom Johnson, Attorney; William Garrett; Kim Haynes; Steven Wake; and Mahesh Chhabria were sworn as to their testimony in this matter. Steven Wake was participating in the hearing through a remote telephone connection.

Speaking in Support:

Tom Johnson, 301 Fayetteville Street, Raleigh, North Carolina, was present on behalf of the applicant, American Tower Corporation. He asked that the exhibits included in the staff report be admitted into the record in support of the variance requests. He stated that the tower was destroyed by the April 15, 2018 tornado. There was a lot of destruction in that area of the City and the tower crumbled on site as it was designed to do in this type of situation. Pictures of the tower after the tornado were shown to members along with a zoning map showing the tower in the rear of the property surrounded by light industrial uses. It is not near any residential properties. The tower was approved in 1999 by the City of Greensboro and the Certificate of Occupancy was issued in 2002; therefore, the tower has been on this site for almost 16 years. Temporary towers have been put in place to maintain vital communication links to this area until the tower can be restored. Four carriers were using the tower at the time it was destroyed and they are now sharing two temporary poles until the tower is completed. American Tower Corporation determined that the existing foundation for the tower that was destroyed can be used for the new tower. The new tower can be put back in place where it was with no change in the height. The new tower constructed to current building code standards, which are more stringent than the standards that were in place when the tower was originally constructed.

William Garrett, 125 Serenity Lane, Pittsboro, North Carolina, is Chief Engineer with American Tower Corporation. The original design for this tower was a 70 mph with no ice design under 1996 standards. What felled the tower was a 135 mph straight line wind which brought the tower stress of up to 400 percent before it actually bent over. The foundations were over-designed when they were installed to at least double of what was required and therefore, when the tower failed the force on the foundation support was totally alleviated. They are designing the new tower to exist on the current foundation. An outside firm confirmed that the existing tower can be used for the new tower. The new design will take into consideration the most recent TIA design standards and building codes. The new tower will be designed to 115 mpg consecutive gusts with $\frac{3}{4}$ inch of ice. The old tower was designed to 70 mph gusts with no ice.

Responding to a question from Ms. Eckard, Mr. Garrett confirmed that the new tower will look almost exactly like the tower that failed. Some member sizes will change but it will be the same taper and structure. He indicated that the design has not been completed for the structure that will be on the site as far as each individual member is concerned.

Mr. Garrett confirmed for Ms. Skenes that the new tower will be exactly the same height as the previous tower. The tower will not increase in height and it will not be more obtrusive to

neighbors. This case is being heard by the Board because the Land Development Ordinance changed as it related to setbacks or communication networks.

Chair Hayworth asked what the difference was in having this special meeting called tonight and waiting two weeks until the regular meeting. Mr. Johnson explained that they were trying to minimize the amount of time the temporary towers will have to be there before the permanent tower can be online. The tower is a critical link for communications in the area, particularly with the large amount of work going on in the area as a result of the tornado. It is extremely important to get full service as soon as possible. During severe weather events the wireless system is the lifeline to people in the area.

Mr. Garrett confirmed for Mr. Truby that the temporary tower did not have to be built to the same standards as the replacement tower. Therefore, it is preferable to have the temporary tower on site for as short a period of time as possible due to the increased risk.

Speaking in Opposition:

Kim Haynes, Burlington, North Carolina, is the General Manager of Speedline Corporation which is adjacent to this property. He indicated that his property, 501 West Apache Street, is to the north and the west of the subject property.

Counsel Kelly stated that Mr. Haynes is an employee who is present to testify as to the facts. It is important for the Board to hear the facts and then make their decision based on substantial competent material and evidence. The Board has the ability to weigh the credibility of those testifying.

Mr. Haynes stated that he is the General Manager of Speedline Corporation Manufacturing Company, which is adjacent to 408 Banner Street to the west. He is also the manager of the warehouse at 406 Banner Street, which is adjacent to 408 Banner Street to north. He stated that on Sunday, April 15, a severe storm caused the cell tower to tear a hole in the roof and tear off interior and exterior siding, exposing the building's contents and potentially causing bodily harm to employees. When the tower fell, it came into the building approximately 15 to 20 feet and fell back down over the side of the building. Fortunately, it was Sunday and no employees were hurt. However, there was damage to inventory in the building, as well as ongoing water damage. The owners of the cell tower are requesting to rebuild it in the same location where it will again loom over his building. The proposed tower is 150 feet and it is approximately 50 to 55 feet from his building. If another incident like this occurs, it is conceivable that 100 feet of tower could land on his building and collapse the roof. The owner became aware of this meeting today and has asked to be included in the conversation through a remote phone call or to postpone any decision for 30 days. Mr. Haynes requested additional time to do further study to determine if there is any danger in rebuilding the tower in the same location next to their building. They were never notified of the original variance for the cell tower or they would have opposed it at the time. It is not safe to construct a tower of this size next to an inhabited workplace. There are many other areas in the neighborhood that could house this tower. He requested that the Board postpone or deny this variance. Mr. Haynes stated that the building at 406 Banner Avenue was completely destroyed by the tornado.

During Mr. Johnson's cross-examination, Mr. Hanes clarified that 406 Banner Avenue was completely destroyed from the force of the tornado and not from the cell tower. Anyone in the building during the tornado would have received bodily harm due to the destruction.

Steven Wake, 1427 E. Hinesville Road, Hudson, Ohio, stated his objection to this request. Mr. Wake was participating in the meeting through a remote phone connection.

Mr. Johnson indicated his objection to the remote swearing-in of Mr. Wake. He felt Mr. Johnson could not be properly identified remotely.

Chair Hayworth said the Planning Department informed Mr. Wake that he could participate by phone. Counsel Kelly noted that due to the special meeting, the owner being out of state, and the owner's inability to secure an attorney on short notice to represent him, it was determined that Mr. Wake could remotely speak as to his actual knowledge of this matter.

Chair Hayworth asked staff if notices were sent out to adjoining property owners. Mr. Kirkman said that notices were sent out based on ownership indicated on tax records and the notification met the 10-25 day requirement. Ms. Thiel said that notice was posted on the property on April 26, 2018.

Mr. Wake said that he was unsure of the address where the notice was sent but he has been traveling and just found it on his desk this morning. He tried to locate an attorney in the area to represent them, but the notice was too short. He said they never received notice this tower was going to be constructed or he would have objected to it as the building owner and the owner of the corporation. The building looms over his building by 100 feet. They were fortunate that this building did not come down in another way. The tower could have taken off 2/3 of the roof and caused considerable damage to employees.

Mr. Johnson objected that Mr. Wake's comments were speculative in their basis and he was not speaking to the facts.

Mr. Wake stated that the tower came down on his building and took off a part of their roof, along with the siding of the building, as evidenced in photographs taken by Mr. Haynes. Despite earlier comments, the tower did fall on the building and there is proof of it. He reiterated that he was never notified originally when the tower was allowed to go into its present location or he would have objected to the tower being built so close to his building. He said the tower posed a hazard to the building and his employees. The tower is no longer in a conforming state and he has reason to object to it. He asked that the tower be built in a different location.

Responding to questions about his earlier comment that the tower fell like it was supposed to and did not cause any damage, Mr. Johnson clarified that he said the tower fell within the site and he let the picture speak for itself. It did hit the adjacent site but it was very minimal. He was at the site today and could not tell after-the-fact what hit the building because he was not present during the storm. He pointed out the other building to the north was destroyed and there is no tower near that building at all. This was an extraordinary event and as such, many structures were damaged.

Mr. Haynes offered additional photos that showed the tower laying on his property. The tower was removed from his property during demolition. Photos were taken of the damage for purposes of insurance claims and repairs.

Ms. Eckard noted a nearby wooded area and asked Mr. Johnson if there could be another location for a tower. Mr. Johnson said that the tower has safely been at this site for 16 years and because he only heard of this objection recently, there is no way there could have been another evaluation about moving it. Everything is in place for the tower and it was constructed under the ordinances in effect in the City of Greensboro when approved in 1999. The tower continued to exist on the site until the recent weather event. They are asking to build the tower back the same way it has existed since given a Certificate Occupancy in 2002.

Ms. Eckard asked staff if there is a code regarding the safety of residents who live near cell towers. Mr. Kirkman explained there is a relationship between the height of the cell tower and

the required setback in the current ordinance. The higher the tower, the greater the setback from the property line must be.

Chair Hayworth said that the height of the tower will be 154 feet and therefore, it must be 154 feet from the property line. In today's Land Development Ordinance, they could not put this tower where it is now without a variance based on that height.

Mr. Wake said that based on factors established in 2014, the setback should be 154 feet from the property line.

Photographs of the property damage taken by Mr. Hanes were entered in the record of evidence.

Speakers Wishing to Address the Board:

Mahesh Chhabria, 4705 Hanberry Drive, is the property owner of 408 Banner Drive. He agreed that it is important to restore communications in the area damaged by the tornado. He tried to reach out to American Towers, but has not received much response back from them. He felt there was a misrepresentation of facts. Although the tower did crumble the way it was supposed to, there was debris and damage to the building.

Mr. Truby asked Mr. Garrett how away from the foundation could the tower fall under the current building codes. Mr. Garrett indicated that currently the new design of the tower is designed at 75 feet, and therefore, the fall radius is half the tower height. Mr. Truby asked if the tower could be designed so that if it fell, it would not hit the building. Mr. Garrett replied in the affirmative, but said that they cannot design for an act of god. They can design for what they believe to be the best parameters around economics, reoccurrence and statistical probability. He felt that putting the new tower on the existing foundation is the right design per the existing building code and protects public welfare.

Mr. Garrett commented that the forensic report is ambiguous as far as it says that either flying components or the edge of the tower itself clipped the edge of the building.

Mr. Truby asked Mr. Garrett if he would design to a tighter fall radius if he was building this tower somewhere else this close to an existing building, Mr. Garrett said he would design it to a fall radius that takes the building out of play as far as the tower laying over on the building, but not out of play as far as grazing the building. He would design the tower for exactly as what happened.

There being no other speakers, Mr. Truby moved to close the public hearing, seconded by Ms. Eckard. The Board voted 7-0 in favor of the motion. (Ayes: Hayworth, Williams, Truby, Blackstock, Skenes, Eckard, Waddell. Nays: None.)

Board Discussion:

Mr. Waddell stated that the tornado was an extremely extraordinary event that nobody can prepare for. The new tower and better design will help to counteract the fall zone because strong winds will be less likely to cause the tower to fail. He is totally in favor of expediting communication in that area. He plans to support the request.

Ms. Skenes stated that she also plans to support the request.

Ms. Williams indicated that she was on the fence with this request. She said that the odds of a severe weather event like this one are certainly low and she noted that the temporary cell towers are providing service to the area. She was initially planning on supporting this request

but she was unaware of the issue with the neighboring building. With the code in place today, the tower could not be built where it is to be located.

Ms. Blackstock indicated that she plans to support this request.

Ms. Eckard said that she was also on the fence with this request. She can understand the need to restore communication as soon as possible, but she wished American Tower Company could look closer and see whether or not there was something that could be done to decrease the fallout area. She was concerned about safety issues.

Ms. Hayworth agreed with Ms. Williams and said the bottom line is that with the code that is in place today, the tower could not be built where it is. The code was changed for a reason and if a tower is 175 feet tall, then it has to have that radius around it.

Mr. Truby stated that if this was not the result of a tornado and the applicant was just coming in to ask to build a little bit smaller tower or even replacing the existing tower in the same location, he would be hesitant to support it. However, this is a true hardship that is no fault of the applicant. He plans to support the request.

Mr. Truby moved that in regard to BOA-18-13, that the findings of fact be incorporated into the record and the Zoning Enforcement Officer be overruled, and the variance granted based on the following: (1) 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 wireless telecommunication facility will not be allowed to be built in the same location as the damaged tower, which would deny this area of Greensboro access to necessary wireless services. (2) 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 hardship results from destruction of the tower by a tornado in this location. (3) The hardship is not the result of the applicant's own actions because the hardship resulted from a natural event beyond the control of the applicant. (4) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the wireless telecommunication facility has existed in this location for over 15 years and is to be reconstructed in the exact same location. The surrounding property is industrial and justice is served by allowing the applicant to rebuild the wireless telecommunication facility as it existed before it was destroyed. The motion was seconded by Mr. Waddell. The Board voted 5-2 in favor of the motion. (Ayes: Truby, Waddell, Eckard, Skenes, Blackstock. Nays: Hayworth, Williams.)

Chair Hayworth stated that the variance is denied. There must be six favorable votes in order for the motion to pass.

Mr. Johnson asked for reconsideration at tonight's meeting to have the fall zone designed for 45 feet which is where the setback is located. If an amendment conditioning the fall zone to 45 feet would make members more comfortable, the applicant can design the tower to stay in that area.

Counsel Kelly stated his opinion and said that if the determining factor of the vote was safety, a motion conditioning the fall zone could be considered. It is the purview of the Board whether or not to consider the amendment. If the more restrictive condition would make a significant impact on the members who voted against the variance, there could be a motion to reconsider the variance followed by a second vote. The Board was supportive of reconsidering this matter through the addition of a condition.

Mr. Truby moved to reconsider this matter by adding a condition for a fall zone of 45 feet, seconded by Ms. Skenes. The Board voted 7-0 in favor of the motion. (Ayes: Hayworth, Williams, Truby, Waddell, Eckard, Skenes, Blackstock. Nays: None.)

Chair Hayworth asked Mr. Garrett to confirm that it would be possible to redesign the tower with a fall zone of 45 feet. Mr. Garrett said that it was doable to redesign the tower with a 45-foot fall zone.

Additional Condition:

Mr. Johnson offered the following condition on behalf of the applicant:

The applicant will design the tower to have a fall zone of 45 feet on structural design. The structural design information will be provided to the City of Greensboro as conditioned to any variance approval.

Mr. Truby moved that in regard to BOA-18-23, based on the same findings of fact, that the Zoning Enforcement Officer be overruled, and the variance granted based on the following with the condition of the tower fall zone as conditioned by Mr. Johnson: (1) 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 wireless telecommunication facility will not be allowed to be built in the same location as the damaged tower which would deny this area of Greensboro access to necessary wireless services. (2) 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 hardship results from the destruction of the tower by a tornado in this location. (3) The hardship is not the result of the applicant's own actions because the hardship resulted from a natural event beyond the control of the applicant. (4) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the wireless telecommunication facility has existed in this location for over 15 years. It is being redesigned to limit the fall distance to protect adjacent properties and is being designed for a higher wind load than the current tower and is to be reconstructed at the exact same location. The surrounding property is industrial and justice is served by allowing the applicant to rebuild the wireless telecommunication facility as it existed before it was destroyed. The motion was seconded by Mr. Waddell. The Board voted The Board voted 7-0 in favor of the motion. (Ayes: Hayworth, Williams, Truby, Waddell, Eckard, Skenes, Blackstock. Nays: None.)

ADJOURNMENT:

There being no further business before the Board, the meeting ended at 6:48 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair
Greensboro Board of Adjustment

CH/sm:jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
MAY 29, 2018**

The meeting of the Greensboro Board of Adjustment was held on Tuesday May 29, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth; Laura Blackstock; Chuck Truby; Patti Eckard; Enyonam Williams; James Waddell; and Mary Skenes. Representing the Planning Department were Shayna Thiel; Mike Kirkman; Lucas Carter; and Andrew Kelly, City Attorney's Office.

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.

SWEARING IN OF STAFF

Shayna Thiel, Lucas Carter and Mike Kirkman, Planning Department, were sworn in for their testimony in the following cases.

APPROVAL OF MINUTES

Ms. Eckard moved approval of the April 23, 2018 meeting minutes, as submitted, seconded by Mr. Waddell. The Board voted 7-0 to approve the minutes. (Ayes: Hayworth, Skenes, Truby, Waddell, Eckard, Williams, Blackstock. Nays: None.)

CONTINUANCES/WITHDRAWALS

None.

OLD BUSINESS

None.

NEW BUSINESS

VARIANCE

- a. **BOA-18-24: 2221 EMERYWOOD ROAD** Mixay and Bouakham Keophakhoun, request a variance to allow the building coverage of a proposed detached accessory structure to exceed the maximum allowed by 120 square feet. The accessory structure will be 720 square feet when the maximum allowed is 600 square feet. Zoning R-5 (Residential Single-Family); Section 30-8-11.1(A)(3); Cross Street – Woodberry Drive. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow the building coverage of a proposed detached accessory structure to exceed the maximum allowed by 120 square feet. The accessory

structure will be 720 square feet when the maximum allowed is 600 square feet. The lot is located on the east side of Emerywood Drive, at the end of Woodberry Drive, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 26,136 square feet, and the house was originally constructed in 1959. Approved building permit #201719274 allowed the applicant to construct a 720 square foot accessory structure connected to the existing house by a covered breezeway, as shown on the site plan submitted as Exhibit B. Per the applicants, original contractor started and then abandoned project when only 40-50% complete. The applicants also indicated that the proposed breezeway connection does not meet building code requirements and now request a variance to allow construction of the proposed accessory structure to continue as detached with the removal of the breezeway. The proposed 720 square foot detached accessory structure exceeds the maximum building coverage allowed (600 square feet) by 120 square feet. 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 Hayworth asked if anyone wished to speak on this matter.

Mixay Keophakhoun, the applicant, was sworn in and stated that a contractor was hired but didn't finish the job.

Robert Davidson, the applicant's contractor, 2502 Cornwallis Drive, was sworn in and stated that the previous contractor didn't inform the applicant of the building codes and that the breezeway connection wouldn't meet them. The detached structure exceeded the maximum allowed size by 120 feet and the only way to get around the oversight is to approve the increased building coverage of the structure or tear it down.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed building coverage of a detached accessory structure would not be intrusive to the neighborhood and surrounding area.

Ms. Williams moved that in regard to BOA-18-24, 2221 Emerywood Road, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: If the applicants comply with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because they will not be able to finish construction of the current garage that is already partially constructed. The hardship of which the applicants complain results from conditions that are peculiar to the property and unique circumstances related to the applicants' property because the house is much taller than the garage and the breezeway structure cannot be attached in a proper manner to allow an attached structure. The hardship is not the result of the applicants' own actions because they relied on a contractor to build the garage to code, but the contractor did not build an appropriate attachment, which means the structure would need to be detached. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the garage is only slightly larger as a detached structure and it will allow the owners to use the property to its highest and

best use, seconded by Ms. Blackstock. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Truby, Williams, Waddell, Eckard, Blackstock. Nays: None.)

- b. BOA-18-25: 409 APPLE RIDGE ROAD** Penny McShelley Bowe-Diouf requests a variance to allow a detached accessory structure to take utility service from a separate meter instead of branching service from the principal dwelling. Zoning CD-RM-8 (Residential Multifamily); Section 30-8-11.1(G)(1); Cross Street – Randleman Road. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow a detached accessory structure to take utility service from a separate meter instead of branching service from the principal dwelling. The lot is located on the south side of Apple Ridge Road, west of Randleman Road, and is zoned CD-RM-8 (Conditional District-Residential Multifamily). Tax records indicate the lot contains approximately 26,136 square feet, and the house was originally constructed in 1959. Approved building permit #201718355 allowed the applicant to construct a detached accessory structure in the rear yard, as shown on the site plan submitted as Exhibit B. Per the applicant, Duke Power conducted an assessment and determined that the meter on the existing principal structure could not handle the additional power needed for the detached accessory structure. The applicant also indicated that Duke Power installed a new utility pole near the detached accessory structure. The RM-8 (Residential Multifamily) District is primarily intended to accommodate duplexes, twin homes, townhouses, cluster housing, and other residential uses at a density of 8.0 units per acre or less.

Chair Hayworth asked if anyone wished to speak on this matter.

Penny Bowe-Diouf, the applicant, was sworn in and stated that she intends to use the structure for a sewing operation from which she does not profit. She will not be able to use all her equipment without the power meter and needs approval.

Chair Hayworth asked if there was currently power in the building and Ms. Bowe-Diouf stated that there is not.

Mr. Truby asked if anyone would reside in the building and Ms. Bowe-Diouf stated that no one would.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this detached accessory structure taking utility service from a separate meter would not be intrusive to the neighborhood and surrounding area.

Ms. Skenes moved that in regard to BOA-18-25, 409 Apple Ridge Road, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 applicant will not be able to power commercial sewing machines with the power that is currently to the house. 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 power required to operate

commercial sewing machines is considerably more than a typical sewing machine and she has three sewing machines. The hardship is not the result of the applicant's own actions because the machines are in a separate building and Duke power did an assessment and determined a separate power pole would be needed. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because now all of her supplies, materials and machines are located in a Pack-Rat in her driveway, seconded by Mr. Truby. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Truby, Williams, Waddell, Eckard, Blackstock. Nays: None.)

- c. **BOA-18-26: 6029-YY WEST GATE CITY BOULEVARD** Richard Vanore, on behalf of Koury Ventures Limited Partnership, requests three variances. **Variance #1:** To allow proposed detached accessory garages along Grandover Village Road to be located in front of the front structure line of the principal structures. Section 30-8-11.1(B)(2) and as reflected in approved Unified Development Plan (UDP). **Variance #2:** To allow proposed detached accessory garages along Grandover Village Road to encroach 15 feet into a required 25 foot street setback. The garages will be 10 feet from the front property line. Section 30-7-7.2(E)(5) and as reflected in approved Unified Development Plan (UDP). **Variance #3:** To allow a proposed building to exceed the maximum 50 foot building height by 30 feet. The building will be 80 feet tall. Section 30-7- 7.2(E)(7) and as reflected in approved Unified Development Plan (UDP). Zoning PUD (Planned Unit Development); Cross Street – Guilford College Road.
(GRANTED)

Shayna Thiel stated that the applicant request three variances. *Variance #1:* To allow proposed detached accessory garages along Grandover Village Road to be located in front of the front structure line of the principal structures. *Variance #2:* To allow proposed detached accessory garages along Grandover Village Road to encroach 15 feet into a required 25 foot street setback. The proposed garages will be 10 feet from the front property line. *Variance #3:* To allow a proposed building to exceed the maximum 50 foot building height by 30 feet. The proposed building will be 80 feet tall. The lot is located on the east side of Grandover Village Road, south of West Gate City Boulevard and east of Guilford College Road, and is zoned PUD. Tax records indicate the vacant lot contains approximately 754,459 square feet. The lot is located between Grandover Village Road on the west and a golf course on the east. Based on the site plan submitted as Exhibit B, the applicant proposes to construct detached accessory garages along Grandover Village Road in front of the front structure line of the principal structures that would also encroach 15 feet into a required 25-foot street setback. The applicant indicates that garages are integral components of multifamily communities, which was not the case when the dimensional requirements for the Grandover development were formulated. The applicant also proposes to construct an 80-foot tall building that will exceed the maximum 50-foot building height by 30 feet. The proposed development of the lot is prescribed by the Grandover Unified Development Plan, as recorded in Plat Book 157, Page 60 on November 15, 2004. By reference, the Land Development Ordinance provides that street setbacks and building heights are established by the Unified Development Plan. The PUD (Planned Unit Development) District is intended to allow a diverse mixture of residential and/or nonresidential uses and structures that function as cohesive and unified project. The district encourages innovation by allowing flexibility in permitted use, design, and layout requirements in accordance with a Unified Development Plan.

Chair Hayworth asked if anyone wished to speak on this matter.

Steve Showfety, 2227 Vanstory Street, representing Koury Corporation, was sworn in and stated that the west side of the Grandover Development is being constructed and will include support services and multi-family uses. The first part of the development is on the west side of the project, which resulted from some jurisdictional lines being redrawn between Jamestown and the City of Greensboro. The second phase of the development involves the commercial area of the property, which is a proposed Publix supermarket. Variances are being asked for all three points to better utilize the site to take advantage of the buffer area that already exists in the rear of the property to create a more wholesome environment.

In response to a question by Mr. Truby, Richard Vanore, who was previously sworn in, stated that the back of the property has a basement unit and the topography drops off severely. There can be a tall foundation or units can be put at the bottom.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as it is felt that this proposed development of the property for residential units would not be intrusive to the neighborhood and surrounding area.

Counsel Andrew Kelly stated that these variances will apply to the property as a whole.

Mr. Truby moved that in regard to BOA-18-26, 6029-YY West Gate City Boulevard, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and variances #1 and #2 granted based on the following: 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 complying with the provisions of the ordinance will create unnecessary hardship by severely limiting the ability to effectively provide garage structures, both in quantity and location, throughout the community. 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 has very little depth and a 25-foot building setback severely limits placement of the garages. The hardship is not the result of the applicant's own actions because the UDP was recorded back in 2004 and standards for multi-family projects have changed since this was approved and recorded. The variances are in harmony with the general purpose and intent of the ordinance and preserve its spirit and assure public safety, welfare and substantial justice because the plan would be approved by the Greensboro TRC ensuring that building codes shall be met, and there are not any adjoining properties that would be affected by these variances, seconded by Ms. Skenes. The Board voted 7-0 to grant the variances requested. (Ayes: Hayworth, Skenes, Truby, Williams, Waddell, Eckard, Blackstock. Nays: None.)

Mr. Truby moved that based on the stated findings of fact, the zoning officer be overruled and variance #3 granted based on the following. 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 without the variance the owner would not be able to construct an 80-foot tall building. The hardship of which the applicant complains results from conditions that are peculiar to the property and any circumstances related to the applicant's property because the shape of the property dictates the

building placement. The hardship is not the result of the applicant's own actions because the UDP was recorded in 2004 and standards for multi-family projects have changed since this was approved. The variance is in general harmony with the purpose and intent of this ordinance and preserves the spirit and public safety welfare and substantial justice because the plan will be approved by the Greensboro TRC ensuring that building codes shall be met, and there are not any adjoining properties that will be affected by this variance, seconded by Ms. Skenes. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Truby, Williams, Waddell, Eckard, Blackstock. Nays: None.)

- d. **BOA-18-27: 702 CARDIGAN COURT** Amanda Hodiernne, on behalf of Thomas C. James III, requests two variances. **Variance #1:** To allow a proposed screened porch to encroach 1.5 feet into a required 30 foot rear setback. The screened porch will be 28.5 feet from the rear property line. **Variance #2:** To allow a proposed carport to encroach 16 feet into a required 30 foot rear setback. The carport will be 14 feet from the rear property line. Zoning R-3 (Residential Single-Family); Section 30-7-3.2 – Table 7-1; Cross Street – Westbourne Road. **(GRANTED)**

Shayna Thiel stated that the applicant requests two variances. *Variance #1:* To allow a proposed screened porch to encroach 1.5 feet into a required 30 foot rear setback. The screened porch will be 28.5 feet from the rear property line. *Variance #2:* To allow a proposed carport to encroach 16 feet into a required 30 foot rear setback. The carport will be 14 feet from the rear property line. The lot is located on the east side of Cardigan Court, south of Westbourne Road, and is zoned R-3. Tax records indicate the lot contains approximately 18,731 square feet and the house was constructed in 1974. The property is on a cul-de-sac, and the rear property line runs diagonal from south to north towards the existing house. Based on the site plan submitted as Exhibit B, the applicants propose to convert an existing deck into a screened porch using the same footprint. An uncovered deck (4 foot or less above grade) may encroach into the rear setback per the Land Development Ordinance, but an enclosed porch could not encroach without a variance. The proposed screened porch will encroach 1.5 feet into a required 30-foot rear setback. The applicants also propose to add an attached carport along the north side of the house that would encroach 16 feet into a required 30-foot rear 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 Hayworth asked if anyone wished to speak on this matter.

Amanda Hodiernne, attorney representing the applicant, was sworn in and after handing out a booklet stated that the first variance is for a small encroachment to enclose an existing deck into a screened porch. The second request is for a sixteen-foot encroachment for an open carport to be built on the existing driveway which is not underway but has been planned. Ms. Hodiernne then explained how the request meets all the variance tests and stated that there is a precedent for this type of request.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the requests as this proposed screened porch and carport would not be intrusive to the neighborhood and surrounding area.

Ms. Eckard moved that in regard to BOA-18-27, 702 Cardigan Court, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variances granted based on the following: 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 strict compliance with the ordinance would require the property owner to tear down and relocate the existing deck structure which was already in place when the house was purchased resulting in potentially not having the ability to cover their outdoor space. 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 when the owner purchased the home, the lot was re-platted, the house was built, the driveway was setup and the deck was already there. The lot is odd shaped causing a rear lot setback to run diagonally across the rear of the yard, which cuts off the southwest corner of the lot. The remaining feasible portion of that yard is located further away than practical and does not make sense for a good location for a carport or screened porch. The hardship is not the result of the applicant's own actions because applying the rear yard setback to the odd shaped lot creates a situation that forms a lot that cannot be used for any structure and would not have the ability to connect with the driveway and deck. The variances are in harmony with the general purpose and intent of the ordinance and preserve its spirit and assure public safety, welfare and substantial justice because the screened porch is very similar to others in the neighborhood, neighbors do approve of the property use and the variances provide better use of the property and preserve the spirit of the ordinance, seconded by Mr. Truby. The Board voted 7-0 to grant the variances requested. (Ayes: Hayworth, Skenes, Truby, Williams, Waddell, Eckard, Blackstock. Nays: None.)

Counsel Kelly stated that the variance approving the carport requires that the project begin within 12 months.

OTHER BUSINESS

None.

ACKNOWLEDGEMENT OF ABSENCES

None.

ADJOURNMENT

There being no further business before the Board, the meeting ended at 6:52 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair

Greensboro Board of Adjustment

CH/jd;gm

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

JUNE 25, 2018

The meeting of the Greensboro Board of Adjustment was held on Monday, June 25, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Cyndy Hayworth; Laura Blackstock; Chuck Truby; Patti Eckard; Enyonam Williams; James Waddell; and Mary Skenes. Representing the Planning Department were Shayna Thiel; Steve Galanti; and Andrew Kelly, City Attorney’s Office.

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.

SWEARING IN OF STAFF

Shayna Thiel and Steve Galanti, Planning Department, were sworn in for their testimony in the following cases.

APPROVAL OF MINUTES

Ms. Eckard moved approval of the May 14, 2018 meeting minutes, as submitted, seconded by Mr. Waddell. The Board voted 7-0 to approve the minutes. (Ayes: Hayworth, Skenes, Truby, Waddell, Eckard, Williams, Blackstock. Nays: None.)

CONTINUANCES/WITHDRAWALS

None.

OLD BUSINESS

None.

NEW BUSINESS

VARIANCE

- a. **BOA-18-28: 303 MAYFLOWER DRIVE** Stephen Tanis and Richard Garraputa, request a variance to allow a proposed addition to encroach 15 feet into a required 20-foot rear setback. The addition will be 5 feet from the rear property line. Zoning R-5 (Residential Single Family); Section 30-7-3.2 – Table 7-2; Cross Street – Wright Avenue. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a proposed addition to encroach 15 feet into a required 20 foot rear setback. The addition will be 5 feet from the rear property line. The lot is located on the east side of Mayflower Drive, north of Wright Avenue, and is zoned R-5. Tax records indicate

the lot contains approximately 10,019 square feet and the house was constructed in 1937. Based on the site plan submitted as Exhibit B, the applicants propose to add an addition to the existing house, which will encroach 15 feet into a required 20 foot rear setback. Per the applicants, a section of land on the edge of the lot was conveyed to a neighbor many years before they bought the lot, to allow the neighbor to build a detached garage. The applicants also indicated that the existing accessory garage in the rear of the property will be removed. 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 Hayworth asked if anyone wished to speak on this matter.

Richard Garraputa, applicant, stated that they wish to put an addition on the rear of the house where there is currently an enclosed porch. The house is all stone and the proposed location for the addition is the only feasible place on the house they can put an addition without damaging the stone and changing the appearance of the house. In doing so, part of the existing parking area will become a new bedroom and a new garage. The existing garage will be removed. Photographs were shown for the Board members' review.

Stephen Tanis, applicant, stated that you can see where the piece of property was sold from the middle of the back yard to the neighbors just to the left. The existing garage is located about 2 feet off the back of the neighbor's garage, which is about 2 feet off the property line. The proposed new garage will be about 10-12 feet off the wall of the neighbor's garage, and there will be plenty of room between the two garages. Mr. Tanis stated that they have spoken to all of their neighbors, and they have no objection to the proposed changes to the applicants' property. He indicated that he has some letters from the neighbors in support of the variance.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed addition would not be intrusive to the neighborhood and surrounding area.

Mr. Truby moved that in regard to BOA-18-28, 303 Mayflower Drive, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: If the applicants comply with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the owners will not be able to build a new garage. The hardship of which the applicants complain results from conditions that are peculiar to the property and unique circumstances related to the applicants' property because the shape and configuration of the property is unique because of the property that was acquired to the north of the lot. The hardship is not the result of the applicants' own actions because of the configuration of the lot, which was established many years before the applicants purchased the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the granting of the variance will enable the applicants to make reasonable use of their property and will not cause concerns for public safety or welfare, seconded by Ms. Blackstock.

The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Truby, Williams, Waddell, Eckard, Blackstock. Nays: None.)

- b. BOA-18-29: 1615 ONTARIO STREET** James Rientjes and Mary Anna Lithgo request a variance to allow a detached accessory structure to take utility service from a separate meter instead of branching service from the principal dwelling. Zoning R-5 (Residential Single Family); Section 30-8-11.1(G)(1); Cross Street – Lovett Street Road. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a detached accessory structure to take utility service from a separate meter instead of branching service from the principal dwelling. The lot is located on the south side of Ontario Street, west of Lovett Street, and is zoned R-5. Tax records indicate the lot contains approximately 64,033 square feet and the house was constructed in 1959. Approved building permit #201809807 allowed the applicants to construct a 336 square foot detached accessory structure in the rear yard, as shown on the site plan submitted as Exhibit B. R-5 Residential single family district is intended to accommodate low density single family detached residential development.

Chair Hayworth asked if anyone wished to speak on this matter.

James Rientjes and Mary Anna Lithgo were sworn in. Ms. Lithgo stated that they have obtained a building permit to add an accessory structure to the back yard and would like a second electrical meter put on that structure. Duke Energy advised that in order to have electric to this accessory structure, they would have to move the existing panel from the house to a different location and would have to jackhammer up the concrete driveway to run that power underneath. They would not like to have that extra expense and there is an existing utility pole close to the accessory structure, so it makes more sense to just run power from that utility pole and have a second meter.

James Rientjes stated that Duke Energy has been out and looked at the existing pole and advised them on what they need to do on the structure to support and additional line and wiring.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed detached accessory structure taking utility service from a separate meter would not be intrusive to the neighborhood and surrounding area.

Ms. Eckard moved that in regard to BOA-18-29, 1615 Ontario Street, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: If the applicants comply with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because if the applicants comply with the ordinance they will not be able to use a separate meter and provide better functionality and use of the power. The hardship of which the applicants complain results from conditions that are peculiar to the property and unique circumstances related to the applicants' property because the detached structure is located near an existing utility pole and it is reasonable and logical and a better use for existing resources to access power from that meter. The hardship is not the result of the applicants' own actions because of the amount of concrete in and around the area that would have to be removed in order to provide power

to the house meter. This would make it more expensive and is not reasonable. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because there will be no harm to the public, seconded by Mr. Truby. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Truby, Williams, Waddell, Eckard, Blackstock. Nays: None.)

- c. **BOA-18-30: 408 CRESTLAND AVENUE** David and Rebecca Ulmsten request a variance to allow a proposed detached accessory dwelling unit to encroach 9 feet into the required 10-foot side setback. The detached accessory dwelling unit will be 1 foot from the side property line. Zoning R-5 (Residential Single Family), Section 30-8-11.1(C)(2), Cross Street – Courtland Avenue. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a proposed detached accessory dwelling unit to encroach 9 feet into a required 10 foot side setback. The accessory dwelling unit will be 1 foot from the side property line. The lot is located on the east side of Crestland Avenue, north of Courtland Street, and is zoned R-5. Tax records indicate the lot contains approximately 7,841 square feet and the house was constructed in 1922. Based on the site plan submitted as Exhibit B, the existing nonconforming detached garage, which the applicants wish to convert into an accessory dwelling unit, is 1 foot from the side property line. Per the Land Development Ordinance, detached accessory dwelling units are required to meet the dimensional requirements of the principal dwelling. In the R-5 District, the side setback is 5 feet. However, because the proposed accessory dwelling unit is over 15 feet tall, the 10 foot side setback for accessory structures applies instead, since it is more restrictive. The applicants seek a variance to allow the proposed accessory dwelling unit to encroach 9 feet into a required 10 foot side setback. 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 Hayworth asked if anyone wished to speak on this matter.

Rebecca Ulmsten, applicant, stated that this home is located in an older neighborhood built in the late 1920s and 1930s. Many structures in the neighborhood are built near or on the property lines. Encroaching into current day setbacks is not unusual and creates the charm of the neighborhood that comes with front porches. They are asking for a variance for the existing detached 2-story garage that does not meet the current setback standards. It was built in the 1950s for the purpose of providing a garage below and a play space above for the previous owner's children. The garage has fallen into neglect, but for the past ten years, while they have been paying taxes on the structure, they have been using the first floor as the garage and saving money to bring the 2nd floor back into full usage. If the variance is granted, they will be able to enhance the existing structure and make it entirely usable, adding plumbing and making the necessary repairs. Moving the structure to make it compliant with current setbacks would create an awkward visual anomaly within the neighborhood. With approval of the variance, they can upgrade it within the existing footprint, and it will add value to their property and the neighborhood, as well. Their neighbor has reviewed their plans and has no objection to this construction. This would also provide the neighbor with added privacy that would be missing if they tore the structure down or moved it to another location. There is also an existing driveway that runs from the street back to the rear property line leading directly to that garage structure.

Terri McNaughton, stated that she is the neighbor most affected by the request and has no objection to the proposed detached accessory dwelling unit.

Chair Hayworth asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed development of the property for a residential unit would not be intrusive to the neighborhood and surrounding area.

Ms. Williams moved that in regard to BOA-18-30, 408 Crestland Avenue, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: If the applicants comply with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the owners are not able to convert an existing garage and 2nd story into an accessory unit. The hardship of which the applicants complain results from conditions that are peculiar to the property and unique circumstances related to the applicants' property because the garage was originally built to be approximately 1 foot from the property line, which was the setback requirement at the time it was built. The hardship is not the result of the applicants' own actions because the building was built in the 1950s before the current owners purchased the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the building the owners wish to convert has existed in this location for decades and the renovation would not extend the footprint, but would allow the owners to use the property to its highest and best use, seconded by Ms. Skenes. The Board voted 7-0 to grant the variance requested. (Ayes: Hayworth, Skenes, Truby, Williams, Waddell, Eckard, Blackstock. Nays: None.)

OTHER BUSINESS

CHAIR AND VICE-CHAIR ELECTIONS

Chair Hayworth stated that this would be her last meeting, along with Ms. Williams and Ms. Eckard, as their terms end this month, unless new appointees are not named. She noted that it has been a pleasure to work with Ms. Eckard, who has not missed any of the meetings. Ms. Williams has a new baby, and although she would be eligible to be reappointed, she wishes to spend more time with her baby. Her knowledge on the Board has been immeasurable, and Ms. Eckard's previous knowledge is to be commended, as well. She feels that this is the best group of people she has ever worked with and it has been a very well-run Board, and with staff's help and information, has been greatly appreciated. She asked that the Board members elect a new Chair and Vice Chair at this time.

Ms. Eckard moved that Mr. Truby serve as Chair, seconded by Ms. Skenes. The Board voted unanimously in favor of the motion.

Mr. Truby moved that Ms. Skenes serve as Vice Chair, seconded by Mr. Waddell. The Board voted unanimously in favor of the motion.

ACKNOWLEDGEMENT OF ABSENCES

None.

ADJOURNMENT

There being no further business before the Board, the meeting ended at 6:10 p.m.

Respectfully submitted,

Cyndy Hayworth, Chair

Greensboro Board of Adjustments

CH/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

JULY 23, 2018

The meeting of the Greensboro Board of Adjustment was held on Monday, July 23, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Chuck Truby; Cyndy Hayworth; Laura Blackstock; Patti Eckard; James Waddell; Deborah Bowers; and Mary Skenes. Representing the Planning Department were Shayna Thiel and Mike Kirkman; and Andrew Kelly, City Attorney's Office.

Chair Truby 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.

SWEARING IN OF STAFF

Shayna Thiel and Mike Kirkman, Planning Department, were sworn in for their testimony in the following cases.

APPROVAL OF MINUTES

Ms. Eckard moved approval of the May 29, 2018 meeting minutes, as submitted, seconded by Mr. Waddell. The Board voted 7-0 to approve the minutes. (Ayes: Truby, Hayworth, Skenes, Bowers, Waddell, Eckard, Blackstock. Nays: None.)

Ms. Eckard moved approval of the June 25, 2018 meeting minutes, as submitted, seconded by Ms. Hayworth. The Board voted 7-0 to approve the minutes. (Ayes: Truby, Hayworth, Skenes, Bowers, Waddell, Eckard, Blackstock. Nays: None.)

CONTINUANCES/WITHDRAWALS

None.

OLD BUSINESS

None.

NEW BUSINESS

VARIANCE

- a) **BOA-18-31: 27 FOREST LAKE CIRCLE** Matthew and Catherine Rowell request a variance to allow a detached accessory structure to take utility services from a separate meter instead of branching service from the principal dwelling. Zoning R-3 (Residential Single-Family), Section 30-8-11.1(G)(1); Cross Street – East Woodlyn Way. **(GRANTED)**

Shayna Thiel stated that Matthew and Catherine Rowell, the applicants, request a variance to allow a detached accessory structure to take utility service from a separate meter instead of branching service from the principal dwelling. The lot is located on the north side of Forest Lake Circle, west of East Woodlyn Way, and is zoned R-3. Tax records indicate the lot contains approximately 58,370 square feet and the house was constructed in 1956. Approved building permit #201807089 allowed the applicants to construct a 960 square foot detached accessory structure in the rear yard, as shown on the site plan submitted as Exhibit B. There is an existing utility pole located along the eastern side property line. 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 Truby asked if there was anyone wishing to speak in favor of this request.

Matthew Rowell, the applicant, was sworn in and stated that the detached building is for a workshop and storage. He has been working out of the basement and now wants to move his workspace out of the house. They cannot pull power from the primary dwelling because of the ordinance requirement, and based on the load that could be carried by the primary meter. The only option is to connect power to an existing power pole in the rear yard of the house.

Chair Truby asked if there was anyone wishing to speak in opposition to the request. There being no opposition, the public hearing was closed.

Board Discussion

The Board members had no further questions and indicated their support of the request as this power hookup to the detached building at the rear of the lot would not be intrusive to the neighborhood and surrounding area.

Mr. Waddell moved that in regard to BOA-18-31, 27 Forest Lake Circle, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: If the applicants comply with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the owners will not be able to use the newly built accessory structure and existing power supply at the rear of their lot. The hardship of which the applicants complain results from conditions that are peculiar to the property and unique circumstances related to the applicants' property because the electrical load on the primary dwelling is currently at maximum capacity. The hardship is not the result of the applicants' own actions because, as shown on the site plan, the accessory building was set off from the house to make the best use of the lot. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because installation of a separate meter does not detract from the character of the neighborhood and provides a safer alternative to running power from the primary dwelling, seconded by Ms. Blackstock. The Board voted 7-0 to grant the requested variance. (Ayes: Hayworth, Skenes, Truby, Williams, Waddell, Eckard, Blackstock. Nays: None.)

- b) BOA-18-32: 602 MEADOWOOD STREET** Ada Castro requests a variance to allow a proposed addition to encroach 12.25 feet into a required 85 foot front setback. The addition will be

72.75 feet from the front property line. Zoning R-3 (Residential Single-Family); Section 30-7-1.4; Cross Street – Sagebrush Trail. **(GRANTED)**

Shayna Thiel stated that Ada Castro, the applicant, requests a variance to allow an addition to encroach 12.25 feet into a required 85 foot front setback. The addition will be 72.75 feet from the front property line. The lot is located on the west side of Meadowood Street, north of Sagebrush Trail, and is zoned R-3. Tax records indicate the lot contains approximately 25,264 square feet and the house was constructed in 1963. A variance approved by the Board of Adjustment on August 28, 2017 (BOA-17-33) allowed a proposed addition to encroach 6.12 feet into a required front setback, as shown in Exhibit 4. The applicant has not obtained permits or started construction on the previously approved addition and now requests a variance to allow a proposed addition to encroach a total of 12.25 feet into a required 85 foot front setback. The addition will be 72.75 feet from the front property line. 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 Truby asked if anyone wished to speak on this matter.

Ada Castro, the applicant, was sworn in and stated that she needs the addition to the structure because her children are getting older and want their own space/privacy.

Ms. Eckard asked if the neighbors support this addition to the house. Ms. Castro responded that the neighbors have no objection to the addition. Mr. Waddell asked when construction would begin for the addition. Ms. Castro responded that it would begin within the next twelve (12) months.

Chair Truby asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as this proposed addition would not be intrusive to the neighborhood and surrounding area.

Ms. Blackstock moved that in regard to BOA-18-32, 602 Meadowood Street, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 applicant needs more space for her family and if she complies with the ordinance the addition could not be built. 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 addition will be 12 feet so it allows for an update to a house that was originally built in 1963. The hardship is not the result of the applicant's own actions because the ordinance changed in 2014 and the home was purchased in 2011 with the intent to construct an addition. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the intent is to preserve the ordinance and there would be no impact or harm to the public, seconded by Mr. Waddell. The Board voted 7-0 to grant the requested variance. (Ayes: Truby, Hayworth, Skenes, Bowers, Waddell, Eckard, Blackstock. Nays: None.)

OTHER BUSINESS

None.

ACKNOWLEDGEMENT OF ABSENCES

None.

ADJOURNMENT

There being no further business before the Board, the meeting ended at 5:55 p.m.

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

CT/jd

GREENSBORO BOARD OF ADJUSTMENT

August 27, 2018

The meeting of the Greensboro Board of Adjustment was held on Monday, August 27, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Chuck Truby; Laura Blackstock; James Waddell; Ted Oliver; Vaughn Ramsey; Deborah Bowers, and Mary Skenes; Shayna Thiel and Mike Kirkman represented Planning Department, and Andrew Kelly represented City Attorney’s Office.

Chair Truby called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the way 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. Waddell moved approval of the minutes for the July 23, 2018 meeting, seconded by Ms. Blackstock. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Ramsey, Waddell, Blackstock, Oliver, Bowers and Skenes. Nays: None.)

SWEARING IN OF STAFF

Shayna Thiel and Mike Kirkman, Planning Department, were sworn in for their testimony in the following cases.

CONTINUANCES/WITHDRAWALS

Shayna Thiel stated that there were no continuances or withdrawals.

NEW BUSINESS

VARIANCE

- a) **BOA-18-34: 2004 STRATTON HILLS COURT** Kelly and Patricia Lebsack request a variance to allow a proposed pergola to encroach 9 feet into a required 25 foot rear setback. The pergola will be 16 feet from the rear property line. Zoning PUD (Planned Unit Development); Section 30-7-7.2(E)(6); Cross Street – Stratton Hills Drive. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a proposed pergola to encroach 9 feet into a required 25 foot rear setback. The pergola will be 16 feet from the rear property line. Supporting documents from the applicants include Exhibit A: variance application, Exhibit B: list of adjoining property owners, Exhibit C: site plan showing property boundaries, existing infrastructure and proposed pergola, Exhibit D: property survey dated September 13, 2013, Exhibit E: photos provided by applicant, and Exhibit F: proposed pergola design and materials. Supporting documents from staff include Exhibit 1: current zoning map showing property is zoned PUD (Planned Unit Development), Exhibit 2: 2014 GIS aerial map, Exhibit 3: Land Development Ordinance Section 30-7-7.2, Exhibit 4: approved Unified Development Plan and preliminary subdivision plan for Brassfield Station, Exhibit 5: Guilford County property report, Exhibit 6: applicants’ deed, and Exhibit 7: field photos taken July 27, 2018. Land Development Ordinance reference is Section 30-7-7.2(E)(6): The minimum setback is 0 feet, if the setback is provided it must be at least 5 feet. The lot is located on the east side of Stratton Hills Court, south of Stratton Hills Drive, and is zoned PUD (Planned Unit Development). Tax records indicate the lot contains approximately 10,454 square feet and the house was constructed in 2013. Based on the

site plan submitted as Exhibit B, the applicants propose to convert an existing patio into a pergola using the same footprint. It will encroach 9 feet into a required 25 foot rear setback. A retaining wall, berm, fence and trees run along the rear property line, providing screening from the adjacent neighbors to the east. At-grade patios can encroach into required setbacks, per the Land Development Ordinance, but a pergola may not encroach without a variance. By reference, the Land Development Ordinance provides that standards, including setbacks, are established by the Unified Development Plan. The proposed development of the lot is prescribed by the Brassfield Station Unified Development Plan, as recorded in Plat Book 168, Page 49 on January 29, 2007. There are no applicable plans/overlays and the land use is single-family dwelling. The adjacent zoning to the north, east, west and south is PUD (Planned Unit Development). The PUD (Planned Unit Development) District is intended to allow a diverse mixture of residential and/or nonresidential uses and structures that function as cohesive and unified project. The district encourages innovation by allowing flexibility in permitted use, design, and layout requirements in accordance with a Unified Development Plan.

Chair Truby asked if anyone wished to speak on this matter.

Kelly Lebsack, the applicant, was sworn in and stated that the application pretty much says everything. The pergola is going to cover the patio. The pictures in the exhibits show the back of the house. There is no shade at all for most of the day. The pergola will not be encroaching on any neighbors to the rear. In response to questions, Mr. Lebsack stated that he had reached out to his neighbors to make sure there were no objections to it.

Chair Truby asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as it is a good location, and a proposed pergola that encroaches 9 feet into a required 25 foot rear setback would not be intrusive to the neighborhood and surrounding area.

Ms. Bowers moved that in regard to **BOA-18-34, 2004 Stratton Hills Court**, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 there is no shade in the back of the residence and the existing concrete patio is unusable in the warmer months of the year from sun and heat. The proposed pergola will alleviate that condition and allow the property to be used. Without the variance, the pergola cannot be built. 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 home was built close to the rear property line and strict compliance will not allow the pergola to be built. The hardship is not the result of the applicant's own actions because the home was located on the site by the developer and not the applicant (current owner). The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the variance is a reasonable use with slight deviation from the ordinance requirements and the pergola will add value to the property and is in keeping with the quality and character of the neighborhood, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Blackstock, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

- b) **BOA-18-35: 301 MEADOWOOD STREET** James T. Dean, Jr. requests a variance to allow a detached accessory garage to take utility service from a separate meter instead of branching service from the principal dwelling. Zoning R-3 (Residential Single-Family); Section 30-8-11.1(G)(1); Cross Street – Greenview Drive. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow a detached accessory garage to take utility service from a separate meter instead of branching service from the principal dwelling.

Supporting documents from the applicant include Exhibit A: variance application and Exhibit B: site plan showing property boundaries and existing infrastructure. Supporting documents from staff include Exhibit 1: current zoning map showing property zone R-3 residential single-family, Exhibit 2: 2014 GIS aerial map, Exhibit 3: land development ordinance section 30-8-11.1, Exhibit 4: recorded plat for Friendswood Section 1, Exhibit 5: Guilford County property report, Exhibit 6: applicants deed, and Exhibit 7: field photos taken July 30, 2018. The Land Development Ordinance reference is Section 30-8-11.1(G)(1): accessory structures to single family, twin homes, duplexes, and traditional houses must take utility services such as water, sewer and electrical by branching service from the principal dwelling. The lot is located on the east side of Meadowood Street, north of Greenview Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 39,204 square feet, and the house was originally constructed in 1955. The house pulls power from an existing utility pole along the north side property line. The existing accessory garage is located along the south side property line, and the applicant proposes to add a separate meter and pull power from an existing utility pole that is closer and along the same side property line. There are no applicable overlays or plans and the land use is single-family dwellings. The adjacent zoning to the north, east, south and west is R-3 and the adjacent land uses are single-family dwellings. 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 Truby asked if anyone wished to speak on this matter.

James Dean, the applicant, was sworn in and stated that he seeks to have electricity to his garage. The garage is already there, and he is not changed anything since he has lived there. He wants electricity there to be able to get heat in the colder months and to make it more functional for him. In the front yard is several oak trees and he doesn't want to hurt them. There are no trees in the back yard.

Chair Truby asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as a detached accessory garage taking utility service from a separate meter instead of branching service from the principal dwelling would not be intrusive to the neighborhood and surrounding area.

Ms. Skenes moved that in regard to **BOA-18-35, 301 Meadowood Street**, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 garage is located on the right of the house and the house meter is on the far left of the house. Pulling from the existing meter would require pulling a line at an extensive distance and disruption of existing landscaping on the property. 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 meter has been in place since 1955. Concrete, back steps and patio have been installed since then, and the garage was built several years ago. The hardship is not the result of the applicant's own actions because they did not build the house there. Pulling power from the power pole just behind the garage would be more logical. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it does not harm neighbors or neighborhood, seconded by Mr. Oliver. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Blackstock, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

- c) **BOA-18-36: 108 LEHIGH STREET** Michael King requests two variances. **Variance #1:** To allow the building coverage of a proposed detached accessory garage to exceed the maximum allowed by 87 square feet. The accessory structure will be 864 square feet when the maximum allowed is 777 square feet. Section 30-8-11.1(A)(3). **Variance #2:** To allow a proposed detached accessory garage to take utility service from a separate meter instead of branching service from the principal dwelling. Section 30-8-11.1(G)(1). Zoning R-5 (Residential Single-Family); Cross Street – Princeton Avenue. **(GRANTED)**

Chair Truby stated that there are 2 variance requests. The Board can hear them together, but he asked if they should vote on them separately. Counsel Kelly stated the Board can vote on both at the same time.

Shayna Thiel stated that the applicants request two variance requests. Variance #1: To allow the building coverage of a proposed detached accessory garage to exceed the maximum allowed by 87 square feet. The accessory structure will be 864 square feet when the maximum allowed is 777 square feet. Variance #2: To allow a detached accessory structure to take utility service from a separate meter instead of branching service from the principal dwelling. Supporting documentation from the applicant includes Exhibit A: variance application and Exhibit B site plan showing property boundaries, principal dwelling, and the proposed detached garage. Supporting documentation from staff includes Exhibit 1: zoning map showing the property is zoned R-5 (Residential Single-Family), Exhibit 2: 2014 GIS aerial map, Exhibit 3: Land Development Ordinance Section 30-8-11.1, Exhibit 4: pending building permit #201812861 for detached accessory structure, Exhibit 5: Guilford County property report, Exhibit 6 applicant's deed and Exhibit 7: field photos taken July 27, 2018. The Land Development Ordinance reference is Section 30-8-11.1 (A)(3): in R districts, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater. Land Development Ordinance Section 30-8-8-11 requires that accessory structures to single-family, twin homes, duplexes, and traditional houses must take utility services such as water, sewer and electrical by branching service from the principal dwelling. The lot is located on the northwest side of Lehigh Street, at the end of Princeton Avenue, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 15,682 square feet, and the house was originally constructed in 1935. Based on the site plan submitted as Exhibit B, the building coverage of the existing principal structure is 1,554 square feet, so the maximum building coverage allowed for all accessory structures is 777 square feet. The applicant seeks to construct an 864 square foot (24'x36') detached accessory garage that exceeds the maximum building coverage allowed by 87 square feet. An existing utility pole is located along the south side property line, close to the house. Another utility pole is in the rear of the property, closer to the location of the proposed detached accessory garage. There are no applicable overlays or plans and the land use is single-family dwelling. The adjacent zoning to the north is Office and Conditional District-Office and the adjacent land use is

Moses Cone Memorial Hospital. The adjacent zoning to the east, west and south is R-5 and the adjacent land uses are single-family dwellings. 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 Truby asked if anyone wished to speak on this matter.

Michael King, the applicant, was sworn in and stated that the report covers everything. He proposes a 24 x 36 garage for working on his 2 classic cars on and lawn equipment. He does not want to do it in his driveway anymore. He has talked to the neighbors and they are fine with it. He has not been able to get in touch with anyone from Moses Cone to see if anybody would have a grievance with it. The power meter is on the opposite side of the house. Ms. Bowers asked staff the reason that the ordinance requires accessory structures to take utility service from the principal dwelling. In response, Mr. Kirkman stated that the provision has been on the books for years. It is his understanding that the City is trying to make sure that the structures are accessory in nature and that all aspects of the accessory structures relate to personal use, including utilities. Chair Truby asked the applicant if he considered building within the allowed square footage or if that the larger dimensions were critical to his needs. Mr. King responded that the garage that he is moving from is slightly bigger and that is the reason for the size.

Chair Truby asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as the building coverage of a proposed detached accessory garage that exceeds the maximum allowed by 87 square feet and allowing a proposed detached accessory garage to take utility service from a separate meter instead of branching service from the principal dwelling would not be intrusive to the neighborhood and surrounding area.

Mr. Waddell moved that in regard to **BOA-18-36, 108 Lehigh Street**, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and variances #1 and #2 be granted based on the following: 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 building in compliance will not facilitate cars and equipment and would also not provide adequate electricity, therefore requiring a separate meter. 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 property is substantially smaller and the proposed structure will be in the back. There is a closer utility pole behind the property. The hardship is not the result of the applicant's own actions because the existing property has limited storage space and requires the need for an additional structure with electricity. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the garage adds values to the property, increases feasibility of the space, reduces noise and improves the quality of the neighborhood, seconded by Mr. Oliver. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Blackstock, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

- d) **BOA-18-37: 4703 SWEETBRIAR ROAD** Kelly and Karen Grafton request a variance to allow a detached accessory carport to take utility service from a separate meter instead of branching service from the principal dwelling. Zoning R-3 (Residential Single-Family); Section 30-8-11.1(G)(1); Cross Street – Old Lake Jeanette Road. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a detached accessory carport to take utility service from a separate meter instead of branching service from the principal dwelling. Supporting documentation from the applicant includes Exhibit A: variance application and Exhibit B: site plan showing property boundaries, principal dwelling and proposed detached carport. Supporting documentation from staff includes Exhibit 1: current zoning map showing property is zoned R-3 (Residential Single-Family), Exhibit 2: 2014 GIS aerial map, Exhibit 3: Land Development Ordinance Section 30-8-11.1, Exhibit 4: Guilford County property report, Exhibit 5: applicants' deed and Exhibit 7: field photos taken July 27, 2018. The Land Development Ordinance reference is Section 30-8-11.1(G)(1): accessory structures to single family, twin homes, duplexes, and traditional houses must take utility services such as water, sewer and electrical by branching service from the principal dwelling. The lot is located on the west side of Sweetbriar Road, north of Old Lake Jeanette Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 40,946 square feet, and the house was originally constructed in 1999. Per the applicants, the existing power panel on the rear of the house is located 220 feet from the detached accessory carport. An existing utility pole is located along the south side property line, close to the house. Another utility pole is in the rear of the property, closer to the location of the detached accessory carport. Applicable overlays and plans include the North Elm Street Visual Corridor Overlay Zone, and the land use is Single-Family Dwelling. To the north, east and south is R-3 (Residential Single-Family) zoning and the land uses are single family-dwellings. To the west is zoned PUD (Planned Unit Development) and the adjacent land use is common area. 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 Truby asked if anyone wished to speak on this matter.

Kelly Grafton, the applicant, was sworn in and stated that he is requesting a second meter with his carport/shed. The existing power panel only has one breaker available. He would like to have power down there to work in the building, maintain batteries and keep them charged.

Chair Truby asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as a detached accessory carport that takes utility service from a separate meter instead of branching service from the principal dwelling would not be intrusive to the neighborhood and surrounding area.

Ms. Skenes moved that in regard to **BOA-18-37, 4703 Sweetbriar Road**, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 carport is located

at the far right of the house and down an embankment. There is also 220 feet from the existing meter box. Pulling from the existing meter box would require extensive disruption to the lot and landscaping. 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 extremely wide and the current meter box only has one slot left. The lack of power from the carport currently requires the running of extension cords to charge batteries, which is unsafe. The hardship is not the result of the applicant's own actions because of the location of the carport. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because a second meter will eliminate the need to run an extension cord, which makes it safer for the applicant and the neighborhood, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Blackstock, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

- e) **BOA-18-38: 404 WAYCROSS DRIVE** Marc Isaacson, on behalf of Stephen Krasicky, Jr. and Laurie Krasicky, requests a variance to allow a proposed house to encroach 23.14 feet into a required 54.05 foot front setback. The house will be 30.91 feet from the front property line. Zoning R-3 (Residential Single-Family); Section 30-7-1.4(A)(1)(b); Cross Street – Staunton Drive. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a proposed house to encroach 23.14 feet into a required 54.05 foot front setback. The house will be 30.91 feet from the front property line. Supported documents from the applicant include Exhibit A: variance application and Exhibit B: site plan showing property boundaries and proposed house. Supporting documents from staff include Exhibit 1: current zoning map showing property is zoned R-3 (Residential Single-Family), Exhibit 2: 2014 GIS aerial map, Exhibit 3: Land Development Ordinance Section 30-8-1.4, Exhibit 4: Guilford County property report, Exhibit 5: applicants' deed and Exhibit 6: field photos taken July 27, 2018. Land Development ordinance reference is Section 30-7-1.4: street setback computations. The vacant lot is located on the east side of Waycross Drive, north of Staunton Drive, and is zoned R-3. Tax records indicate the lot contains approximately 16,553 square feet. The applicants propose to construct a new house that will encroach 23.14 feet into a required 54.05 foot front setback and be 30.91 feet from the front property line. A stub street (Calverton Drive) runs along the side property line to the north, and Starmount Forest Country Club golf course is along the rear property line to the east. There are no applicable overlays or plans, and the land use is Vacant. The adjacent zoning to the north, east, west and south is zoned R-3. The adjacent land use to the north, west and south are single-family dwelling. To the east is the golf course. 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 Truby asked if anyone wished to speak on this matter.

Marc Isaacson, attorney representing the applicants, presented materials for the Board's review. He stated that the applicants acquired this property in 2017 and have been working on house plans since then. Their plans call for a two-story home, which is consistent with the other properties around. Tab 1 of the materials is a zoning map showing the zoning is R-3. The properties at 402 and 400 Waycross Drive were used to determine the average front setback. This lot is shallower than the other two, and that is essential reason they are asking for the variance. Tab 2 is the site layout showing a 30 foot rear

setback and a 20 foot utility easement. The applicants are trying to fit a similar size house on this smaller lot and are requesting a variance for the front part of the house. The encroachment includes 489 square feet of the garage on the left and a small area at the front entrance. To build a home in keeping with the other homes in the area, this what needs to be done. The proposed house layout is impacted by 2 very old and significant trees that provide a lot of shade and character, not only for the applicants, but for the adjoining properties and for the golf course. The applicants made their rounds in the neighborhood and got to know their neighbors. There are several letters from neighbors that support this variance request.

Chair Truby asked if the garage doors were going to be in the front or the back. In response, Stephen Krasicky Jr., the applicant, said that the garage will be entered into from the back, off of Calverton Drive.

Laurie Krasicky, the applicant, stated that people coming from the east or west on Waycross Drive will just see the front of the house and landscaping, so it gives it more appeal. Chair Truby asked if they talked to the neighbors and Mr. Krasicky said they have and no one objected.

Chair Truby asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as a proposed house that encroaches 23.14 feet into a required 54.05 foot front setback would not be intrusive to the neighborhood and surrounding area.

Mr. Truby moved that in regard to **BOA-18-38, 404 Waycross Drive**, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 applicant complies with the ordinance they would not be able to locate the house in the preferred location due to limitation outside control of the owner. 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 approximately 30 feet shallower than comparable lots adjoining subject property and the lot is subject to a 20 feet utility easement at the rear that precludes development on that portion of the lot. The hardship is not the result of the applicant's own actions because the lot is not as deep as the adjoining lots and the house needs to be closer to the street. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it will allow the placement of the home in harmony with adjoining houses and will have a detached garage to provide security and safety for the homeowner, which ensures public safety and welfare, seconded by Ms. Skenes. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Blackstock, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

- f) **BOA-18-39: 3916 LAWDALE PLACE** James Booe requests a variance to allow a proposed covered patio to encroach 7 feet into a required 30 foot rear setback. The covered patio will be 23 feet from the rear property line. Zoning R-3 (Residential Single-Family); Section 30-7-3.2 – Table 7-1; Cross Street – Lawndale Drive. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow a proposed covered patio to encroach 7 feet into a required 30 foot rear setback. The covered patio will be 23 feet from the rear property line. Supporting documents from the applicant include Exhibit A: variance application and Exhibit B: site plan showing the boundaries of the property, existing infrastructure and proposed covered patio. Supporting documents from staff include Exhibit 1: current zoning map showing property is zoned R-3 (Residential Single-Family), Exhibit 2: 2014 GIS aerial map, Exhibit 3: Land Development Ordinance Section 30-7-3.2, Exhibit 4: Guilford County property report, Exhibit 5: applicant's deed and Exhibit 6: field photos taken July 27, 2018. The Land Development Ordinance reference is Section 30-7-3.2 - Table 7-1: rear setback in R-3 is 30 feet. The lot is located on the east side of Lawndale Place, north of Lawndale Drive, and is zoned R-3. Tax records indicate the lot contains approximately 11,761 square feet and the house was constructed in 1994. Based on the site plan submitted as Exhibit B, the applicant proposes to cover and enlarge an existing patio to 16'x22'. The covered patio will encroach 7 feet into a required 30 foot rear setback and be 23 feet from the rear property line. At-grade patios can encroach into required setbacks, per the Land Development Ordinance, but a covered patio may not encroach without a variance. There are no applicable overlays or plans and the land use is Single-Family Dwelling. The adjacent zoning to the north, east, west and south is R-3 and the land uses are Single-Family Dwellings. 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 Truby asked if anyone wished to speak on this matter.

James Booe, the applicant, was sworn in and stated that he is trying to cover the existing patio behind the house to make it more useable for 3 seasons of the year and to enhance the value of the house. Mrs. Bowers asked if he just wanted to cover it and not make it larger. Mr. Booe responded that the existing patio will be 2 feet larger so he will not have to tear up the patio to install the posts.

Chair Truby asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as a proposed covered patio that encroaches 7 feet into a required 30 foot rear setback would not be intrusive to the neighborhood and surrounding area.

Ms. Blackstock moved that in regard to **BOA-18-39, 3916 Lawndale Place**, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 without a variance the existing patio will not be able to be covered. 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 covered patio would allow for the back yard to be more enjoyable and protect the patio from exterior elements. The hardship is not the result of the applicant's own actions because the house and patio already exist, so the request allows the outside space to be used without worrying about the elements. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the intent is to

maintain it and serve the spirit of the ordinance and the property will remain to be used for residential purposes, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Blackstock, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

SPECIAL EXCEPTION

- a) **BOA-18-40: 824 RANKIN PLACE** Spoma Jovanovic and Lewis Pitts request a special exception to allow a proposed house to encroach 5 feet into a required 20 foot front setback. The house will be 15 feet from the front property line. Zoning R-7 (Residential Single-Family); Section 30-7-3.2 – Table 7-3; Cross Street – Tate Street. **(GRANTED)**

Shayna Thiel stated that the applicants request a Special Exception to allow a proposed house to encroach 5 feet into a required 20-foot front setback. The house will be 15 feet from the front property line. Supporting documents from the applicant include Exhibit A: special exception application and Exhibit B: site plan showing the boundaries of the property, existing infrastructure, and proposed house location, Exhibit C: construction drawing of proposed house prepared on June 13, 2018 and Exhibit D: driveway and garage easement agreement recorded on April 8, 2018 in Deed Book 8039 Page 1643. Supporting documents from staff include Exhibit 1: current zoning map showing property is zoned R-7 (Residential Single-Family), Exhibit 2: 2014 GIS aerial map, Exhibit 3: Land Development Ordinance Section 30-2-2.2(B) and Section 30-7-3.2 - Table 7-3, Exhibit 4: Certificate of Appropriateness approved by Historic Preservation Commission on July 2, 2018, Exhibit 5: Guilford County property report, Exhibit 6: applicants' deed and Exhibit 7: field photos taken July 27, 2018. The Land Development Ordinance references are Section 30-2-2.2(B): use of non-conforming lots and Section 30-7-3.2 - Table 7-3: R-7 minimum setback is 20 feet. The lot is located on the north side of Rankin Place, east of Tate Street, and is zoned R-7. The property is located within the College Hill Historic District. The currently vacant property is considered a nonconforming lot, as it contains approximately 3,920 square feet, when the minimum lot size in the R-7 district is 5,000 square feet. One single-family dwelling may be built on a nonconforming lot in a residential zoning district if compliance is achieved with regard to all ordinance requirements except for lot area or width. The applicants propose to construct a new house that will encroach 5 feet into a required 20 foot front setback and be 15 feet from the front property line. On July 2, 2018, the Historic Preservation Commission approved a Certificate of Appropriateness for the proposed new house and recommended a special exception. The adjacent zoning to the north is PI (Public and Institutional) and the adjacent land use is Greensboro College. The zoning to the east, west and south is R-7, and the land uses are Single-Family Dwellings. The R-7, Residential Single-Family District is primarily intended to accommodate low to moderate density single-family detached residential development. The overall gross density in R-7 will typically be 7.0 units per acre or less.

Chair Truby asked if anyone wished to speak on this matter.

Spoma Jovanovic, the applicant, was sworn in and stated that they have lived on this street for 17 years. They owned an adjacent house and this lot. Staff has been really helpful. The Historic Commission pointed out that moving the house forward 5 feet would accomplish a few things. It would create more space between the house and the existing garage and would create more backyard space, while still conforming with many houses on the street.

Chair Truby asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as a proposed house that encroaches 5 feet into a required 20 foot front setback would not be intrusive to the neighborhood and surrounding area.

Ms. Skenes moved that in regard to **BOA-18-40, 824 Rankin Place**, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the special exception be granted based on the following: The special exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because other homes in the area have similar setbacks, and with the special exception, the home will still be 15 feet from the front property line. The granting of the special exception ensures the public safety and welfare and does substantial justice because the request has been reviewed by the Historic Preservation Commission, a Certificate of Appropriateness has been approved and the special exception promotes infill construction of the College Hill Neighborhood, seconded by Mr. Waddell. The Board voted 7-0 to grant the special exception requested. (Ayes: Truby, Skenes, Waddell, Blackstock, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

OTHER BUSINESS

Mike Kirkman welcomed the two new members, Mr. Oliver and Mr. Ramsey, to the Board. He looks forward to working with them in the future. Chair Truby also welcomed the new members.

ACKNOWLEDGEMENT OF ABSENCES

None.

ADJOURNMENT

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

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

CT/jd:pr

GREENSBORO BOARD OF ADJUSTMENT**September 24, 2018**

The meeting of the Greensboro Board of Adjustment was held on Monday September 24, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Chuck Truby; James Waddell; Ted Oliver; Vaughn Ramsey; Deborah Bowers, and Mary Skenes. Representing the Planning Department were Shayna Thiel, Steve Galanti and Lucas Carter; and representing the City Attorney's Office was Andrew Kelly.

Chair Truby 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. Ramsey moved approval of the minutes for the August 27, 2018 meeting, seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Ramsey, Waddell, Oliver, Bowers and Skenes. Nays: None.)

SWEARING IN OF STAFF

Shayna Thiel, Steve Galanti and Lucas Carter, Planning Department, were sworn in for their testimony in the following cases.

CONTINUANCES/WITHDRAWALS

Shayna Thiel stated that there were no continuances or withdrawals

NEW BUSINESS**VARIANCE**

- a) **BOA-18-42: 405 EAST MEADIWVIEW ROAD** Edgar L. Norris, Jr., on behalf of Norris Family Investments, LLC, requests a variance to allow the area of a proposed attached wall sign to exceed the maximum allowed by 71.5 square feet. The sign will be 216 square feet when the maximum allowed is 144.5 square feet (10% of wall area). Zoning HI (Heavy Industrial); Section 30-14-7.4 – Table 14.3; Cross Street – McArthur Drive. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow the area of a proposed attached wall sign to exceed the maximum allowed by 71.5 square feet. The attached sign will be 216 square feet when the maximum allowed is 144.5 square feet (10% of wall area). The lot is located at the end of East Meadowview Road, east of South Elm-Eugene Street and north of I-40/Bus 85. It is zoned HI (Heavy Industrial), and tax records indicate the lot contains approximately 392,040 square feet. Per the www.thebuildingcenterinc.com website, *The Building Center, Inc.* operates as a lumber and building products dealer at the subject property. The applicant proposes to install a 216 square foot (12 feet x 18 feet) attached wall sign on an

existing building that faces 1-40/I-85. The wall area of the building is 1,445 square feet (12 feet x 85 feet), so the maximum area allowed per the Land Development Ordinance is 144.5 square feet. The proposed attached wall sign exceeds the maximum allowed by 71.5 square feet. The HI (Heavy Industrial) District is primarily intended to accommodate 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.

Chair Truby asked if anyone wished to speak on this matter.

Edgar Norris, Jr., 10201 Industrial Drive Pineville, NC, stated that they primarily want this request for visibility for their customers and inbound freight trucks. Mr. Waddell asked if there was a sign already there. Mr. Norris said that the previous business had painted sign on the back of the building, but it has been removed. Chair Truby asked why they picked that size sign. Mr. Norris said they considered the scale against the large building. Counsel Kelly asked if Mr. Norris was an attorney and if his testimony tonight was based on his personal knowledge. Mr. Norris said he was not an attorney and that his testimony is based on personal knowledge.

Chair Truby asked if there was anyone wishing to speak in opposition to the request, and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as it is a good location and a proposed attached wall sign that exceeds the maximum allowed by 71.5 square feet would not be intrusive to the surrounding area. Mr. Waddell was concerned if they were setting a precedent for other businesses along that highway. Counsel Kelly said they are giving permission for this specific property. Chair Truby said that he struggled with the same thing when he read the information, but when he put it into context with the huge site located on the interstate and a massive billboard right next to it that is much larger than the proposed sign, he thought there were enough reasons to approve this request without trying to set precedent.

Ms. Skenes moved that, in regard to **BOA-18-42, 405 East Meadowview Road**, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 sign would have to be much smaller, when the requested building side faces I-85 with rapid speed limits. If ordinance is followed the sign would be difficult to read from I-85. 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 building is adjacent to the interstate. The layout of other buildings on site makes the requested sign location the most logical. The hardship is not the result of the applicant's own actions because the business is located at the end of a dead-end street, and the requested sign location is the only location visible to potential customers. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the variance will allow business to have signage visible to customers, no other businesses will be impacted, seconded by Mr. Waddell. The Board voted 6-0 to grant the requested variance. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

- b) **BOA-18-43: 1505 RED SAIL LANE** Stephen and Emily Lafrance request a variance to allow a proposed detached accessory garage to encroach 5 feet into a required 10-foot side setback. The detached accessory garage will be 5 feet from the side property line. Zoning R-3 (Residential Single-Family); Section 30-8-11.1(C)(2); Cross Street – Chadford Place. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a proposed detached accessory garage to encroach 5 feet into a required 10-foot side setback. The detached accessory garage will be 5 feet from the side property line. The lot is located on the west side of Red Sail Lane, north of Chadford Place, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 14,375 square feet and the house was constructed in 1985. The applicant proposes to construct a 672 square foot (24 feet x 28 feet) detached accessory garage that will line up with the existing driveway and be approximately 25 feet tall. The Board of Adjustment granted a variance to the applicants for the same 5-foot encroachment on August 25, 2014 (BOA-14-28), but that variance expired since construction did not commence within 12 months of approval. 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 Truby asked if anyone wished to speak on this matter.

Emily Lafrance, the applicant, was sworn in and stated that there are no changes in the plan. The reason they have not started construction four years ago when it was approved was because they had other home repairs that needed to be done. Mr. Ramsey asked if all the neighbors have been notified. Ms. Lafrance said that all the neighbors have been notified and there were no complaints. Mr. Waddell asked if they would be taking power from the existing residence. Ms. Lafrance said that she doesn't know that yet.

Chair Truby asked if there was anyone wishing to speak in opposition to the request, and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request the proposed detached accessory garage would not be intrusive to the neighborhood and surrounding area.

Mr. Ramsey moved that, in regard to **BOA-18-43**, 1505 Red Sail Lane, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 by complying with the setback, the garage will not align with the existing driveway and the required garage would need a 45 degree angle or greater distance from the house, thus requiring an excessive amount of concrete driveway length and reduction of utility of the applicant's backyard. 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 current orientation of the house results in a narrow driveway and short distance between the house and the property. The hardship is not the result of the applicant's own actions because the aforementioned conditions resulting from the placement of the house existed prior to applicant purchasing the property. The variance is in harmony with the general

purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it does not harm neighbors or neighborhood and increases use of the lot and adds value to the property, seconded by Ms. Skenes. The Board voted 6-0 to grant the requested variance. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

- c) **BOA-18-44: 1404 BRIARCLIFF ROAD** Adam and Laura Duggins request a variance to allow a proposed covered patio to encroach 8 feet into a required 20-foot rear setback. The covered patio will be 12 feet from the rear property line. Zoning R-5 (Residential Single-Family); Section 30-7-3.2 – Table 7-2; Cross Street – Woodland Drive. **(GRANTED)**

Mr. Ramsey recused himself from this case.

Shayna Thiel stated that the applicant requests a variance to allow a proposed covered patio to encroach 8 feet into a required 20-foot rear setback. The covered patio will be 12 feet from the rear property line. The lot is located on the east side of Briarcliff Road, south of Woodland Drive, and is zoned R-5. Tax records indicate the lot contains approximately 9,148 square feet and the house was constructed in 2012. Based on the site plan submitted as Exhibit B, the applicants propose to cover an existing patio without extending the footprint. It will encroach 8 feet into a required 20-foot rear setback. Uncovered at-grade patios can encroach into required setbacks, per the Land Development Ordinance, but a covered patio may not encroach without a variance. 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 Truby asked if anyone wished to speak on this matter.

Adam Duggins, the applicant, was sworn in and stated that they have an existing brick patio that acts as an outdoor living space. They want to put a cover over and lift it to create more privacy for their neighbors and themselves. They have spoken to the other neighbors and they are okay with it. They would use this area a lot more if it was covered because it gets too hot in the summer to really enjoy it.

Chair Truby asked if there was anyone wishing to speak in opposition to the request, and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as the proposed covered patio would not be intrusive to the neighborhood and surrounding area.

Mr. Oliver moved that, in regard to **BOA-18-44**, 1405 Briarcliff Road, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance be granted based on the following: 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 back patio has no cover, making it unusable six to eight months of the year. The proposed structure lifts and covers space that will be more usable. 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 small lot size, combined with the house being toward the back of the property, makes it very hard for backyard living. The

hardship is not the result of the applicant's own actions because the property was purchased as is and the applicant did not build the house or the back deck. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because covering the existing patio doesn't increase the current outdoor living space and the owner will add additional greenery for shielding the view, seconded by Ms. Skenes. The Board voted 5-0-1 to grant the requested variance. (Ayes: Truby, Skenes, Waddell, Oliver, Bowers and Skenes. Nays: None. Abstain: Ramsey)

Mr. Ramsey returned to the dais for the rest of the meeting.

SPECIAL EXCEPTION

- d) **BOA-18-45: 321 SOUTH TATE STREET** Katrina Guilford-Hayes requests a special exception to allow a proposed pergola to encroach 3.5 feet into a required 5-foot side setback. The pergola will be 1.5 feet from the side property line. Zoning R-7 (Residential Single-Family); Section 30-7-3.2 – Table 7-3; Cross Street – Walker Avenue. **(GRANTED)**

Shayna Thiel stated that the applicants request a special exception to allow a proposed pergola to encroach 3.5 feet into a required 5-foot side setback. The pergola will be 1.5 feet from the side property line. The lot is located on the east side of South Tate Street, north of Walker Avenue, and is zoned R-7. Tax records indicate the lot contains approximately 8,276 square feet and the house was constructed in 1905. The property is located within the College Hill Historic District Overlay and Central Business Overlay. The applicant proposes to construct a pergola attached to the house that will encroach 3.5 feet into a required 5-foot side setback and be 1.5 feet from the side property line. On August 29, 2018, the Historic Preservation Commission approved a Certificate of Appropriateness for the proposed pergola and recommended a special exception. The R-7, Residential Single-Family District is primarily intended to accommodate low to moderate density single-family detached residential development. The overall gross density in R-7 will typically be 7.0 units per acre or less.

Chair Truby asked if anyone wished to speak on this matter.

Nat and Katrina Hayes, the applicants, were sworn in and stated that they are requesting a special exception because they need to encroach 3.5 feet into the setback for the pergola. The space where they want to put it makes sense for livable patio space. Chair Truby asked if they had spoken to the neighbors. Mr. Hayes said that they have not because the properties around them are all rentals and apartments. Ms. Hayes said that one neighbor, Mr. Yates, was at the neighborhood association meeting and approved their project. Ms. Bowers asked about the height of the pergola. Mr. Hayes said it would be 9.5 to 10 feet.

Chair Truby asked if there was anyone wishing to speak in opposition to the request and no one came forward. The public hearing was closed.

Board Discussion:

The Board members had no further questions and indicated their support of the request as a pergola that encroaches 3.5 feet into a required 5-foot side setback would not be intrusive to the neighborhood and surrounding area.

Ms. Skenes moved that, in regard to **BOA-18-45**, 321 South Tate Street, the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the special exception granted based on the following: the special exception is in harmony with the general purpose and intent of the ordinance and preserves its spirit, because the Historic Preservation Committee approved the Certificate of Appropriateness for the proposed pergola and recommends the special exception. The granting of the special exception assures public safety and welfare because construction of the pergola enhances the value of the property and maintains the historic appeal of the property. Certificate of Appropriateness was approved on August 29, 2018, seconded by Ms. Skenes. The Board voted 6-0 to grant the requested special exception. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

OTHER BUSINESS

None.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Blackstock was acknowledged as excused.

ADJOURNMENT

There being no further business before the Board, the meeting ended at 6:14 p.m.

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

CT/jd:pr

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
OCTOBER 22, 2018**

The meeting of the Greensboro Board of Adjustment was held on Monday, October 22, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Chuck Truby; James Waddell; Ted Oliver; Vaughn Ramsey; Deborah Bowers, and Mary Skenes. Representing the Planning Department were Shayna Thiel and Mike Kirkman. Andrew Kelly represented the City Attorney's Office.

Chair Truby 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. Ramsey moved approval of the minutes for the September 2018 meeting, seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Ramsey, Waddell, Oliver, Bowers and Skenes. Nays: None.)

SWEARING IN OF STAFF

Shayna Thiel and Mike Kirkman, Planning Department, were sworn in for their testimony in the following cases.

CONTINUANCES/WITHDRAWALS

Shayna Thiel stated that Case BOA-18-52, 1200 Revolution Mill Drive, has been withdrawn by the applicant. No action by the Board is necessary.

OLD BUSINESS: None

NEW BUSINESS

DETERMINATION TO ALLOW CHANGE TO ANOTHER NONCONFORMING USE

- a. **BOA-18-46: 1406 WEST FRIENDLY AVENUE** Marsh Prause, on behalf of Thomas Fogle, requests a determination to allow a proposed nonconforming duplex use in place of a current nonconforming multifamily use, based on the proposed use having no greater adverse impacts on the surrounding area. Zoning R-5 (Residential Single Family); Section 30-2-3.4(B); Cross Street – Hillcrest Drive.
(CONDITIONALLY GRANTED)

Shayna Thiel stated that the applicant requests a determination from the Board of Adjustment to allow a proposed nonconforming duplex use in place of a current nonconforming multifamily use, based on the proposed use having no greater adverse impacts on the surrounding area. The lot is located on the north side of West Friendly Avenue, east of Hillcrest Drive, and is zoned R-5. Tax records indicate the lot contains approximately 7,405 square feet and the house was constructed in 1925. The applicant purchased the subject property in July 2018. The structure has most recently been used as a multifamily dwelling, which is a nonconforming use in the R-5 District. The applicant now proposes to convert the nonconforming multifamily dwelling (3 or more families) use into another nonconforming use, a duplex (2 families). The proposed change of use may be allowed if the Board of Adjustment determines that the proposed use will have no greater adverse impacts on the surrounding area, based on such factors as traffic, parking, number of persons, lighting, noise, glare dust, odor, vibration,

smoke and hours of operation, as outlined in Section 30-2-3.2. The R-7 (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 Truby asked if there was anyone wishing to speak in favor of this matter.

Marsh Prause, 380 Knollwood Street, Winston Salem, NC, attorney representing the owner, Thomas Fogle, stated that the staff has done a great job at laying out the provisions of the ordinance. His client has what is a currently legal and useable nonconforming triplex/quadruplex use, which is three to four dwelling units, and he wants to change it to a duplex, which is two dwelling units. They are a nonconforming use currently and they want to change it to a different nonconforming use which he maintains is less impactful to the surrounding area. The Land Development Ordinance states that each dwelling unit can be occupied by four unrelated people so this house could have up to 16 people, with 16 cars attempting to park; and as a triplex it would be up to 12 people. Mr. Prause noted then that as a duplex it would only be up to 8 people, with a maximum four in each unit. He then point to the criteria set out in section 30-2-3.2 of the LDO that includes anticipated traffic, parking requirements, number of people on the premises, offsite impacts, such as lighting, noise, glare, dust and smoke and argued that all would be lessened with the change.

Mr. Prause then noted that this house is currently zoned single-family, but the property was rezoned to single family about 15 years ago after the house had already been in use as a triplex/quadruplex. He then noted that the exterior of the structure will not be changing and the footprint of the house will not be changing. The house right now has three exterior doors, and Mr. Prause thinks one of those will be eliminated. Mr. Prause then noted his clients were in the audience and added that while Mr. Fogle (senior) is from Ohio his son plans to live on the premises and rent the other half out. Chair Truby asked why they are requesting this determination and if they are required to get a building permit for the conversion work. Mr. Prause stated that there is a provision in the Land Development Ordinance that lets the Planning Director do a discretionary, Type 1 Modification, but that has to do with changing the structure housing a nonconforming use to ensure no greater impacts. In this case they are wanting to go from one nonconforming use to another nonconforming, so staff's determination is they had to go through this process. Another reason that this needs to be done is because their contractor had started work on a property and had to stop work and get building permits and he thinks staff advised them if they continue to do the work without going through this process first, that they may lose their status as a nonconforming use and then they would have to make it a single-family home. They are interested in continuing with this project to convert to a duplex use and will just be reconfiguring the interior of the house so it will be divided up into two dwellings instead of three or four.

Mr. Ramsey asked when the structure was last used as a single-family residence. Mr. Prause said that he doesn't know. He thinks City staff has investigated, but building permits don't go back to 1920s, 1930s and 1940s. They could have found out evidence that it had been converted to a nonconforming use before it had been rezoned. He thinks it was RM-26 before it was rezoned about 10 to 15 years ago. It may have even been RM-18. Ms. Skenes asked if this has been a continual multi-family use? Mr. Prause stated that they believe so and they don't want to lose their status of nonconforming use. Ms. Skenes said that she still doesn't understand that this use is currently nonconforming and will still be nonconforming if the Board makes the determination, yet they are going to reduce the impacts of the nonconformity. Mr. Prause stated that it is what the rules say, according to 30-2-3.4 B, it does say that the Board of Adjustment may allow a nonconforming use to be changed to another nonconforming use that is in the same use category, or to another functionally similar use or less intensive use if the Board of Adjustment determines that the proposed use will have no greater adverse impacts. Ms. Skenes asked why it could not have been a Staff decision since it was less impactful. Mike Kirkman told her that staff is not granted the authority under the ordinance as it is written now. The authority to grant this right is given to the Board of

Adjustment. Mr. Kirkman further noted that the Permitted Use Table identifies a multi-family dwelling with three units of more as a separately defined use from a duplex dwelling which is two units even though it is in the same residential use group. The broader philosophy of the ordinance when talking about nonconformities is the ordinance is looking to achieve a point at which things come into conformance, so what is being proposed is going to extend the time for a nonconformity to exist here. The applicant is changing the existing use and extending the time frame that will be nonconformity. With this change they are getting closer to conformance, and this may be an interim step. Chair Truby asked if this duplex is damaged by fire and has more than 50% of its value destroyed, then they wouldn't be able to build it back. Mike Kirkman stated that is correct, unless they came to the Board of Adjustment and requested a variance at that point in time. Mr. Prause stated that since Mike Kirkman mentioned variances because this request is not a variance there is no need to present the usual things you show for a variance and this just comes down to whether this change in use is less impactful than the current nonconforming use.

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

Gina Walter, 210 Abington Terrace, was sworn in and stated that she is here because she was curious when the Board of Adjustment sign went up and was just curious about what was going on with the property. She thinks that this property has already lost its nonconforming status, for several reasons. The property had already had construction started on it without building permits and she believes that the reason they are here is because they couldn't continue work on the property without a permit. A permit cannot be approved unless their nonconforming status is approved. She thinks that the repairs inside may have been more than what the repairs and maintenance that is allowed under article 30-2-1.5, which says incidental repairs and normal maintenance are permitted. It doesn't say they can tear down the building, take out walls, or rip out plumbing. Nonconforming property must have also continuous use. The house was owned by Mike Holston, who passed away February of 2017, it went into an estate and transferred back in October of last year. It has not been continuously operated as a multi-family property and she doesn't think it was operated as a multi-family property in the last 12 months and it must be a continuous operation or it loses its nonconforming status. The one thing that is permitted under nonconforming status is the ability to make repairs if there is 50% or less damage to the property. The owner wants to spend \$70,000, which is more than 50% of the tax value of the property. Chair Truby asked what is defined as continuous use. Mike Kirkman said that section 3-2-3.6 of the LOD notes a nonconforming use ceasing operation for any reason for a continuous period for one year or more cannot be reestablished and any subsequent use must be those that are allowed in that zoning district. There will be times that a unit will not be occupied but is available for sale or lease or in the process of being rented. Staff's understanding from discussions with the applicant is that this property has been in continuous operation so this is the first the staff has heard about the use potentially not being in continuous operation. It's hard to say if the timeframe on that property is 12 months or longer so staff will have to do some investigating to figure out how long the operation has been ceased. Mike Kirkman asked Ms. Bolton how long the property had been used until the last change of ownership? She stated that is a good question. She knows that the person who inherited was over a year ago and it has had four deed transfers since then. Mr. Ramsey asked why did she think it was not being used for a year? She stated she doesn't know why it was not rented. Ms. Skenes asked that if what she was saying was that nobody was living on the property for a continuous 12 months? Ms. Bolton said that she did not go on the property, so she is not sure. The owner was living in the property, but she doesn't know if he had other tenants in the property. Ms. Skenes stated that the ordinance reads that the disuse of the structure must be caused by accidental causes. They are purposely doing this construction, so that wouldn't factor in. Ms. Bolton said that the repairs and maintenance section 30-2-1.5 says that they can make repairs to the property, but it doesn't say they can do structural changes and they have already done that, so therefore they have lost their nonconforming status. Mike Kirkman answered by saying it is a violation to do work without permits. The applicant is seeking to resolve that

issue by coming to the Board to request permission to convert to duplex units from the previous quadruplex units. If the Board found that the duplex use could be allowed to be there and if they are renovating and get the proper permits, zoning would typically sign off. Zoning staff is greatly aware of this property, so they can be sure to be involved as well. Mr. Oliver asked if these renovations have an impact on the status of the property. Mike Kirkman stated that a nonconforming duplex use would reasonably have less or the same impact as a nonconforming quadruplex on this property. The issue is if the nonconformity went away prior to the action to convert the nonconforming quadruplex. Staff is not in a position to make that determination this evening. The Board is being asked if a duplex use at this location is the same or less impact based on the factors that Counsel Kelly read out versus a four unit use. Staff would need to start an investigation to determine the question of the caseation of use, including if the property was advertised for sale and those type of things. There is no data base to go to and know exactly how long a residence was not occupied. Mr. Oliver stated that if they were to approve the changes, because we are not deciding that it hasn't been in nonconformity status. He thinks that Ms. Bolton should make a formal request to the City and let the zoning people go out and do their research to see if it has lost its conformity status. Mike Kirkman stated that Staff is not prepared to answer that issue before the Board this evening. Ms. Bowers asked are they to assume that in deciding that the property has already been approved and comes here today approved for a nonconforming use as a triplex. Counsel Kelly said that based on the evidence before them he doesn't think that there is conclusive evidence to say that it has lost its conformity. Ms. Bolton asked if they were to grant nonconformity status of a duplex, does that change any of the process to refer to single-family, which is what it originally was and what the zoning was for. Chair Truby said that staff is telling them to look at the three or four findings and if going from a quadruplex down to a duplex is less intensive and if they find those findings they can approve. If it is determined to have lost its nonconformity previously then the Board's determination would become moot. Chair Truby asked if they should continue this until the staff can do their investigation. Counsel Kelly told the Board that they can continue it, as that is in their rules and regulations.

David Barnard, 1405 Northfield Street, was sworn in and stated that they live in the home directly behind the house in question. There have been multiple tenants in and out but it has been vacant for quite some time. He can't say that it is has been longer than a year. It is a vacant house now and is in disrepair. They welcome any improvements to this house. It would be a much better use back to its original single-family and that would be the goal. There is a current Stop Work Order on the house. There were weeks of work going on from sunup until about 4 o'clock in the afternoon. His biggest concern is that they took out the two-car garage without a demolition permit. The bigger concern is that it had asbestos shingles on it. They did not have the permits and they didn't do proper asbestos removal. There are asbestos shingles all over the property now. He stated that he did have pictures and showed them to the Board members. Mr. Barnhard stated that in tearing down the garage that would reduce the value of the property, but also lean toward the 50% rule in terms of improvements and structure changes going on to the house. There was substantial work done without permits. Now they are going back to get a permit. Ms. Bowers asked if they had any evidence that there was going to be more traffic or more of an impact on the surrounding area on the use of this property than was when it was used as a triplex? Mr. Barnhard said he expected less traffic as a duplex.

Carlos Wong, 1508 Northfield Street, was sworn in and stated that he wanted to remind the Board that this neighborhood is zoned as single-family residential. This property has a landlord requested for a new nonconforming designation based on 30-2-1.5 refers to repairs and maintenance. He can perform repairs and normal maintenance to the property. A new nonconformity designation should not be approved because the zoning is single-family residential use only, not duplexes or multi-family use. This request has an impact on surrounding areas. He has lived in this neighborhood for about 15 years and they deal with a lot of traffic, college kids usually rent these properties on Friendly Avenue and they have constant traffic in the alleyways. They are trying to work with the City to see who is going to maintain that alleyway in the back. It is in disrepair at this point.

The rules designated by the City of Greensboro must be enforced and this property should be reverted to a single-family use or continue its current nonconformity status.

Speaking in rebuttal, Marsh Prause stated that if the Board does feel as though they are going to consider evidence of whether the property has lost its nonconformity status, he would like to put his client on and examine him about the use of the property in the last year and the work that has been done. This isn't a Code Enforcement proceeding, it is governed by the Land Development Ordinance. The complaints the neighbors have raised do not go to the four factors stated previously. He doesn't understand why they would want a triplex there instead of a duplex. Chair Truby asked Staff that if their actions tonight to change the nonconforming use, does that automatically continue that nonconforming use even if the neighborhood can prove to the City Staff that it did lose its nonconforming status? Counsel Kelly stated that it is his recommendation to continue to let Mike Kirkman determine if they have lost their nonconformity status. If you grant this and then they determine that it is not conforming, then that will cause more problems. Chair Truby asked if they could make a motion to conditionally approve and if they determine they lost their nonconformity status then it would render that decision moot. Ms. Skenes asked Mr. Prause if that was okay with them. Mr. Prause said that he would need to talk to his clients, but is sure they don't want to have to come back here. Chair Truby asked if anyone opposing wanted to rebut? Mr. Prause then returned to the dais to say his clients are fine with conditional approval pending further investigation by City Staff.

There being no other speakers the public hearing was closed.

Board Discussion: None

Ms. Bowers moved that in regard to **BOA-18-46, 1406 West Friendly Avenue**, based on the stated findings of fact moves that the change in nonconforming use be allowed by the Board of Adjustment on condition of accuracy of the assumption that the property previously maintained its nonconforming use as approved for a triplex. The reasons for this motion is to allow the proposed nonconforming duplex use: based on considerations of 30-2-3.2, the property was already being used as a triplex when purchased by the current owner in July 2018, the traffic and number of people on the premises, off-site impact and other considerations show that there will be of less impact than the current approved use of a triplex and the ordinance allows nonconforming uses to be changed to another functionally similar or less intensive uses if the Board of Adjustment determines the proposed use will have no greater adverse impact to the surrounding area. Considering the requirements in the ordinance 30-2-3.2, which are anticipated traffic, parking requirements, number of people on premises, off-site impacts and hours of operations, seconded by Ms. Skenes. The Board voted 6-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

VARIANCE

- a. **BOA-18-47: 415 SOUTH SWING ROAD** Shahzad Akbar, on behalf of Khan Hotels and Hospitality LLC, requests two variances. i. To allow an existing freestanding sign to exceed the maximum 50 foot height by 15 feet. The freestanding sign is 65 feet tall. Section 30-14-7.3 – Table 14- 2. ii. To allow an existing freestanding sign to exceed the maximum 275 square foot area by 67 square feet. The freestanding sign is 342 square feet. Section 30- 14-7.3 – Table 14-2. Zoning C-M (Commercial-Medium); Cross Street – Guilford College Road **(GRANTED)**

Mr. Ramsey was recused from this item.

Shayna Thiel stated that the applicant requests two variances. Variance #1: To allow an existing freestanding sign to exceed the maximum 275 square foot area by 67 square feet. The freestanding sign is 342 square feet. Variance #2: To allow an existing freestanding sign to exceed the maximum 50 foot height by 15 feet. The

freestanding sign is 65 feet tall. The lot is located on the north side of South Swing Road, west of Guilford College Road, and is zoned C-M (Commercial-Medium). Tax records indicate the lot contains approximately 215,186 square feet and the building was constructed in 1973. The existing freestanding sign is 65 feet tall and its area is 342 square feet. The sign is within 400 feet of the right-of-way of I-40. Because of its proximity to the right-of-way of an Interstate Highway, the Land Development Ordinance would allow the maximum sign area to be increased by 75 square feet and the maximum height of the sign to be increased to 50 feet. The existing freestanding sign is nonconforming because it exceeds both the allowable maximum area and height requirements. The applicant proposes to add an electronic message board to the existing freestanding sign and seeks a variance to bring the sign into compliance with current Land Development Ordinance sign regulations. The C-M (Commercial-Medium) District is primarily intended to accommodate a wide range of retail, service, office and multi-family residential uses in a mixed-use environment. The district is typically located along thoroughfares in areas which have developed with minimal front setbacks.

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

Alan Blackwell, attorney representing the applicant, stated that the property is owned by Conn Hospitality Hotels and Hospitality LLC. Two of the owners were there tonight as well as the individual who created Exhibit B that is attached to the materials. Prior to the current owner's possession of this property this sign issue was pre-existing. They can't determine how long the sign has been erected. Previously this sign has been permitted through the City in 2003. Attorney Blackwell noted that the sign dimensions estimated as square foot of 342' and 65' in height, were incorrect so they will provide testimony to the Board of the more accurate square footage of the sign. He noted that this is an existing sign located on the property sometime before the current owners purchased it. This sign was there when they bought the property in 2012 and was conforming to the current sign regulations in the City based on their understanding at the time. They believe that a sign that is more visible and larger or taller than what the sign ordinance allows would be necessary to avoid hardship for the petitioners. Since this is not a new sign. Ms. Skenes asked if the only changes that are being proposed to the sign is the addition of the LED bar below the existing sign. Mr. Blackwell stated that is correct and showed Exhibit B to explain what they are asking to add to the sign. Ms. Bowers said that she thought they also wanted to make sure the sign was 15' higher than allowed. Mr. Blackwell said that is correct, again the sign as it is now is 65', which is above the 50' regulation but it has been there since the property was constructed and the last permit they found was in 2003 and that sign was permitted. Ms. Skenes asked if the sign has been out of compliance since the day it was put up. Mr. Blackwell said he looked for the old sign regulations and ordinances in the City but was not able to find those. There is no way for him to know if the sign was in compliance when it was erected. Ms. Bowers said that they were asking for a retroactive variance. Mr. Oliver asked if Attorney Blackwell said that the square footage in their application was not correct Mr. Blackwell said that the sign developer did the measurements for just the portion of the sign that is being altered. The bar was 14' wide, and they think it may be two feet left and right. The height of the Wyndham portion of the sign, they believe to be 8'. Mike Kirkman clarified that the addition of the electronic message board is triggering the need for a sign permit. The ordinance states that when a sign permit is required any existing nonconforming signs should be brought into conformance, and that is why they need this variance. He also noted the dimensions for the variance application on the square footage came from the sign permit application and used what was presented to staff as part of the request.

Steve Carnish, Ali Design Company, was sworn in and stated that he is familiar with the property. He said that Ali Design Company is a client of his and Mr. Carnish is a contractor and sign designer. He noted that he was approached about doing the drawings for the sign for permitting. They went for the permit and that is when they found out there was some issues. He noted that he has been in the design business for 20 years. He applied for a permit for this property and he submitted documentations to the City for the permit about the dimensions of the current sign. Initially the permit application was just for the addition of the small electronic message board. The

measurements he got was a 3' by 14' replacement. The LED message sign was 3' by 14'. Ali did the measurements and provided Mr. Carnish the measurements. He contacted the City of Greensboro and they went back and forth over the sign. The first application was rejected because LED boards are considered a new sign. Then they found out the sign itself was too high and the square footage allowed was too high, because the older laws allowed it, but now it is not. The sign measurements between the poles are 14', but the cabinet on top can't be 25' as the original permit stated. The old permit said the sign width was 25'. He used the information from the old permit for the sign's dimensions onto the current owner's application. After taking a second look at the dimensions of the LED light and the sign above it. After reviewing everything he determined that all together it would be about 186 square feet to put the new sign up and they would connect to existing wiring. Counsel Kelly asked Mr. Carnish for his address for the record. Mr. Carnish said his address was 6107 Edgerton Drive, Greensboro, NC. Counsel Kelly asked if he was withdrawing his request for the first variance since he was testifying that that proposed sign square footage could meet the City's requirements. Mr. Carnish said yes. Mike Kirkman then stated to be clear the updated assessment is 144 square feet and the message board is 42 square feet, for a total of 186 square feet. Mr. Carnish said that is correct.

Skip Alston, 2705 W. Vandalia Road, was sworn in and stated that he is a consultant for the Khan Hospitality group and have been so for six or seven years. He stated that this request is simple. They are using what is already there and not changing any dimensions, just the face of the insert. They are admitting that it is 15' higher than the ordinance allows and that is why they are asking for the variance.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter. There being no other speakers the public hearing was closed.

Board Discussion: None

Mr. Waddell moved that in regard to **BOA-18-47, 415 Swing Road**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 ordinance applied requirements are not allowed due to restrictions when the sign was originally erected. The goal is to increase visibility from the highway. 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 sign has a unique location in relation to the highway. Electronic message boards are considered as new signs which requires that the property be in compliance. The hardship is not the result of the applicant's own actions because current sign was erected at the current height and has been an existing sign for many years. If not for the proposed change additional permitting would not be required. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the electronic message board improves visibility and allows the public to see the sign without any sight issues, seconded by Ms. Skenes. The Board voted 5-0-1 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Bowers and Skenes. Nays: None. Abstained: Ramsey.)

- b. BOA-18-48: 4301 LAWNSDALE DRIVE** Chris Wilson, on behalf of City of Greensboro, requests a variance to allow proposed buildings to encroach 35 feet into a required 50 foot street setback. The proposed buildings will be 15 feet from the property line. Zoning PNR (Parkland and Natural Resource Areas); Section 30-7-5.1 – Table 7-14; Cross Street – Orman Road. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow proposed buildings to encroach 35 feet into a required 50 foot street setback. The proposed buildings will be 15 feet from the property line. The lot is located on the west side of Lawnsdale Drive, west of North Church Street at Lake Jeanette Road, and is zoned PNR. Tax

records indicate the entire City-owned lot contains approximately 344 acres, but the area used by the Greensboro Natural Science Center, subject to the variance request, is 28 acres. Per the application, the City of Greensboro proposes to upgrade the Greensboro Natural Science Center site using funds from the 2016 Parks and Recreation Bond allocated for the Battleground Parks District Development. The proposed expansion includes additional buildings along Orman Road that will encroach 35 feet into the required 50 foot street setback. The buildings will be 15 feet from the property line along Orman Road. Open space associated with the Guilford Courthouse National Military Park lies on the north side of Orman Road across from the area proposed for the Greensboro Natural Science Center expansion. The PNR (Parkland and Natural Resource Areas) District is intended to accommodate large size (over 10 acres) public and quasi-public lands such as major regional parks and recreation areas, conservation or natural areas, shore land, urban wilderness areas, and waterfront access areas, open space owned by a governmental or nonprofit (or similar) entity for land conservation, and associated ancillary uses such as operational facilities, recreational facilities designed to accommodate intermittent activities (such as ball fields or amphitheatres), and concessions operating under the purview of the Parks and Recreation Department. It is not intended to accommodate outdoor recreation areas that are more commercial and permanent in nature, such as amusement parks or go-kart tracks. Nor is it intended to accommodate smaller neighborhood parks or recreation areas.

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

Tori Small, representing the Greensboro Science Center, 125 S. Elm Street, was sworn in and stated she is a civil engineer. The setbacks are 50' on both Lawndale Drive and Orman Road. They are not wanting to change anything on Lawndale Drive and are only asking for the variance on Orman Road. The Science Center will be adding seven new animals exhibits, relocating the animal hospital and creating a loop trail system. The Science Center does lease land from the City of Greensboro and is limited in its expansion area. They will be using the 2010 and 2016 bond package. This is the only undeveloped area left on the site. This area has some old barns where there used to be a deer herd. They will be adding three buildings along Orman Road and are dealing with some stream and well issues, so they have to push the buildings back a little bit further from the center of the site and closer to Orman Road. Ms. Small added that they have to make sure the entire site is handicap accessible and also have to meet museum and zoo requirements. This will be the final phase of the zoo portion of the Science Center. Ms. Small stated that Orman Road requires a 50' setback in this zoning district and pointed to Exhibit 3 in the packet that shows other zoning districts in the area having a 15' street setback. She concluded that there is no developed property along Orman Road and it is a unique piece of property that is part of the larger parks in the area. They are just asking for the variance along Orman Road, so no neighborhood will be fringed upon.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter. There being no other speakers the public hearing was closed.

Board Discussion: None

Ms. Skenes moved that in regard to **BOA-18-48, 4301 Lawndale Drive**, that the findings of fact be incorporated into the record and the Enforcement Officer be upheld and the variance denied based on the following: 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 science center will not be able to move forward with the necessary construction to upgrade the site or use allocated bond funding for expansion. 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 this property is part of a 500-acre park. The City leases 28 acres to the National Science Center. This parcel is needed to expand the animal habitat and will be the final expansion of the zoo. The hardship is not the result of the applicant's own actions because the property zoning dictates 50' setback, other

commercially zoned property does not require 50' setback, but rather requires a 15' setback. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it allows expansion of the science center, animal habit using funds allocated for expansion and ?? , seconded by Mr. Waddell. The Board voted 6-0 to approve the variance requested. (Ayes: Truby, Waddell, Oliver, Ramsey, Skenes, and Bowers. Nays: None)

- c. **BOA-18-49: 1611 MORTON STREET** Larry Wallace requests four variances. To allow an accessory dwelling when the property owner does not occupy either the primary or the accessory dwelling. Section 30-8-11.2(B) ii. To allow a proposed detached accessory dwelling to encroach 0.7 foot into a required 5 foot side setback. The detached accessory dwelling will be 4.3 feet from the side property line. Section 30-8-11.2(D). iii. To allow a proposed detached accessory dwelling to encroach 9.9 feet into a required 15 foot rear setback. The detached accessory dwelling will be 5.1 feet from the rear property line. Section 30-8-11.2(D). iv. To allow the heated floor area of a proposed detached accessory dwelling to exceed 30% of the floor area of the primary dwelling (357.4 square feet). The heated floor area of the detached accessory dwelling will be 470.4 square feet. Section 30-8-11.2(E). Zoning RM-18 (Residential Multifamily); Cross Street – Mayflower Drive **(DENIED)**

Shayna Thiel stated that Larry Wallace, the applicant requests four variances. Variance #1: To allow an accessory dwelling when the property owner does not occupy either the primary or the accessory dwelling. Variance #2: To allow a proposed detached accessory dwelling to encroach 0.7 foot into a required 5 foot side setback. The detached accessory dwelling will be 4.3 feet from the side property line. Variance #3: To allow a proposed detached accessory dwelling to encroach 9.9 feet into a required 15 foot rear setback. The detached accessory dwelling will be 5.1 feet from the rear property line. Variance #4: To allow the heated floor area of a proposed detached accessory dwelling to exceed 30% of the floor area of the primary dwelling (357.4 square feet). The heated floor area of the detached accessory dwelling will be 470.4 square feet. The lot is located on the south side of Morton Street, east of Mayflower Drive, and is zoned RM-18. Tax records indicate the lot contains approximately 7,405 square feet and the house was constructed in 1941. The applicant proposes to convert an existing 470.4 square foot detached accessory garage into an accessory dwelling. Currently, the detached accessory garage meets accessory structure setback and area requirements. However, if converted to an accessory dwelling, it cannot meet the RM-18 dimensional requirements and accessory dwelling use standards. The proposed detached accessory dwelling will encroach 0.7 foot into a required 5 foot side setback and be 4.3 feet from the side property line. It will also encroach 9.9 feet into a required 15 foot rear setback and be 5.1 feet from the rear property line. The proposed detached accessory dwelling will occupy the same footprint as the existing detached accessory garage, so the area will remain 470.4 square feet. This area will exceed 30% of the floor area of the primary dwelling (357.4 square feet), which is required by the Land Development Ordinance. At 470.4 square feet, the proposed accessory dwelling area will be 39% of the area of the principal dwelling instead. The applicant also requests that an accessory dwelling be allowed even if the property owner does not occupy either the primary or the accessory dwelling. The RM-18 (Residential Multifamily) District is primarily intended to accommodate multi-family and other residential uses at a density of 18.0 units per acre or less.

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

Larry and Wendy Wallace, 200 Woodbourne Road, the applicant was sworn in and stated that they own a three-bedroom house and there is a garage behind the house and they want to turn it into a studio apartment. They rent to college students, because it is a little less than a block to the campus. The main residence on this property is a three-bedroom house. Mr. Ramsey asked how will the parking work? Mr. Wallace said there is enough room for the four tenants to park. They will continue to park in the same place. If they could move the garage forward enough to meet the setbacks, it would take up the parking spaces.

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

Jeffrey Emerling, 1613 Woodland Street, was sworn in and stated that he and his wife have lived there for two years. Student rentals cause a disruption in the neighborhood. They met with him to describe their project. In the past Mr. Emerling has had to call the police for noise ordinance violations at their property. The Wallace's asked him to call them directly instead of calling the police. This past Saturday they were creating a disturbance very loud and it was spilling out onto the street. He came right over and went in and the police did show up at the property. The concern is that it will create another opportunity to be able to have loud gatherings. The students think they can drink and party and not be respectful to the neighborhood. He said that there is an encroachment on the required setback, if that will be a dwelling it will encroach on their property line. They are marketing directly to students, he opposes more density of this nature.

Eve Hubbard, 510 Mayflower Drive, was sworn in and stated that she is President of the Mayflower Neighborhood Association. They formed 12 years ago with the purpose of improving the quality of life in the neighborhood, but also to keep the property density at or below the current level of RM-18. They have improved the situation in terms of the party activities from students, working with UNCG and the police. This includes shutting down two frat houses. The City's regulations do not readily allow off site frat houses in Greensboro. She noted a concern with a party occurring at 1611 Morton Street on Saturday was a Frat Party and it is extremely important to them to keep that under control. Granting the variances would not just approve a mother-in-law house, but create another opportunity to open up an apartment on a tiny piece of property. It will add to the parking in the street, which is already very crowded. They continue to be very vigilant about all these issues. She opposes this variance request. Chair Truby asked if she was speaking on behalf of the association or for herself. She said she is speaking for both and that there are about 13 others that oppose this request. Mr. Oliver asked her if she knew the percentage of homes along Mayflower and Morton that were owner occupied. She said the last count was 28 residences in the area and 11 were owner occupied.

Ronald McIrvine, owner of property at 1703 Cobb Street, was sworn in and stated that he has been involved in the neighborhood since the 1970's. Houses were converted into student housing and created problems in the neighborhood. In 2005 College Park Apartments was torn down and University Villas was constructed with a high density of students. They had problems with parties, groups of people flowing through University Villas, they have had over 800 people partying. In 2007 there was a party that had more than 1,000 people. In 2014 University Villas built a fence on the Cobb Street entrance and closed that entrance to vehicular traffic. From 7 p.m. to 7 a.m. it is card accessed only and that helps tremendously with the partying up and down that area. Half a dozen properties have gone from rental to owner occupancy. They do have a problem with not knowing what will happen at the corner of Spring Garden and Mayflower where Friends Meeting house is now vacant. Anything that will increase density in the area, especially related to students is a real problem. They want to maintain continuing to improve the neighborhood. Ms. Bowers asked if Mr. McIrvine lives at the Cobb Street address. He said that his son lives there. She asked if he rented the house to his son, and if he was a student. Mr. McIrvine said that he did rent it to his son and no his son was not a student.

Michael Walker, 709 Mayflower Drive, was sworn in and stated that he wants to reinforce what everybody else has said. He moved there in 2000 and they soon got letters from UNCG saying that they were wanting to buy houses in that area to expand the campus. He thinks it is a good thing they went over to Gate City Blvd instead. The neighborhood has really been cleaned up. They want to turn the neighborhood back into an owner-occupied neighborhood. He opposes this variance.

Eve Hubbard returned to the podium and stated that their Association is not just home owner occupants, but also people who own rental property. Several of the landlords have put a "no party clause" in their lease. There are

some who have not done that and that is where the problems start. The absentee landlords that never show up at the meetings, even though they are invited. It is public knowledge, that is where all the problems begin. This is not fair, this is where they live.

Speaking in rebuttal, Larry Wallace and Wendy Wallace stated that he has a lot of the same concerns that the neighbors have expressed. He feels like their property is being lumped in with other landlords. They have long conversations with young people about what lifestyle since they got fooled once and got a fraternity and it was terrible. They do not rent party houses. They do not allow large gatherings, that is in the lease. They have not had a call about a party in a few years. Mr. Wallace went over last Saturday when he got the call about the large gathering at his property. He read an apology from one of the three tenants who sincerely apologized for the party as it was a result of a once a year fundraising Gala for an on-campus organization. There was a designated meeting place, but the meeting place fell through and since they were only going to be there for a short time in the late afternoon, they did not see the harm of having people over before they left for the venue. The house was so near to the bus pick up. They apologized, and they cleaned up the house and yard. The girls made a bad decision and they are good girls. They claim that they did not know they had a Neighborhood Association.

Jane Rondel 602 Mayflower, was sworn in and stated that they are very aware of what happens. They know about the parties and have dealt with it for several years. How much housing can go on the street? Adding more rental houses on one of the very small lots is not good. There is no real room there for another property. Neighborhood groups work together and improve their neighborhoods. The fact that they need a variance says it all.

Speaking in rebuttal in opposition to the case

Ms. Skenes asked the Emerlings about how long the party went on for last Saturday. Katy Emerling said that it was not a long get together. There were many people hanging out in the driveway. When they are having parties and are in the driveway there are practically in our yard. She is not opposed to students renting. Ms. Skenes asked about the parties, wants to know if it is specific to this house. Ms. Emerling and Mr. Emerling said yes, it is specific to this house. They have called the cops regularly. When they first moved in there was a huge party and Ms. Emerling walked over there to check on a girl laying in the driveway. There is no fence all the way along the driveway. Ms. Skenes said she is trying to determine if the no party clause was working and what she hears is no. Mr. Emerling said that they like most the tenants that they have rented to. The students use this opportunity to have parties and be loud. The rules are not always respected. Mr. Waddell asked over the last year how many times have the authorities been called? Mr. Emerling said that they have not had to call the Police on these current tenants until this last Saturday. They have called twice in the two years they have lived there.

There being no other speakers the public hearing was closed.

Board Discussion:

Ms. Bowers asked staff if the Wallaces wanted to add to the existing house for additional tenants would they need a variance to do so. Mike Kirkman said it would depend on the size of the addition. Without knowing details, he noted that there is a maximum building coverage for the zoning district in addition to meeting setbacks and spacing. If the addition met all those minimum standards that would be fine, but if they didn't meet that they would need a variance. Mr. Ramsey asked if it would matter if they changed the parking requirement? Mike Kirkman said that for single-family dwelling the requirements is two parking spaces off street. So, the size of the house doesn't dictate the total amount since that particular use requires two parking spaces. Mr. Oliver asked if this time of variance is granted frequently. Mike Kirkman said that he is not aware of approvals for requests to waive all of these requirements.

Ms. Skenes said that there appears to be an issue with partying. Chair Truby the property is zoned RM-18. As he goes through this, he feels the same way. Ms. Bowers said the complaints are over density. Chair Truby said that he is having difficulty with this. Mr. Ramsey said that the Wallace's appear to be good landlords, it is clear that the neighborhood association is doing their best to make this a better place to live. They try to work with the landlords as much as they can. Chair Truby said that he thinks that to have that accessory dwelling unit it has to be owner occupied and he is not prepared to grant that variance.

Mr. Oliver moved that in regard to **BOA-18-49, 1611 Morton Street**, that the findings of fact be incorporated into the record and the Enforcement Officer be upheld and the variance denied based on the following: If the applicant complies with the provisions of the ordinance, unnecessary hardship will not result to the property by applying strict application of the ordinance because it is in clear violation of section 30-8-11.2 b the owner of the property must occupy the primary or accessory dwelling. The hardship of which the applicant complains does not result from conditions that are peculiar to the property and unique circumstances related to the applicant's property because it does not meet the setback requirements as the existing garage only has a 5' side setback. The hardship is the result of the applicant's own actions because the proposed detached property will encroach 9.9' into the required 15' rear setback and a detached accessory dwelling will be 5.1' from the rear property line. The variance is not in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because of the reasons they heard about increased party activity, increased traffic and opposition by the neighborhood group, seconded by Ms. Skenes. The Board voted 5-1 to deny the variance requested. (Ayes: Truby, Waddell, Oliver, Ramsey, and Skenes. Nays: Bowers.)

- d. **BOA-18-50: 3033 LAKE FOREST DRIVE** Thurman and Anne Givan request a variance to allow a proposed detached accessory garage to encroach 5 feet into a required 10 foot side setback. The detached accessory garage will be 5 feet from the side property line. Zoning R-3 (Residential Single-Family); Section 30-8-11.1(C)(2); Cross Street – Waldron Drive. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a proposed detached accessory garage to encroach 5 feet into a required 10 foot side setback. The detached accessory garage will be 5 feet from the side property line. The lot is located on the south side of Lake Forest Drive, east of Waldron Drive, and is zoned R-3. Tax records indicate the lot contains approximately 19,602 square feet and the house was constructed in 1976. The applicants propose to construct a detached accessory garage over 15 feet tall in their back yard. It will encroach 5 feet into a required 10 foot side setback and be 5 feet from the side property line. On September 19, 2018, the Planning Board approved the applicants' request to release a portion of a 20 foot utility easement along the side and rear property lines where the proposed detached accessory garage is to be located. 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 Truby asked if there was anyone wishing to speak in favor of this matter.

Anne Givan, the applicant, was sworn in and stated that they want to use their existing driveway to head back straight back into the garage that they would like to build. The utility variance was approved, and they will not encroach on the back lot, but on the side by 5'. She has met with all her neighbors and showed them their plans. The letters are attached that it is no hardship to them.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward.

There being no other speakers the public hearing was closed.

Board Discussion:

Mr. Ramsey moved that in regard to **BOA-18-50, 3033 Lake Forest Drive**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 location of the existing driveway plus the existing property line would be difficult for a vehicle to angle into the proposed garage. The proposed detached accessory garage will alleviate that condition and allow the property to be used without the variance the detached accessory garage cannot be built. 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 location of the existing driveway so near the property line that will prevent the applicants use of the property for its best use and to have a garage on their property. The hardship is not the result of the applicant's own actions because the driveway preexists the applicant's ownership of the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the variance is a reasonable use and the proposed garage addition will add value to the property and is in keeping with the quality and character of the neighborhood, seconded by Ms. Skenes. The Board voted 6-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

- e. **BOA-18-51: 3844 BATTLEGROUND AVENUE** Carrie O'Brien, on behalf of CMJD Greensboro Apartments LLC, requests a variance to allow two monument-style freestanding signs at a development entrance, when only one is permitted. Zoning RM-8 (Residential Multifamily); Section 30-14-7.3 – Table 14-2, Section 30-7-8.10(B), Section 30-7-8.10(C) and Scenic Corridor Overlay District Design Manual; Cross Street – Drawbridge Parkway. **(CONTINUED TO NOVEMBER MEETING)**

As the applicant was not present for this case, Mr. Ramsey made a motion to continue the item to the next meeting, seconded by Mr. Waddell. The board voted 6-0 to continue until the November Meeting. (Ayes: Ramsey, Waddell, Skenes, Truby, Oliver and Bowers. Nays: None)

- f. **BOA-18-52: 1200 REVOLUTION MILL DRIVE** Amanda Hodiernne, on behalf of Historic Revolution LLC, requests a variance to allow a proposed bar use to be located 0 feet from a lot containing a residence or a lot that is residentially zoned, when a 400 foot separation is required on lots greater than 5 acres. Zoning CD-LIM (Conditional District-Light Industrial Mixed); Section 30-8-10.4(F)(1)(b)(ii)(b); Cross Street – Yanceyville Street. **(WITHDRAWN BY APPLICANT)**

SPECIAL EXCEPTION

- a. **BOA-18-53: 312 ISABEL STREET** Brad and Bobi Crump request a special exception to allow a proposed uncovered deck to encroach 1.5 feet into a required 5 foot side setback. The uncovered deck will be 3.5 feet from the side property line. Zoning R-5 (Residential Single-Family); Section 30-7-3.2 – Table 7-2; Cross Street – North Church Street. **(GRANTED)**

Shayna Thiel stated that the applicants request a special exception to allow a proposed uncovered deck to encroach 1.5 feet into a required 5 foot side setback. The uncovered deck will be 3.5 feet from the side property line. The lot is located on the south side of Isabel Street, west of North Church Street, and is zoned R-5. Tax records indicate the lot contains approximately 10,019 square feet and the house was constructed in 1919. The property is located within the Fisher Park Historic District Overlay and Fisher Park National Register Historic District. It is also in the North Elm Street Visual Corridor Overlay District and Central Business Overlay District. The applicants propose to construct an uncovered deck along the side of the house that will encroach 1.5 feet into a

required 5 foot side setback and be 3.5 feet from the side property line. Other proposed work includes a mudroom and covered stoop addition at the rear of the house. These additions meet setback requirements. On August 29, 2018, the Historic Preservation Commission approved a Certificate of Appropriateness for the proposed uncovered deck and recommended the special exception. 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 Truby asked if there was anyone wishing to speak in favor of this matter.

Brad Crump, the applicant, was sworn in and stated that the purpose was to address a safety issue with the home. When they purchased the property, the dryer encroaches 6" into the rear entry way. They want to fix that, and also have enough space to do a mud room. They also want to have an informal dining area on the exterior of the building. As a result they want to extend 18 inches into that 5 foot setback. They have hired a draftsman to design this. The Historical Commission has approved and recommended the special exception. They have also met with the neighbors and all are in approval of the project.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward.

There being no other speakers the public hearing was closed.

Board Discussion: None

Ms. Skenes moved that in regard to **BOA-18-53, 312 Isabel Street**, that the Special Exception be approved. The Special Exception is in harmony with the general purpose and intent of this ordinance and preserves in spirit because the 18" variance will allow for expansion of outdoor living space. The side of the house already has fencing and vegetation screening to the neighbors. The granting of the Special Exception ensures the public safety and welfare and does substantial justice because the Historic Property Commission has issued a Certificate of Appropriateness deeming the deck to be in compliance with the Historic District. , seconded by Mr. Waddell. The Board voted 6-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Bowers and Skenes. Nays: None.)

OTHER BUSINESS

Shayna Thiel stated that the board is invited to attend the PlanIt GSO meeting.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Laura Blackstock was acknowledged as excused.

ADJOURNMENT

There being no further business before the Board, the meeting ended at 8:15 p.m.

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

CT/jd:pr

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
NOVEMBER 26, 2018**

The meeting of the Greensboro Board of Adjustment was held on Tuesday November 26, 2018 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present were: Chair, Chuck Truby; James Waddell; Ted Oliver; Vaughn Ramsey; Laura Blackstock; Deborah Bowers, and Mary Skenes. Representing the Planning Department staff was Shayna Thiel, Luke Carter, Mike Kirkman; and Andrew Kelly, City Attorney's Office.

Chair Truby called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the way 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. Waddell moved approval of the minutes for the October 22, 2018 meeting, seconded by Ms. Skenes. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Ramsey, Waddell, Oliver, Blackstock, Bowers and Skenes. Nays: None.)

SWEARING IN OF STAFF

Shayna Thiel, Luke Carter and Mike Kirkman, Planning Department, were sworn in for their testimony in the following cases.

CONTINUANCES/WITHDRAWALS

Shayna Thiel stated that there were no continuances requested.

OLD BUSINESS - None

NEW BUSINESS

VARIANCE

- a. **BOA-18-55: 3909 HENDERSON ROAD** Jorge Rievers requests a variance to allow a proposed sunroom to encroach 9 feet into a required 70-foot front setback. The sunroom will be 61 feet from the front property line. Zoned R-3 (Residential Single Family), Section 30-7-1-4; Cross Street – Leonard Drive **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow a proposed sunroom to encroach 9 feet into a required 70-foot front setback. The house will be 61 feet from the front property line. The subject lot is located on the south side of Henderson Road, east of Leonard Street, and is zoned R-3. Tax records indicate the lot contains approximately 23,958 square feet and the house was constructed in 1962. The applicant proposes to construct a sunroom at the front of the house that would encroach 9 feet into the required 70-foot front setback. Per the application, the proposed sunroom will be in line with and will not extend beyond the front building line of the existing porch. 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 Truby asked if there was anyone wishing to speak in favor of this matter.

John Constance, 5203 Hedrick Drive, stated that he is the contractor representing the applicant Jorge Rivers 3909 Henderson Road. Mr. Constance did confirm that Mr. Rivers was present in the audience should the Board have any specific questions for him. Mr. Constance then stated that Mr. Rivers asked his company to design the sunroom addition for his house and during the design their architect pointed out the need for a variance. Mr. Constance then noted that the hardship occurs based on the calculated setback based on the average of the two adjacent properties due to the curving of Mead Street.

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

Board Discussion:

None

Mr. Waddell moved that in regard to **BOA-18-55, 3909 Henderson Road**, based on the stated findings of fact moves that the Zoning Enforcement Officer be overruled and the variance granted based on the following: 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 sunroom could not be built without variance, compliance of the ordinance would not allow the addition to be constructed. 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 street is curved and adjacent houses all have varying setbacks. The hardship is not the result of the applicant's own actions because the residence is 56 years old and constructed before the ordinance existed. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the proposed sunroom addition will be constructed in the existing footprint and will enhance the condition of the neighborhood, seconded by Ms. Skenes. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Blackstock, Ramsey, Bowers and Skenes. Nays: None.)

- b. BOA-18-56: 703 SUSSEX COURT** Craig and Lauren Williams request two variances: 1. To allow a proposed screened porch to encroach 2.49 feet into a required 30-foot rear setback, the screened porch will be 27.51 feet from the rear property line. Section 30-7-3.2 – Table 7-1. 2. To allow a proposed garage to encroach 11.74 feet into a required 30-foot rear setback. The garage will be 18.26 feet from the rear property line. Section 30-7-3.2 – Table 7-1. Zoning R-3 (Residential Single Family) Cross Street- Westbourne Road. **(GRANTED)**

Shayna Thiel stated that the applicant requests two variances. The applicants request two variances. Variance #1: To allow a proposed screened porch to encroach 2.49 feet into a required 30-foot rear setback. The screened porch will be 27.51 feet from the rear property line. Variance #2: To allow a proposed garage to encroach 11.74 feet into a required 30-foot rear setback. The garage will be 18.26 feet from the rear property line. The cul-de-sac lot is located on the west side of Sussex Court, south of Westbourne Road, and is zoned R-3. Tax records indicate the lot contains approximately 15,246 square feet and the house was constructed in 1966. Based on the submitted site plan, the applicants propose to convert an existing deck into a screened porch using the same footprint. An uncovered deck (4 foot or less above grade) may encroach into the rear setback per the Land Development Ordinance, but an enclosed porch may not encroach without a variance. The proposed screened porch will encroach 2.49 feet into a required 30-foot rear setback. The applicants also propose to add an attached garage at the rear of the house that would encroach 11.74 feet into a required 30-foot rear 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 Truby asked if there was anyone wishing to speak in favor of this matter.

Craig Williams, 703 Sussex Court, stated that they are the homeowners. They want to construct an attached garage and there is no way to switch it around to avoid the variance. There is also an existing deck outside the back door and they want to screen in that deck and cover it.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter. There being no other speakers the public hearing was closed.

Board Discussion:

None

Mr. Ramsey moved that in regard to **BOA-18-56, 703 Sussex Court**, that the findings of fact be incorporated into the record and the Zoning Enforcement Officer be overruled and the variances granted based on the following: 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 with regard to the variance request on the screen porch the lack of the screen porch prevents the use of the rear of the applicants property. Regarding the second variance requested on the garage, the lack of the garage reduces the safety of the applicant and vehicles. The pie shaped lot is preventing the applicant from fully utilizing their property. 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 regarding the screen porch the applicant is unable to use the existing deck during the hot months of the year and the porch will provide shade to the house. Regarding the garage variance the pie shaped lot and house orientation limits the position of that garage on the property. The hardship is not the result of the applicant's own actions because, regarding both variances, the deck was already in existence when they purchased the property and no space for a garage was provided when the house was built in 1966 before the applicants purchase of the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because with regards to the porch, the screen porch will allow better use of the property, will increase the value and is consistent with other homes in the neighborhood. Regarding the garage variance, the garage will enhance the value of the property and is consistent with the other homes in the neighborhood, seconded by Ms. Skenes. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Blackstock, Bowers and Skenes. Nays: None. Abstained: Ramsey.)

- c. **BOA-18-57: 1601 YANCEYVILLE STREET** Emma Haney, on behalf of SHVF Olympic LLC, requests a variance to allow a proposed outdoor advertising sign to be installed 110 feet from a residential zoning district when a minimum 300 feet is required. Zoning LI (Light Industrial) Section 30-14-9.5(B), Cross Street – Textile Drive. (GRANTED)

Shayna Thiel stated that the applicant requests a variance to the applicant requests a variance to allow a proposed outdoor advertising sign to be installed 110 feet from a residential zoning district, when a minimum 300 feet is required. The lot is located on the north side of Yanceyville Street, at Textile Drive, and is zoned LI. Tax records indicate the lot contains approximately 668,210 square feet. The subject lot is adjacent to Revolution Mills and is considered part of the overall development but is a separate parcel with a different owner. The applicant proposes to install an outdoor advertising sign that will be 110 feet from a residential zoning district, when a minimum 300 feet is required. The LI (Light Industrial) District is primarily intended to accommodate limited manufacturing, wholesaling, warehousing, research and development, and related

commercial/service activities which in their normal operations, have little or no adverse effect upon adjoining properties. Chair Truby asked why this is considered an outdoor advertising sign. Mike Kirkman stated that the sign that is proposed is referencing activities and development not located on the premises where the proposed sign is to be located.

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

Amanda Hodierne, 804 Green Valley Road, stated that she is present on behalf of the applicant Emma Haney and SHVF Olympic LLC. Mrs. Hodeirne presented some materials to the Commissioners. She explained that the reason they are there is to request an outdoor advertising sign that would be closer to residential zoning than the LDO permits. They need additional monument signage for the second entrance into Revolution Mill on Yanceyville Street that is used as apartments, event space, art galleries, office space and restaurants. The access way on the new Textile Drive serves the kitchen and market restaurant and future developments on the south side of the property. Proper way finding and identification are important for this site. When the property for Revolution Mills was bought from Cone Mills it had been subdivided into several parcels. These properties are all held under different LLC's but operate under one parent company. They are not asking for a billboard. The proposed sign will be limited to displaying identification information for the Revolution Mill Campus and tenants only. The proposed sign will not utilize any digitized or electronic moveable copy. The proposed sign will be scaled down to keep with the existing sign at Yanceyville Street and Revolution Drive.

Mrs. Hodierne then noted this is request meets all the necessary tests for a variance. The unnecessary hardship would result from carrying out the strict letter of the zoning ordinance because the proposed sign location is the only access for the destination businesses on the Revolution Mill Campus on the south side and need to be appropriately identified to maintain vehicular safety on Yanceyville Street and optical way finding for the patrons of those businesses. The hardship does result from the conditions that are peculiar to the property mainly because the preexisting subdivision lines creating the offsite technicality and the location of the creek creates a situation that is confusing for visitors. The hardship is not the result of the applicant's own actions because all these conditions are preexisting. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit, because the result of the variance will be an entrance sign that is appropriate for the existing Revolution Mill Campus and compatible with the sign on the north entrance. It will not be a billboard. The granting of the variance assures the public safety and welfare and does substantial justice by allowing proper identification signage for destination location, mitigating the potential danger of lost vehicles making U-turns on Yanceyville Street or driving too slow looking for the right place to turn. Furthermore, businesses on the south side of the campus get the appropriate signage as they would in any other retail development. Ms. Bowers asked if all the residential structures are on the other side of Yanceyville Street. Mrs. Hodierne answered that was correct. Chair Truby asked what kind of lights will the proposed sign have. Randy Gordon, sign designer, said that the it would be lighted internally.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter. There being no other speakers the public hearing was closed.

Board Discussion:

None

Ms. Skenes moved that in regard to **BOA-18-57, 1601 Yanceyville Street**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted with the conditions presented based on the following: 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 currently

there is no signage on the south side directing patrons to parking areas, activities, and restaurants at the Revolution Mill Campus. 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 location of the Revolution Mill facility and the creek parking area is located on the interior property and not visible from the entrance and because the parcel in question is adjacent to Revolution Mill and is part of the overall development but has a different LLC owner. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the sign being requested is the same as the sign on the north entrance. Granting this variance will give consistency to the entire development and create better access allowing customers to get to the correct location, seconded by Mr. Waddell. The Board voted 7-0 to approve the variance requested. (Ayes: Truby, Waddell, Oliver, Ramsey, Skenes, Blackstock and Bowers. Nays: None)

- d. BOA-18-58: 6105 Harbor View Lane** Diane Watson requests a variance to allow the adjusted lot width of an existing lot to be 3 feet less than the required 50 foot minimum. The lot width is 47 feet. Zoning R-5 Cluster (Residential Single Family) Section 30-7-3.2 – Table 7.3 Cross Street – Starboard Drive. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow the adjusted lot width of an existing lot to be 3 feet less than the required 50 foot minimum. The lot width is 47 feet. The lot is located on the south side of Harbor View Lane, south of Starboard Drive, and is zoned R-5 Cluster. Tax records indicate the lot contains approximately 6,534 square feet and the house was constructed in 1986. The lot was developed under Guilford County regulations as a Planned Development with conditions. When annexed into the City, however, conditions were not transferrable, so the closest zoning district was assigned. The R-5 Cluster zoning district allows for R-7 dimensional requirements to be applied. Upon annexation, the 47-foot-wide lot was considered nonconforming, as it did not meet the 50-foot minimum lot width requirement under City ordinances. Along with this variance request, the applicant proposes to adjust the property line between 6105 and 6103 Harborview Lane by 33 square feet to ensure that existing structures are not crossing over property lines. The applicant wishes to address the lot width nonconformity and seeks a variance to make the lot conforming. The R-5 (Residential Single-Family) District is primarily intended to accommodate low to moderate density single-family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less. Chair Truby asked if the owner could have changed the zoning when they were annexed into the city. Mr. Kirkman said that this property came into the City as part of a large original zoning in 2008. Chair Truby also asked if a side setback variance was needed. Mr. Kirkman responded that they were going to use a zero-side setback no additional variance was needed. Mr. Oliver said he was curious about adjusting the property line between 6103 and 6105 Harbor View Road. Mike Kirkman stated that there is construction across the property line and this request was meant to address that issue.

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

Diane Watson, 6105 Harbor View Lane, stated that she is the owner of the property. When she put her house up for sale she discovered the non-conforming issue because a survey showed her neighbors had an HVAC system on their property which was removed, and they had a fence that has been removed, along with a small brick dwelling. She noted that while her house affected, there could be others affected as well. She also noted that they have been working on this issue since June and they now have a new survey using the 47 foot lot width minimums instead of the 50 foot minimums.

Donna Belhadj, 6103 Harbor View Lane, stated that she is Diane's next-door neighbor. When the city annexed the property it became not conforming. They also need a variance, so they can both have clean deeds and Ms. Watson can sell her house. Chair Truby asked if they had a survey when they first bought their house. Ms. Belhadj said no. Ms. Watson said that she also did not, as her house was left in a trust fund by her deceased

parents. Mr. Oliver asked about adjusting the property lines. Ms. Watson said that the line adjustment was needed so her lot can be conforming and can be sold. Mr. Oliver asked if the new line was a curved line. Ms. Belhadj said that the adjusted line did include a tiny triangle.

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

Board Discussion:

None

Mr. Oliver moved that in regard to **BOA-18-58, 6105 Harbor View Lane**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: If the applicant complies with the provisions of the ordinance, unnecessary hardship will not result to the property by applying strict application of the ordinance because if the variance is not granted the lot would remain non-conforming. The hardship of which the applicant complains does not result from conditions that are peculiar to the property and unique circumstances related to the applicant's property because without a variance other structures in the neighborhood would need to be moved or removed. The hardship is not the result of the applicant's own actions because the lot was non-conforming when it was annexed into the city. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the lot is 3 feet less than required and is like other lots in the neighborhood, seconded by Ms. Skenes. The Board voted 7-0 to deny the variance requested. (Ayes: Truby, Waddell, Oliver, Blackstock, Ramsey, and Skenes. Nays: Bowers.)

- e. **BOA-18-59: 6103 HARBOR VIEW LANE Aoumeur** Baelhadj and Donna Baelhadj request a variance to the adjusted lot width of an existing lot to be 3 feet less than the required 50 foot minimum. The lot width is 47 feet. Zoning R-5 Cluster (Residential Single Family) Section 30-7-3.2 – Table 7.3 Cross Street – Starboard Drive. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow the adjusted lot width of an existing lot to be 3 feet less than the required 50 foot minimum. The lot width is 47 feet. The lot is located on the south side of Harbor View Lane, south of Starboard Drive, and is zoned R-5 Cluster. Tax records indicate the lot contains approximately 6,534 square feet and the house was constructed in 1986. The lot was developed under Guilford County regulations as a Planned Development with conditions. When annexed into the City, however, conditions were not transferrable, so the closest zoning district was assigned. The R-5 Cluster zoning district allows for R-7 dimensional requirements to be applied. Upon annexation, the 47-foot-wide lot was considered nonconforming, as it did not meet the 50-foot minimum lot width requirement. Along with this variance request, the applicants propose to adjust the property line between 6103 and 6105 Harborview Lane by 33 square feet to ensure that existing structures are not crossing over property lines. The applicants wish to address the lot width nonconformity and seek a variance to make the lot conforming. The R-5 (Residential Single-Family) District is primarily intended to accommodate low to moderate density single-family detached residential development. The overall gross density in R-5 will typically be 5.0 units per acre or less.

Chair Truby asked if there was anyone wishing to speak in favor of this matter and no one came forward.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers the public hearing was closed.

Board Discussion:

None

Ms. Bowers moved that in regard to **BOA-18-59, 6103 Harbor View Lane**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 allowed the lot would remain non-conforming and application of the ordinance would prevent owners from getting clear title. 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 after annexation this previously designated planned a development house that encroached 6 inches into the neighbor's lot. The hardship is not the result of the applicant's own actions because the lot was non-conforming when annexed into the city. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the lot would only be 3 feet less than required and would be like other lots in the neighborhood, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Blackstock, Bowers and Skenes. Nays: None.)

Ms. Skenes asked staff how to make the other homeowners aware of the possibility of encroachments. Mr. Kirkman said that everything can stay as is until something triggers the need to get a variance. Ms. Skenes said there are at least 3 other properties that have encroachments and nothing to do with the lot was conforming or not and she is looking at this as a public service issue. Mike Kirkman said that until something triggers a variance it will stay the same. Chair Truby asked if it would be easier to get those neighbors to agree and rezone it PUD and apply the conditions and this problem would be solved. Mike Kirkman said that they offered that option when this first issue came up and all the applicants needed to sign the application, which was deemed to be challenging at this time.

- f. **BOA-18-60: 2312 PRINCESS ANN STREET** John and Elaine Hammer request a variance to allow an accessory structure to take utility service from a separate meter instead of branching service from the principle dwelling. Zoning R-3 (Residential Single Family) Section 30-8-11.1(G)(1), Cross Street Liberty Drive. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow an accessory structure to take utility service from a separate meter instead of branching service from the principal dwelling. The subject lot is located on the east side of Princess Ann Street, south of Liberty Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 83,200 square feet, and the house was originally constructed in 1954. Building permit #201818699 was recently issued to allow the construction of an accessory structure. Per the applicants, they propose to add a separate utility meter on the accessory structure because of the heavily wooded 150-foot separation between the principal structure and the accessory structure. Per the applicants, an existing utility pole is located along the north side property line, approximately 20 feet from the detached accessory structure. 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 Truby asked if there was anyone wishing to speak in favor of this matter.

John Hammer, 2312 Princess Ann Street, stated that he thinks this is a very simple request. They are building a storage building 150 feet from the house. The utility pole is about 20 or 30 feet from where they are building the storage building. It makes a lot more sense to pull from the utility pole that is there versus coming from the house. The reason they are building the accessory structure in this location is because when the house was built

next door in 2011 they accidentally cleared this part of their lot. He decided that he could get a cement truck back there and poured a pad in 2011 and now is building the storage building. Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers the public hearing was closed.

Board Discussion:

None

Ms. Blackstock moved that in regard to **BOA-18-60, 2312 Princess Ann Street**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 distance from the principal dwelling to the accessory building and the heavily wooded lot results in strict application of this ordinance creating unnecessary hardship. 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 fact that the accessory building is 150 feet from the principle dwelling and this is a heavily wooded lot the existing utility pole is about 20 feet from the accessory building. The hardship is not the result of the applicant's own actions because the hardship is the result of the size and shape of the lot, the heavily wooded area between the principle dwelling and the accessory building and the topography limited the buildable area. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the accessory building with electrical service will enhance the value of the property and most houses in the neighborhood have accessory buildings with electrical service, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Blackstock, Bowers and Skenes. Nays: None.)

- g. BOA-18-61: 635 GRAY WILSON ROAD** Johnnie and Gail Anderson request a variance to allow an accessory structure to take utility service from a separate meter instead of branching service from the principle dwelling. Zoning R-3 (Residential Single Family) Section 30-8-11.1(G)(1) Cross Street – South Bunker Hill Road. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow an accessory structure to take utility service from a separate meter instead of branching service from the principal dwelling. The lot is located on the east side of Gray Wilson Road, east of Bunker Hill Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 248,728 square feet, and the house was originally constructed in 1990. The applicants propose to install a separate utility meter on an existing accessory structure. Per the applicants, the breaker panel in the house does not have adequate space to provide 80 amps necessary to operate machinery in the accessory structure. The applicants also indicated that running a line from the existing meter at the house over 100 feet away would require the disturbance of a concrete walkway, slab and septic field. 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 Truby asked if there was anyone wishing to speak in favor of this matter.

Johnnie Anderson, 635 Gray Wilson Road, stated that he was just trying to get electricity in his barn without creating issues with the rest of his property.

Drew Money, stated that he was the electrical contractor for Mr. Anderson.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers the public hearing was closed.

Board Discussion:

None

Mr. Truby moved that in regard to **BOA-18-61, 635 Gray Wilson Road**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 without a separate meter a new line would have to be buried over a 100 feet distance. 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 panel at the house does not have enough capacity to handle the equipment that would be placed in a shop building. The hardship is not the result of the applicant's own actions because the existing panel on the house is not large enough. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the new meter will not be seen by the neighbors and is the safest way to supply power to the shop building, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Blackstock, Bowers and Skenes. Nays: None.)

- h. BOA-18-62: 3404 WHITEHURST ROAD** Charles Winfree, on behalf of Kotis Holdings, LLC, requests three variances: 1. To allow a proposed special events facility to provide direct vehicular access to a sub-collector street, when direct vehicular access to a thoroughfare or collector street is required. Section 30-8-10.4(P)(2). 2. To allow parking areas associated with a proposed special events facility to encroach 43.4 feet into a required 50-foot setback from residentially zoned or used property. The parking areas will be 6.6 feet from residentially zoned or used property. Section 30-8-10.4(P)(4). 3. To allow outdoor seating areas of a proposed special events facility to be located 60.6 feet from residentially zoned property, when 100 feet is required. Section 30-8-10.4(P)(5)/ Zoning C-H (Commercial - High, Cross Street – Westridge Road. **(GRANTED)**)

Shayna Thiel stated that the applicant requests three variances: Variance #1: To allow a proposed special events facility to provide direct vehicular access to a sub-collector street, when direct vehicular access to a thoroughfare or collector street is required. Variance #2: To allow parking areas associated with a proposed special events facility to encroach 43.4 feet into a required 50-foot setback from residentially zoned or used property. The parking areas will be 6.6 feet from residentially zoned or used property. Variance #3: To allow outdoor seating areas of a proposed special events facility to be located 60.6 feet from residentially zoned property, when 100 feet is required. The lot is located on the north side of Whitehurst Road, west of Westridge Road, and is zoned C-H. Tax records indicate the lot contains approximately 99,317 square feet and the building was constructed in 2002. The applicant proposes to convert the existing building on the property, which was formerly used as a restaurant, into a special events facility. Per the Land Development Ordinance, special events facilities must comply with additional use requirements related to direct vehicular access and distances of parking areas and outdoor seating areas to residentially zoned property. The C-H (Commercial-High) District is 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 other 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. Skenes asked how we got to the conclusion of a special events center. Mr. Kirkman said that based on information provided by the

applicant a special events facility was the most appropriate classification. Ms. Skenes said she thought an events center was going to be like the coliseum, but this request was more like a restaurant.

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

Charles Winfree, 100 S. Elm Street on behalf of Kotis Holdings LLC and Painted Plate, stated that this would be an event for weddings, bar mitzvah parties, and the like and not large events. Calling this an event facility it would be considered for large events like sports events etc. This was the closest fit staff could come up with what this could be used for. Ms. Skenes asked about if being called a special event center was why they were here. Mr. Winfree said that is correct. His client bought this property about two or three years ago. Newbridge Bank and other people had it before and had various uses. They are trying to improve the property for this part of town. They are not changing the footprint of the existing building at all nor are they intending to change the parking or other amenities. They just want to have catered events and painted plates. Mr. Winfree noted that are three problems. One is the requirement of the parking to be 50 feet from residential areas, and the road itself is residentially zoned. The next issue is with the small patios on the side of the building and outdoor setting can't be within 100 feet of residential use. The third issue is the requirement that special event centers be on a major thoroughfare or connector. Under the current ordinance these items can't be met and that's why the applicant is asking for the variances. Mr. Winfree noted that these hardships don't arise from anything the applicant intends to do and this is in keeping with the development plan in the area.

Brad Zim, representing Painted Plate, stated that they have been in existence for 25 years and is currently the president of painted plate. He noted that they are not changing anything to the existing site other than the use. They had a meeting inviting the neighbors to come and talk about what they are doing and the neighbors were more concerned about it becoming a restaurant or bar again. Mr. Zim noted that the space would be available until midnight and they would have about 100 employees both part time and full time.

Mr. Ramsey asked if the outdoor seating is already in existence. Mr. Zim responded that the outdoor seating area is about 10 or 11 feet wide and he has made them a little smaller because the riser for the sprinkler system is there. He added that in the current plan the sound system did not include the patio area. Ms. Bowers asked if they were increasing parking spaces. Mr. Zim said they would not be changing the parking spaces and there are about 140 parking spaces. He also noted that many of his patrons come in a bus or shuttle or more than one person per car. Ms. Bowers will there be other parking off Whitehurst other than going toward the shopping center area. Mr. Zim responded that there are two driveways that both exit onto Whitehurst and their drive is really close to the building. Mr. Waddell asked about the seating capacity. Mr. Zim said that the seating charts he shows has about 170 in the downstairs area. He doesn't plan on putting any permanent barriers in the space that would allow two people to rent spaces at the same time.

Marty Kotis, stated that it does feel like it needs to be a different classification for a catering headquarters. This is an operation operating out of and hoping to cater the event themselves. Ms. Skenes asked about vehicular access, thinking that if it was fine when it was a restaurant, it should be fine if it becomes a special event center since there will be fewer cars than it was when it was a restaurant. Mr. Winfree said that is correct and there will be fewer cars with it being a special event center.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers the public hearing was closed.

Board Discussion:

Chair Truby said they are not changing anything. Bars are subject to a special standards and the previous use was a sports bar. Mr. Kirkman did clarify that the previous use was a restaurant with accessory bar area. Ms. Bowers said she thinks this a good use.

Ms. Bowers moved that in regard to **BOA-18-62, 3404 Whitehurst Road** that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variances granted based on the following: 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 facility can be used for catering without the variance. 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 Whitehurst Road is considered Residential and the desired use of the property would be a different use. The hardship is not the result of the applicant's own actions because the restaurant was there before the applicant purchased the property and can't change the street access. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because allowing for the proposed variance and development of property would be an asset to the area and the potential traffic will be less than the previous restaurant, seconded by Ms. Skenes. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Blackstock, Bowers and Skenes. Nays: None.)

- i. **18- 63: 904 DOVER ROAD** Marc Isaacson, on behalf of Gregory and Jacqueline Plemmons, requests a variance to allow a proposed carport to encroach 3 feet into a required 10-foot side setback. The carport will be 7 feet from the side property line. Zoning R-3 (Residential Single Family), Section 30-7-3.2 – Table 7.1 – Cross Street - Blair Street. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow a proposed carport to encroach 3 feet into a required 10-foot side setback. The carport will be 7 feet from the side property line. The lot is located on the north side of Dover Road, west of Nottingham Road, and is zoned R-3. Tax records indicate the lot contains approximately 22,651 square feet and the house was constructed in 1954. The applicants propose to construct a carport along the side of the house that will encroach 3 feet into a required 10-foot side setback and be 7 feet from the side property line. Per the application, the proposed carport will align with the existing driveway. The applicants also propose to construct a garage at the front of the house. Based on preliminary information, the garage will meet setback requirements and is not subject to this variance request. 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 Truby asked if there was anyone wishing to speak in favor of this matter.

Marc Isaacson, 804 Green Valley Road, stated that he had some materials for the Board members to review. He is here on behalf of the property owners Gregory and Jacqueline Plemmons. They want to request the side setback variance from the required 10 feet to put an attached car port onto the lot. Mr. Isaacson noted that on the first page of his materials the survey of the property and then the proposed carport. There are also architectural plans in the packet on pages two and three. This is a remodeling project with an attached carport at the end of the existing driveway. Mr. Isaacson then noted the stakes at the beginning of the driveway and it encroaches into the side setback already. He also noted that adjoining homes all have an attached carport. Letters were sent out about the carport and no one complained about it. Mr. Isaacson reviewed the variance tests under the ordinance. If the applicant complies with the provision of the ordinance unnecessary hardship would result from strict application of the ordinance as the owners would be precluded from adding a carport to their home. The hardship results from the peculiar conditions of the property such as location size or

topography in that the proposed carport would be at the end of the existing driveway. Hardship results from the application of the ordinance that requires a standard side setback that would preclude the existence of the proposed carport. The hardship is not the results of the applicant own actions in that the proposed carport would be located at the end of an existing driveway which is located in the side setback already and which of was in place when the owners acquired this property.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers the public hearing was closed.

Board Discussion:

None

Chair Truby moved that in regard to **BOA-18-63, 904 Dover Road**, that the findings of fact be incorporated into the record and the Zoning Enforcement Officer be overruled and the variance granted based on the following: 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 applicant are renovating their home and plan to build a carport on the side of the home at the end of the driveway. 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 very narrow for this area with the existing residence. The existing driveway will remain and determines the location of the proposed carport. The hardship is not the result of the applicant's own actions because the applicants acquired the home in 2018. The dimensions, structure and driveway location are fixed in place. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the proposed carport will serve as a drop zone for the home and will provide a safe covered entrance to the home, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Blackstock, Bowers and Skenes. Nays: None.)

- j. **BOA-18-64 915 ENGLEWOOD STREET** (formerly known at 2010 SPRING GARDEN STREET) Amanda Hodierna, on behalf of Nazarene Fellowship LLC requests a variance to allow a proposed multifamily dwelling to encroach 14.48 feet into a required 20 foot side yard setback. The multifamily dwelling will be 5.52 feet from the side property line. Zoning RM-18 (Residential Multifamily) Section 30-7-3.2(J)(a)(i) – Cross street – Spring Garden Street. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow a proposed multifamily dwelling to encroach 14.48 feet into a required 20-foot side yard setback. The multifamily dwelling will be 5.52 feet from the side property line. The lot is located on the east side of Englewood Street, north of Spring Garden Street, and is zoned RM-18. Tax records indicate the lot contains approximately 11,326 square feet and the building was constructed in 1960. The applicant proposes to convert the existing building on the property, formerly used as a church, to multifamily dwelling units. The existing building is considered a nonconforming structure because it encroaches into a 25-foot required side setback for nonresidential development. When converted into multifamily dwellings, the existing building encroaches 14.48 feet into a required 20-foot side yard setback. The RM-18 (Residential Multifamily) District is primarily intended to accommodate multi-family and other residential uses at a density of 18.0 units per acre or less.

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

Amanda Hodierna, presented some materials to the Boar and noted this property was a church built in 1960 but was vacated some years ago and sat empty until her clients bought it. They have created a plan to turn this into a four-unit apartment building. She noted that the property is properly zoned for this proposed use but the obstacle they are having is the side setback. The setback is a preexisting condition and would apply to this

structure even if it would continue to be used as a church it would require 25-foot side yard setback, so it has been existing as a legal non-conforming for quite some time. The building was grandfathered in before setbacks were required. With the change of use to multi-family the side setback goes down to 20 feet and the grandfather status is lost. 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 appropriate reuse of the structure would not be able to be made. The structure does not meet today's side yard setback requirements for any type of use. So, if held to the strict letter of the law it would have to remain a church and operate under its grandfathered nonconforming status. This is not realistic as they see the church is not operating anymore. The building is a small building and doesn't meet the needs of a modern congregation. Any expansion or rebuild after casualty would trigger the loss of the grandfather status and that makes a long-term prospect here unlikely. The hardship results from conditions that are peculiar to the property since the dimensional deficiency is preexisting. The structure was sited in 1960 and is non-compliant with today's modern regulations. The hardship results from the application of the ordinance of the property because the code section sets out a minimum side yard setback for multi-family uses adjacent to a single-family dwelling. Without this provision the change of use permit would already be approved and building permits would have already been issued. This hardship is not the result of the property owners own actions because they did not created the lot, which was done in 1904 on lot or the existing structure built in 1960 long before the clients bought the property this year. This variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the proposed this is the request that remains the status quo. The house has been there since 1938. There is a buffer that will not be touched. The property owner next door was happy to see something being done with this property. Mr. Oliver asked if it was a two-story building now. She said yes, it is.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers the public hearing was closed.

Board Discussion:

None

Mr. Truby moved that in regard to **BOA-18-64, 915 Englewood Street**, that the findings of fact be incorporated into the record and the Zoning Enforcement Officer be overruled and the variance granted based on the following: If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because it would preclude the property owner from making adaptive reuse of the property and structure. 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 they plan to use the existing building with no change to the structure. The new LDO created a 20-foot side yard and does not have provisions for existing buildings that are converted for a multi-family use. The hardship is not the result of the applicant's own actions because the property owner did not build the structure which was built in 1960. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the building is currently vacant and granting the variance will provide for the highest and best use of the property, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Blackstock, Bowers and Skenes. Nays: None.)

- k. **BOA-18-65: 106 ELMWOOD TERRACE** Amanda Hodiernne, on behalf of Philip and Elizabeth Payonk, requests two variances: 1. To allow a proposed detached accessory garage to encroach 7 feet into a require 10-foot side setback. The detached accessory garage will be 3 feet from the side property

line. Section 30-8-11.1) C) (2). 2. To allow a proposed detached accessory garage to encroach 5 feet into a required 10-foot rear setback. The detached accessory garage will be 5 feet from the rear property line. Section 30-8-11.1C) (2) Zoning R-3 (Residential Single Family) Cross Street- Rockford Road. **(GRANTED)**

Shayna Thiel stated that the applicants request two variances. Variance #1: To allow a proposed detached accessory garage to encroach 7 feet into a required 10-foot side setback. The detached accessory garage will be 3 feet from the side property line. Variance #2: To allow a proposed detached accessory garage to encroach 5 feet into a required 10-foot rear setback. The detached accessory garage will be 5 feet from the rear property line. The lot is located on the north side of Elmwood Terrace, east of Rockford Road, and is zoned R-3. Tax records indicate the lot contains approximately 19,166 square feet and the house was constructed in 1965. The applicants propose to construct a detached accessory garage approximately 20 feet tall in their back yard. It will encroach 7 feet into a required 10-foot side setback and be 3 feet from the side property line. The proposed detached accessory garage will also encroach 5 feet into a required 10-foot rear setback and be 5 feet from the rear property line. Per the application, the proposed detached accessory garage will align with the existing driveway and will not encroach into an existing utility easement along the rear property line. 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 Truby asked if there was anyone wishing to speak in favor of this matter.

Amanda Hodiern, 804 Green Valley Road, stated that she was there on behalf of Phillip and Elizabeth Payonk. They are the property owners who intend to live in this home. The request is to accommodate the construction of the new garage structure in place of a carport. The parents live in this neighborhood and the owners are currently upgrading this house to meet their family needs. The reason for the variance is the garage structure will be over 15 feet in height. At 20 feet high the code states that it must be at least 10 feet from the rear and side property lines. The extra 5 feet of height creates this added step in their renovation project. It was an important 5 feet to them as they needed an extra bonus space. With their family of 5 the primary structure is fully utilized. The garage structure is designed to create a space that is truly a bonus room above the garage. The detached carport is really a hallmark of this neighborhood and the carport was common place at the time when the house was built in 1960. They can maintain the character of the home. The proposed building pad is the same as the existing location. The current carport sets 2 feet off the rear property line and encroaches into a utility easement of the city that runs back almost 5 feet. The proposed garage will be moved out of that easement and the side yard setback will be the same. This is to match up with the driveway as it currently fits. This meets the variance test.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers the public hearing was closed.

Board Discussion:

None

Mr. Ramsey moved that in regard to **BOA-18-65, 106 Elmwood Terrace**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 with regard to the rear and side variance strict application would keep the applicant from upgrading to a more feasible garage that allots an existing driveway on obtaining yard space allowing vehicles to safely return. 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 in connection with remodeling the existing home, applicant's construction of a new garage without a variance would otherwise take away from the back yard and prevent use of the driveway and is consistent with the home renovation project. The hardship is not the result of the applicant's own actions because the current setup with the garage on the property predates the applicants' purchase of the home. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the variance will increase the value of the property and is consistent with other homes in the neighborhood, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Blackstock, Bowers and Skenes. Nays: None.)

- I. **BOA-18-66: 2211 OAK HILL DRIVE Raymond and Sharon Comer** request a variance to allow a proposed addition to encroach 16.1 feet into a required 79-foot front setback. The addition will be 62.9 feet from the front property line. Zoning R-3, Residential Single Family) Section 39-7-1.4, Cross Street- Lawndale Drive. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a proposed addition to encroach 16.1 feet into a required 79-foot front setback. The house will be 62.9 feet from the front property line. The subject lot is located on the south side of Oak Hill Drive, west of Lawndale Drive, and is zoned R-3. Tax records indicate the lot contains approximately 20,909 square feet and the house was constructed in 1953.

The applicants propose to construct an addition at the right front corner of the existing house that will encroach 16.1 feet into a required 79-foot front setback and be 62.9 feet from the front property line. 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 Truby asked if there was anyone wishing to speak in favor of this matter.

Donnie Roberson stated that he is the contractor hired by the applicant, Mr. Comer, who was also in attendance at the meeting. Mr. Comer noted that he wants to construct a master bathroom that will be handicap accessible off his master bedroom. Mr. Roberson added that he thinks that the curving of the road is what is prohibiting them from meeting the required setbacks.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter and no one came forward. There being no other speakers the public hearing was closed.

Board Discussion

Ms. Skenes noted that this was like other average front setback they have approved before and even with the variance granted he will still be 62 feet from the property line and its zoned R-3. Generally in R-3 most of the setbacks are 25 feet. Mike Kirkman said yes that was correct. Ms. Skenes then surmised that the applicant will be well within the standard setback and she doesn't see a problem and there is a huge curve in the road that he mentioned where the house is situated so it really throws off trying to get dimensional numbers and she sees no problem at all.

Mr. Waddell moved that in regard to **BOA-18-66 2211 Oak Hill Drive**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance granted based on the following: 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 addition cannot be built without a variance and the addition would make the space more livable and would increase the property value. 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 layout of the existing property dictates the location of the proposed addition. The hardship is not the result of the applicant's own actions because the configuration of the property limits the feasibility for any additions. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the addition will not create any safety issues and the fact that it will be handicap accessible, seconded by Mr. Waddell. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Skenes, Waddell, Oliver, Ramsey, Blackstock, Bowers and Skenes. Nays: None.)

OTHER BUSINESS

Mike Kirkman wanted to let the Commission know that next month's meeting will be on December 17th. Also the 2019 meeting schedule is in their folders.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Laura Blackstock was acknowledged as excused.

ADJOURNMENT

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

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

CT/jd:pr

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
DECEMBER 17, 2018**

The meeting of the Greensboro Board of Adjustment was held on Monday December 17th, 2018 at 5:30 p.m. in the Plaza Level Conference Room of the Melvin Municipal Office Building. Board members present were: Chair, Chuck Truby; James Waddell; Ted Oliver; Vaughn Ramsey; Laura Blackstock; and Mary Skenes. Representing the Planning Department were Shayna Thiel and Steve Galanti; and Andrew Kelly, City Attorney's Office.

Chair Truby called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the way 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

The November meeting minutes were not ready at the time. They will bring them up at the January meeting.

SWEARING IN OF STAFF

Shayna Thiel and Steve Galanti, Planning Department, were sworn in for their testimony in the following cases.

CONTINUANCES/WITHDRAWALS

Shayna Thiel stated that the applicant for BOA-18-67 has requested a continuance.

OLD BUSINESS

None

NEW BUSINESS

VARIANCE

- a. **BOA-18-67: 2107 Granville Road** James B. Wolfe III, on behalf of Wolfe Construction Inc, request a variance to allow a proposed house to encroach 54.6 feet into a required 54.6-foot front setback. The house will also be 30 feet from the front property line. Zoning R-3 (Residential Single-Family); Section 30-7-1.4(A)(1)(b); cross street – Kimberly Drive. **(Continued to January meeting)**

Mr. Ramsey moved that **BOA-18-67, 2107 Granville Road**, be continued until the January meeting, seconded by Mr. Waddell. The Board voted 6-0 in favor. (Ayes: Truby, Skenes, Blackstock, Waddell, Ramsey and Oliver. Mays: None)

- b. **BOA-18-68: 900 Courtland Street** Adam and Melissa Tarleton request a variance to allow an existing fence located within 15 feet of the right-of-way to exceed the maximum 4-foot height requirement by 4.5 feet. The fence is 8.5 feet tall, as measured from the grade at street level. Zoning R-5 (Residential Single-Family); Section 30-9-4.6 (A) Cross Street – Crestland Avenue. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow an existing fence located within 15 feet of the right-of-way to exceed the maximum 4-foot height requirement by 4.5 feet. The fence is 8.5 feet tall, as measured from the grade at street level. The corner lot is located on the west side of Courtland Street, at the intersection of Crestland Avenue is zoned R-5. Tax records indicate the lot contains approximately 10,019 square feet and the house was constructed in 1921. On August 23, 2018, the applicants were issued a notice of violation for installing a fence that (1) exceeded 4 feet in height within 15 feet of any right-of-way and (2) was located within the public right-of-way. The applicants have since relocated the fence outside of the public right-of-way and seek a variance to allow the fence to remain and exceed the maximum 4-foot height requirement by 4.5 feet. The fence is 8.5 feet tall, as measured from the grade at street level. The R-5 (Residential Single-Family) District is primarily intended to accommodate low density single-family detached residential development. Overall gross density in R-5 will typically be 5.0 units per acre or less.

Chair Truby asked if the notice of violation came from a neighbor or if it was staff initiated. Steve Galanti stated that they typically are complaint-driven.

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

Adam Tarleton, 900 Courtland Street, stated that he and his wife purchased this house in March 2017. It was built in 1921, they are the third owners of the property. His neighbor, Rebecca Olmsten, from across the street was in attendance to support the request. When they purchased it, the house was pretty much falling down. They took it down to the studs and redid the wiring, plumbing, and HVAC from March to October 2017. They learned that the rear of the house is graded downward, which resulted in substantial water damage to the foundation in the back and the west side of the house. They installed a 3-foot retaining wall about 10 feet from the rear of the house and graded that area. In October 2017, they constructed a fence that matched the height of the fence that had been at the house for a number of years. It was a six-foot privacy fence along the Crestland Avenue side. The fence they built encroached on the right-of-way about 7 or 8 feet. They realized that when they received the notification in August 2018 and moved the fenced outside the city right-of-way. They also discovered when they got the notification that you can't have a fence taller than 4 feet within 15 feet of the right-of-way. The issue they encountered about reducing the fence to 4 feet is because of the grade of the house and the location of the retaining wall. If they put a 4-foot fence half way up that grade it would only be 2 to 3 feet above the height at the top of the yard and their two dogs could hop right over the fence. There are other fences in the neighborhood that are taller than 4 feet. Ms. Skenes asked him if the fence in the rear yard was his fence or the neighbor's. He stated that is their fence and is about 8 feet from the edge of the lot. They have two lots, including the tiny sliver at the back that has a different address.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter. There being no other speakers the public hearing was closed.

Board Discussion:

Mr. Ramsey stated that the applicants were victims of their circumstances. They had to build this retaining wall in order to protect the foundation from rotting away again and the topography creates a fence that is virtuously useless if he had to build it to the required height. Ms. Skenes said that it is because of the slope, we are measuring it from the base of the fence, but because they are measuring from the street and there is a 15-foot driveway, then it's because it is sitting on top of a hill. Mr. Truby stated that being on a corner lot also causes some problems.

Mr. Ramsey moved that in regard to **BOA-18-68, 900 Courtland Street**, that the findings of fact be incorporated into the record and the Zoning Enforcement Officer be overruled and the variances granted based on the following: 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 unique topography of the lot and the existing retaining wall will allow pets to jump the fence and effectively eliminate any privacy being afforded by a fence. 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 rear part of the lot sloped toward the house and requires a drainage wall to protect foundation. A 4-foot fence on the steep grade would have an effective height of approximately 3 feet and the fence can't be moved because the retaining wall and existing right-of-way. The hardship is not the result of the applicant's own actions because of the unique topography of the lot. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the effects will be consistent with existing neighborhood as there are numerous nearby fences. The Board voted 6-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Blackstock, Ramsey, and Skenes. Nays: None).

- c. **BOA-18-69: 3500 Dogwood Drive** Christopher and Dana Vaughn request a variance to allow an addition to encroach 2.6 feet into a required 10 feet side setback. The addition will be 7.4 feet from the side property line. Zoning R-3 (Residential Single-Family); Section 30-7-3.2 – Table 1; Cross Street – Beverly Place. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a proposed addition to encroach 2.6 feet into a required 10-foot side setback. The addition will be 7.4 feet from the side property line. The lot is located on the north side of Dogwood Drive, west of Beverly Place, and is zoned R-3. Tax records indicate the lot contains approximately 12,632 square feet and the house was constructed in 1952. The existing house is considered a nonconforming structure as it encroaches 2.6 feet into a required 10-foot side setback from the eastern side property line. The applicants propose to construct an addition along the rear and side of the house that will encroach 2.6 feet into the same required 10-foot side setback. Per the application, the proposed addition will align with the existing building line and be 7.4 feet from the eastern side property line. As shown on the submitted site plan, the applicants also propose to construct other additions to the existing house. Based on preliminary information, the additions will meet setback requirements and are not subject to this variance request. 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 Truby asked if there was anyone wishing to speak in favor of this matter.

Christopher Vaughn, 3500 Dogwood Drive, stated that he had some exhibits to show to the Board members. He stated that the staff did a great job. The requested variance is for 2.6 feet. The house was built in 1952. At that time, they had a 73-foot lot and they built the house 7.4 feet from the east boundary line. All bedrooms are along the east hall of the house. They want to add another bedroom and bathroom. They need to encroach in the setback to put the bedroom and bathroom on the east side of the house. They bought the house in 1999 and discussed the renovations for a long time. On October 1, 2018, a tree took out the roof in the den, so now the time to remodel. He is sure the house complied with the setbacks in 1952 when it was built. They are not doing anything on the front of the house. They are not building anything that would affect the side lines for public safety. A lot of these houses were post-war houses and they were all ranches, but none of them are ranch houses today. So, the neighborhood has really grown through the years. The neighbor behind him has done an expansion just like they are wanting this variance to do. The neighbor to the east has also expanded their house. Around the time of this application request, he spoke to all his neighbors and none of them had a problem with it. There is a letter from his neighbor to the east who shares the common

boundary line, and she has no problem with the request. There is also a letter from the neighbor behind him stating that he has no problem either.

Chair Truby asked if there was anyone wishing to speak in opposition to this matter. There being no other speakers the public hearing was closed.

Board Discussion:

None

Ms. Skenes moved that in regard to **BOA-18-69, 3500 Dogwood Drive**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variance based on the following: 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 addition cannot be built in line with the existing house which is already too close to the side setback. 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 house was built in 1952, and is a non-conforming structure that encroaches 2.6 feet into the 10-foot side setback. The addition will be in line with the existing house and match the existing interior configuration. The hardship is not the result of the applicant's own actions because the house was built in 1952 and is non-conforming structure. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because by granting the variance the addition will be done in line with the existing house and create conformity, seconded by Mr. Waddell. The Board voted 6-0 to approve the variance requested. (Ayes: Truby, Waddell, Oliver, Ramsey, Skenes, and Blackstock. Nays: None)

- d. **BOA-18-70: 1105 Kindley Court** Michael Pawlak, Tulasi Kimbrough, and Anne Wells request three variances. (1) To allow an existing accessory structure that is not subordinate to the principal structure in height. The accessory structure is 21.25 feet tall, when the principal structure is 14.5 feet tall. Section 30-18-11.1 (A)(2) **(GRANTED)**. (2) To allow the building coverage of an existing accessory to exceed the maximum allowed by 568 square feet. The accessory structure is 1,198 square feet when the maximum allowed is 630 square feet (50% of principle structure building coverage) Section 30-8-11-1(A)(3). **(GRANTED)**. (3) To allow an existing accessory structure to encroach 6.81 feet into a required 10-foot rear setback. The accessory structure is 3.19 feet from the rear property line. Section 30-8.11.1(C)(2). **(GRANTED)**

Shayna Thiel stated that the applicants request three variances. Variance #1: To allow an existing accessory structure that is not subordinate to the principal structure in height. The accessory structure is 21.25 feet tall, when the principal structure is 14.5 feet tall. Variance #2: To allow the building coverage of an existing accessory structure to exceed the maximum allowed by 568 square feet. The accessory structure is 1,198 square feet when the maximum allowed is 630 square feet (50% of principal structure building coverage). Variance #3: To allow an existing accessory structure to encroach 6.81 feet into a required 10-foot rear setback. The accessory structure is 3.19 feet from the rear property line. The lot is located on the south side of Kindley Court, west of Kindley Street, and is zoned R-5. Tax records indicate the lot contains approximately 13,068 square feet and the house was constructed in 1962. The existing 1,198 square foot accessory structure in the rear yard is a nonconforming structure because: (1) it is not subordinate to the principal structure in height; (2) it exceeds the maximum allowed building coverage; and (3) it encroaches into the required 10-foot rear setback. The accessory structure is 21.25 feet tall, when the principal structure is 14.5 feet tall. With an area of 1,198 square feet, the accessory structure exceeds the maximum allowed 630 square feet (50% of principal structure building coverage) by 598 square feet. The accessory structure encroaches 6.81 feet into a required 10-foot rear setback and is 3.19 feet from the rear property line. The applicants wish to address these nonconformities to be able to sell the subject property. The existing accessory structure also encroached into a 10-foot easement along the

rear property line, but the Planning Board approved an easement release on November 16, 2018. Per the applicant, the smaller existing storage building shown on the submitted survey will be removed.

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

Robert Brown, attorney for applicant, 445 Dolley Madison Road, stated that he was going to let Ms. Zina explain how they got here.

Vicki Zina, realtor, 1501 Highwoods Blvd, Suite 400, stated that she was contacted by the applicants to be their listing agent. Once they sign the agreement, she got an appraisal and started on her checklist. She went and looked on the tax records and all she could find was a 400 square foot outbuilding. So, they listed it, but in the listing she stated that there was no permit on record in the City of Greensboro. She contacted Henry Allen Miller, a contractor, and asked if it could be permitted, moved, or down-sized. He contacted the City of Greensboro and he was told that if it met setback requirements it would be a legal non-conforming use. They had a survey prepared that showed that the accessory structure did not meet setback requirements. She went to Andy Lester at the City of Greensboro, who indicated that it would be a legal non-conforming since it was built a long time ago. She asked him to research all that and she sent him an email answering the questions from the buyers. Andy Lester got a response back from Mike Kirkman, Zoning Administrator, that because the setback requirement was in place from the very beginning, the accessory structure was illegal to begin with.

Mr. Brown stated that the house was built in 1952. He said that Ms. Zina is very diligent when she goes to list a property and she has done a lot of work trying to fix this situation. She has tried to find out when this out building was built on this property. Despite numerous calls to the prior owner, who bought it in 1970 and sold it in 2009, Ms. Zina has been unable to get in touch with them. She has pulled serial numbers off meters and sent those to manufacturers trying to get a date and can't get any information that way either. Shayna Thiel pulled the ordinances from 1961, and there is a little bit of a difference on the setback. There are three variance requests. One relates to the accessory structure height. The height is 21.25 feet, which is higher than the house itself. The accessory structure is on stilts because the property behind the house slopes down toward I-40. So, taking the measurement from the ground at the center point of the accessory structure the highest point of the roof is 21.25 feet, but also that is almost 7 feet off the ground. So, had the property been leveled at that point, they wouldn't have this problem. Per the 1961 ordinance, an accessory structure under 15-foot-high, which in this case would be but for the fact that it slopes down, the setback would only be 3 feet. If this house had been an average house, which is 2,660 square feet according to the US Census, this accessory structure would not be a problem. This is a much smaller house, and as a result the ordinance doesn't apply to this property and creates this hardship. The location is the last problem. In 1961, it was in conforming at that point. The shape of the lot is triangular, with a narrow section up toward the street. The house couldn't be pushed up any further without violating the side setback. There is just not that much room in the back. The property behind it is all woods and abuts I-40. Decreasing the size or moving it is not an option. This brings the applicants to demolition, and Vicki has gotten some estimates. Simply tearing down that structure, if there is no asbestos, would cost \$4,777. If asbestos was found, the price would sky rocket. Additionally, removing the accessory structure would reduce the property value \$15,000, which is 23% of the state tax value of that property. The applicants (owners) received the property from their parents. The house was occupied in 2009 until a few months ago, when it was put on the market. The accessory structure consists of two rooms, one of them was a sound studio, with large speakers and wiring. The majority of the accessory structure was a wood working hobby shop, with doors about 60 to 70 inches wide. Many people have been interested in the property, but they want the structure to remain on the property. The problem is from a legal aspect. When Mr. Brown certifies title to the insurance company, banks require the owner to have a title insurance policy and that policy will not get issued if there is an illegal non-conforming use on the property.

The accessory structure has been on the property for decades and nobody has complained. The applicants just need the variance so they can sell the property. The property is a few hundred yards south of the 220/I-40 interchange. If anything, having a large structure in the back blocks some of the sound from that very intersection of I-40. Mr. Oliver asked if the home was on the market now. Mr. Brown said it was on the market for one month, but when Ms. Zina discovered this problem, she pulled it off the market to get through this process. Ms. Zina said she has four buyers waiting right now to see how this plays out before proceeding with any sales.

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

Board Discussion:

None

Mr. Waddell moved that in regard to **BOA-18-70, 1105 Kindley Court**, that the findings of fact be incorporated into the record and the Enforcement Officer be overruled and the variances number one, two, and three be granted based on the following: If the applicant complies with the provisions of the ordinance, unnecessary hardship will not result to the property by applying strict application of the ordinance because it is not possible to modify or move the workshop in order to make it conform and the cost of demolition can be very high, if other issues are discovered. If the ordinance is applied, demolition will be the only option. 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 any useful workshop would exceed limits due to the size of the property and the resulting home. The house could not be moved without violating setbacks or hardship because of the location of the workshop and the lot size/shape. The hardship is not the result of the applicant's own actions because the owner obtained the property in 2009 and was originally built in 1962. The exact construction date of the workshop has been unable to be determined. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the owners are conducting due diligence to rectify the issues without causing destruction of a key component of the property. The building has not produced any issues in the community, seconded by Ms. Blackstock. The Board voted 6-0 to approve the variance requested. (Ayes: Truby, Waddell, Oliver, Blackstock, Ramsey, and Skenes. Nays: None).

OTHER BUSINESS

The next meeting will be January 28, 2019.

ACKNOWLEDGEMENT OF ABSENCES

Deborah Bowers

ADJOURNMENT

There being no further business before the Board, the meeting ended at 6:57 p.m.

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

CT/jd:pr