

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
JANUARY 28, 2019**

The meeting of the Greensboro Board of Adjustment was held on Monday, January 28, 2019 in the Plaza Level Conference Room of the Melvin Municipal Office Building. Board members present were: Chair, Chuck Truby, James Waddell, Ted Oliver, Deborah Bowers, Leah Necas and Mary Skenes. Representing the Planning Department staff was Shayna Thiel, Mike Kirkman, and Andrew Kelly and Terri Jones, 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

November 26, 2018 Minutes and December 17, 2018 Minutes

Shayna Thiel stated that the November minutes should reflect that Laura Blackstock was in attendance.

Ms. Skenes moved approval of the November and December 2018 minutes, with the correction noted, seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Oliver, Waddell, Bowers and Necas. Nays: None.)

SWEARING IN OF STAFF

Shayna Thiel, Mike Kirkman, Mike Cowhig, Stefan-leih Geary, Planning Department, were sworn in for their testimony in the following cases.

CONTINUANCES/WITHDRAWALS: NONE

OLD BUSINESS: NONE

NEW BUSINESS

VARIANCE

- a. **BOA-18-54: 3400 REGENTS PARK LANE** Marie Coggins requests two variances. 1. To allow a proposed addition to encroach 20 feet into a required 30 foot rear setback. The addition will be 10 feet from the rear property line. Section 30-7-3.2 – Table 7-1. 2. To allow a proposed addition to encroach 11 feet into a required 15 foot side street setback. The addition will be 4 feet from the side property line. Section 30-7-3.2 – Table 7-1. Zoning R-3 (Residential Single-Family); Cross Street – Great Castle Court. **(GRANTED)**

Shayna Thiel stated that the applicant requests two variances. Variance #1: To allow a proposed addition to encroach 20 feet into a required 30 foot rear setback. The addition will be 10 feet from the rear property line. Variance #2: To allow a proposed addition to encroach 11 feet into a required 15 foot side street setback. The addition will be 4 feet from the side property line. The corner lot is located on the north side of Regents Park Lane, at the intersection of Great Castle Court, and is zoned R-3. Tax records indicate the lot contains

approximately 14,810 square feet and the house was constructed in 1972. Based on the submitted site plan, the applicant proposes to construct an addition at the back of the house that would encroach 20 feet into the required 30 foot rear setback. The proposed addition would also encroach 11 feet into the required 15 foot side street 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.

Marie Coggins, the applicant, 3400 Regents Park Lane, was sworn in and stated that she has a letter of support from the neighbor behind her that she provided to the Board. She is trying to build storage onto the back of her carport. It is a corner lot and was built in 1972 and she is very restricted to as where she can build on the lot. Her 94-year-old mother lives with her and they are trying to put some exercise equipment out there, so she can get some rehabilitation. Mr. Oliver asked if they had already dug out a portion of the lot in anticipation of this project. Ms. Coggins stated that when they first looked at it they thought they only needed a three (3) foot setback, but instead they needed a 30-foot setback. They went ahead and dug out the larger section because she had the concrete already poured and she did not want to bring heavy equipment in if they were not able to do this project. It was a total misunderstanding on her part. Ms. Necas asked if the land that was cleared is more land than she will need for the final construction of the addition. Ms. Coggins stated yes and noted the actual structure will be at least 10 feet back from this side of the 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:

Chair Truby stated that corner lots are tough, and he did not see any issues with it.

Mr. Waddell moved that in regard to **BOA-18-54, 3400 Regents Park Lane**, 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 the variance is required to construct the addition in the most suitable location. 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 is rectangular in shape and is a corner lot. Due to the existing infrastructure the most reasonable location to the addition would be in the proposed location. The hardship is not the result of the applicant's own actions because the house was originally constructed in 1972. 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 granting of the variances will not have a negative impact on the public, seconded by Ms. Skenes. The Board voted 6-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, and Skenes. Nays: None).

- b. BOA-19-01: 3003 HENDERSON ROAD** Corey and Megan Williams request a variance to allow a proposed porch addition to encroach 19.2 feet into a required 66 foot front setback. The proposed porch addition will be 46.8 feet from the front property line. Zoning R-3 (Residential Single-Family); Section 30-7-1.4; Cross Street – Kemp Road East. **(GRANTED)**

Shayna Thiel stated that the applicants request a variance to allow a proposed porch addition to encroach 19.2 feet into a required 66 foot front setback. The house will be 46.8 feet from the front property line. The subject lot

is located on the south side of Henderson Road, west of Kemp Road East, and is zoned R-3. Tax records indicate the lot contains approximately 20,473 square feet and the house was constructed in 1966. The existing house is considered a nonconforming structure as it encroaches into the required 66 foot front setback. The applicants propose to construct a porch addition at the front of the existing house that will encroach 19.2 feet into the required 66 foot front setback and be 46.8 feet from the front property line. The Land Development Ordinance allows an open air/covered porch addition to encroach up to 10 feet into a required setback. However, since the existing house already encroaches into this setback, the proposed porch addition will encroach more than the allowed 10 feet and a variance is required for 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. Ms. Skene asked, if prior to the Land Development Ordinance, R-3 had a 25-foot setback.

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

Corey & Megan Williams, 3003 Henderson Road, the applicants, were sworn in and stated that they were renovating a 1966 old colonial style home in the Starmount area. They want to put a front porch on this house to help with updating the house. They noted that the house tilts a little bit left and the back yard tilts a little bit right, which impacts where the front of the house is relative to the front property line. For the front porch to be functional, it needs to be expanded to the back. They concluded that even with the addition, the porch would still be 46 feet from the road.

Chair Truby stated that he lives in the neighborhood and is very familiar with the house. He is glad to see them doing something with it. Ms. Necas stated that it is already 11.2 feet into the setback and they said it used to be 25 feet. Chair Truby stated that the current owners probably did not know their house was grandfathered when the rules changed with the LDO and in order to come into conformity they needed a variance.

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 moved that in regard to **BOA-19-01, 3003 Henderson 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 front porch cannot be added due to average front setback dimensions under the current ordinance. 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 prior to the current LDO which requires a greater front setback than before. Prior to adoption of the new LDO, the front setback would have been 25 feet. The hardship is not the result of the applicant's own actions because the new LDO was adopted changing front setback requirements. 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 open front porch will be in harmony with the other houses in the neighborhood and the porch will still be 49 feet from the street, seconded by Ms. Necas. The Board voted 6-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, and Skenes. Nays: None).

APPEAL OF HISTORIC PRESERVATION COMMISSION DECISION

Chair Truby suggested that the following two matters be discussed together as they are for the adjacent properties with the same owner and involve similar issues. However, he added that the Board would make separate motions on each matter.

- a. **BOA-19-02: 820 SPRING GARDEN STREET** Evagelia Eustathiou appeals the decision of the Historic Preservation Commission to deny an application for a Certificate of Appropriateness to replace a side door after the fact. Zoning C-N (Commercial-Neighborhood); Section 30-4-12.4(G) and 30-4-12.4(H); Cross Street – South Mendenhall Street. **(REMAND BACK TO HPC)**
- b. **BOA-19-03: 551 SOUTH MENDENHALL STREET/822 SPRING GARDEN STREET** Evagelia Eustathiou appeals the decision of the Historic Preservation Commission to deny an application for a Certificate of Appropriateness to construct a second floor addition after the fact. Zoning C-N (Commercial-Neighborhood); Section 30-4-12.4(G) and 30-4-12.4(H); Cross Street – Spring Garden Street. **(DELETED)**

Terri Jones, Counsel representing the Historic Preservation Commission, stated that she is the assigned counsel to the Historic Preservation Commission for the City of Greensboro. She noted this is not your typical administrative appeal. The Historic Preservation Commission is a quasi-judicial body, which means that the Board of Adjustment is sitting like a court reviewing a decision that another body would make that would be appealed to the Superior Court. This is not a new hearing on the evidence that was presented to the Historic Preservation Commission, but the Board is required to look at the records that have been presented, which includes the verbatim transcript and the unofficial minutes from the October 31, 2018 meeting, which are not official because the Historic Preservation Commission has not had a meeting since that point to approve them. Counsel Jones noted that in this appeal the Board of Adjustments shall make sure the Appellant's rights have not been prejudiced because the Historic Preservation Commissions findings of facts, conclusions, or decisions were based on the prescribed factors; the violation of constitutional provisions including those protecting procedural due process rights; excess of authority conferred upon the City or the authority conferred upon the Historic Preservation Commission, inconsistent with applicable procedures specified by statute or ordinance; other issues affected by other error of law; unsupported by substantiary evidence in view of the entire record, or arbitrary or capricious decisions. The Board can affirm the decision of the Historic Preservation Commission to deny the Certificate of Appropriateness. If The Board reverses the Historic Preservation Commission decision then they will be granting the Certificate of Appropriateness. In order to do so they will have to find that there is evidence in the record for granting that COA. If there is a procedural error, they can remand it back to the HPC for further hearing or with instructions to make additional findings. Counsel Jones then noted that the appellant's appeal application fails to state any reasons for the appeal. The reference said to see attachment, but no attachment was ever provided to City staff or HPC. The HPC findings did not violate any Constitutional rights including those protecting the appellant's due process rights. The HPC held a public hearing on October 31, 2018 where the appellant was present, and she testified at that hearing. The HPC decision was reduced to writing on November 2, 2018 that includes the applicant's appeal rights. The findings of the decision were not in excess of statutory authority. State law requires that no exterior of any building can be altered until after a Certificate of Appropriateness has been submitted and approved by the HPC for that jurisdiction. That is found in Section 160A-400.9 of the North Carolina General Statutes. Exterior features include the type and style of all doors and other features. The other State statutory authority is found in Section 160A-400.1-160A-400.15. The City's Land Development Ordinance establishes the City's Historic Preservation Commission in Section 30-3-8 as well as the review process of COA, which can be

found in Section 30-4-12. The City's LDO also requires that the City's Historic Preservation Commission refer to the City's Historic District Program Manual and Design Guidelines, which was adopted in 2003 and the Doors and Window Guidelines are included in the Board's record. The appellant has made no allegations that the HPC exceeded its statutory authority. The Commission's findings were not inconsistent with the applicable procedure specified in the ordinance. The applicable procedures for COA are found in Section 30-4-12.4 of the LDO and a copy is in the record. The HPC held a public hearing and the appellant was present and testified. The HPC considered the Historic District Program Manual and Design Guidelines. The Guidelines are in Exhibit 4 of the Board's record. Exhibit Seven (7) is the Staff comments that were presented to the Commission. The findings, conclusions and decisions were not affected by any other error of law. The findings, conclusion and decisions were not unsupported by substantial and competent evidence in the record. The photo in Exhibit 6 shows the new door and it does not match the other doors. The Guideline under Windows and Door on page 57 of the manual, number one (1) requires that new door openings be compatible in proportion, location, shape, pattern, size, materials and details to existing doors and windows. The appellant could not tell the Commission what material the new door was made of and that is found in the transcript on page 12 lines six (6) and seven (7). The new door does not maintain the character of the building's Queen Ann architectural style as required by the Guideline under Changes to Non-contributing Structures found on page 68 Section 3 of the Guidelines. At the public hearing, an opponent Joe Wheby was opposed due to inappropriate materials and that is found in the transcript page 28, line eight. The findings, conclusions and decisions were not arbitrary or capricious. The HPC found the work to be incongruous and Counsel Jones is asking the Board to affirm the decision of the HPC and deny the COA for the door.

Mr. Oliver stated that he is confused about the picture of the door; it looks like a Queen Ann door and a Queen Ann style but because there is a picture of the door with the oval opening and that is the kind of door they put up. Is that irrelevant because they did not go through proper procedure first? Counsel Jones stated that the Staff's recommendation found that the door did not match the style of the other doors on the building and did not include compatible materials to the other doors. It was a synthetic door and not a wood door. Chair Truby asked if it was the door or the door opening? Counsel Jones stated that the COA was to replace a side door. When Staff went to look at the request and they started looking at archival photographs and Google Maps it did not appear that an opening previously existed. An opening for any new window or door would require a COA as well as any replacement door. Some members of the HPC stated that they would not approve the opening and all of them did not like the style or the material of the door. They denied the application for that door. Chair Truby stated that the way it was denied she must go back and fill that opening in and make it look like it did before. Mr. Oliver asked what would have been the proper procedure. Counsel Jones stated that the COA was first and then the building permit. She stated that it would depend on whether a building permit is required. There are some things that a permit is not required for. Generally, if they apply for the permit first they are told to get a COA or the permit will not be processed until a COA is received. Ms. Necas asked if the side door was entirely new. Counsel Jones stated that the application requested to replace that side door. After the application was accepted it appeared that it was also a new opening. City Staff relied on Google Maps photos to see that it did not appear that there was an opening in that location. Ms. Necas asked if staff had any proof of that. Counsel Jones stated that the only thing they had on record was the appellant's testimony that there had been a door there. It was not visible from the exterior but was alleged to be visible on the interior. At some point it had siding over where the door is now. Ms. Skenes stated that in the minutes Staff had commented that "if the property owner had come in ahead of time and worked with us and could have been able to go to Architectural Salvage to find a door we were comfortable with it could have been done at the Staff level." Counsel Jones stated that in Exhibit four (4) there is a heading that says the door opening requires a COA. Exposing a previously covered window unit with replacement

could be done with Staff approval. This was not a window unit, but Staff stated that this would have fallen under this had she gone through proper procedures. If you are replacing something that was already there then the Staff could approve. Mr. Oliver asked if the applicant was were told at closing that they were in the Historic District? Counsel Jones stated that she did not know what was disclosed at closing, but on the City's web page there is a list of all the streets that are in the Historic District. If a property owner calls in, the Staff would tell them that they were in the Historic District.

Andrew Kelly, Counsel representing the Board of Adjustment, stated that these appeals from the Historic Preservation Commission are considered in the nature of certiorari under State law. That means that they are acting in review of the processes that the Historic Preservation Commission took. The law is the authority and the facts that they provide in the minutes before the Board. The Board of Adjustment is not here to litigate the case, but to review what has already been done. There were materials in front of the members to help them in their analyses of whether there was any error in law that was committed, whether the Commission was acting consistent with their procedures, whether due process was given to any kind of appellant or person of interest, whether the decision of the Historic Preservation Commission was supported by substantial and competent evidence and whether or not the Commission's decision would be considered arbitrary or capricious. Ms. Skenes stated that there seemed to be a lot of debate in the Commission meeting as to whether that side door would have even been allowed due to how close it was to the side lot linen She asked if that determination was ever made. Counsel Kelly stated that he could not tell them whether that determination was ever made or not. He doesn't know if that is a requirement. What the Board is being asked to review is what they did review and the decision they made. If they are going to bring that before them and say that was something that had to be a necessary finding, then Counsel Jones would tell them whether that is something that the Historic Preservation Commission must decide before making the decision. Mr. Oliver asked if the decisions the Board would make today were to affirm, reverse or remand. Counsel Kelly stated that was correct. Mr. Oliver asked if the six criteria that were listed earlier are the six things the Board should use to make their decision. Counsel Kelly stated that the criteria list is the framework for which the Board is to make their decision. Affirming would be upholding the decision that HPC made. Overturning would be changing the decision that HPC made. Remanding would be saying that any one of these factors may not have been meet in the Board's opinion and they will be sending it back to HPC so that they could address that. He does not think it was an issue to hear the items together, but that any motions should be separated.

Harry Gordon, Counsel representing the Appellant, stated that on the matter of the roof, the applicant is going to proceed with repairing the roof, though that will only be a temporary fix. Probably two years from now she would be coming back to HPC with a new design and asking for the Board's approval before she goes forward. He does not think they need to spend a lot of time on the roof matter since she is going to take off the elevated roof and repair the roof. Counsel Jones asked if the appellant was withdrawing the appeal for 822 Spring Garden Street. Counsel Gordon stated that was correct and his client would not be going forward with that appeal. He did add that in that same Historic district, about 95% of the buildings have a sloped roof but his client must have a flat roof. His client is going to remove the elevated roof that she did not get permission to build and live with it until she gets approval to get the elevated roof. Counsel Jones stated that she does not need a COA to restore the roof to its original prework condition, but she will need a building permit because she has made alterations to the building and she must make additional alterations to restore it back to its original state. Chair Truby stated that it sounded as if the appeal to the roof has been removed and everyone agreed. Chair Truby stated that the Board would then just address the door appeal.

Shayna Thiel stated that the applicant appeals the decision of the Historic Preservation Commission to deny an application for a Certificate of Appropriateness to replace a side door after the fact. The subject lot is located on the north side of Spring Garden Street, east of South Mendenhall Street, and is zoned C-N. Tax records indicate the lot contains approximately 5,563 square feet and the house was constructed in 1902. The applicant installed a new side door without securing appropriate building permits and a Certificate of Appropriateness. The City issued a Notice of Violation on October 8, 2018 noting need for a Certificate of Appropriateness for exterior changes to property within a Historic District. The applicant filed a Certificate of Appropriateness Application on October 12, 2018, and the request was heard by the Historic Preservation Commission on October 31, 2018. Following a public hearing, the Historic Preservation Commission denied the COA request. A letter confirming this decision was issued to the applicant on November 2, 2018. The applicant then filed an appeal of this decision on November 9, 2018, within the required 15 day appeal period. The C-N (Commercial-Neighborhood) District is primarily intended to accommodate a mix of low intensity office, retail, and personal service and upper story residential uses within or abutting residential areas.

Harry Gordon, 330 S. Green Street, attorney for the appellant, stated that he heard Counsel Jones state that the new door was not consistent with other doors. He doesn't know if she means not consistent with other doors in the neighborhood because the Board heard that this application came on quickly. The HPC doesn't have much time to go out and look at other doors. Therefore, he does not think they went out and looked at any other doors in making this determination. Counsel Jones stated that staff looked at Archival Google Maps for the property, which included pictures from October 2017. They were not archival or going back through history. The one person who knows about that door is the applicant who owns the building and did the work. She had come forward at the HPC meeting and testified that there was a door there previously. Council Gordon noted that you do not get a building permit to do something to your home unless it is more than \$15,000. It used to be \$5,000. He also noted that there are all kinds of exceptions and a ton of work done without permits. The rules change when you get into commercial, as there are no exclusions. If they looked through the minutes, the HPC kept asking what kind of building is this. Is this a commercial or residential building? Did they do any research before this application came forward? The front door has nothing to do with history. They need to go see that building and they didn't need to come to that meeting without knowing whether this was a commercial or residential building. To answer the question is this commercial or residential, it's commercial in the front, and in the back it is residential. There are two (2) apartments in the rear of the building. One is entered from a back door that is undersized and the other one you go through the commercial part and go upstairs to get to the apartment. His client found an old door that used to be there and put in another door. It would have been useful to the residential tenants and a second door and fire escape for the people in the units. She made some repairs and certain changes, but she crossed the line. His client is content to take the roof off and make the temporary repairs to the other building.

Council Gordon then stated that the Board of Adjustment should remand this back to the HPC and have them do their job. He argued that the HPC did not stay in their own lane, because they asked the same question why she did not get a building permit before she came to the HPC and she did not. Had she gone for the building permit then she would have been sent over to the HPC. The rules are if you didn't go to get the building permit then the standard is they act as if the change was never made. If that is the guideline, why is everybody giving her a hard time because she didn't get the permit? By Code today, the door must be 78 inches tall. Her new door is 78 inches. A question by one of the Commissioners was, "Is there a compelling need for this door?", and that is not what they are supposed to be asking. Mr. Gordon then wanted the Board to look at the comments made by Commissioner Wayne Smith. He threatens to leave because they would not follow his advice or conclusions. He was told repeatedly to stay in his lane. The only way to appease him was to go ahead and vote, but what were

they voting on? It is hard to tell what they are voting on. Google Maps should not have been used to decide what was there and what wasn't there. They had direct testimony from the applicant stating that the door was there. If they looked at page 7 of the minutes Stefan-leih Geary stated that the middle door is a new door opening which is certainly allowed under their Guidelines. This was the opening of the meeting. Mr. Gordon then asserted that his client was told in advance that the recommendation was that the doorway was okay, but the roof was a problem. Therefore, his client gets told that the doorway was okay because it was a side elevation. The door itself was not found to be in keeping with the Guidelines in terms of materials and design. Now they are not looking at the opening anymore, but the door. She was told that the door was okay and that she was only there for the roof. This is not how you treat citizens. That property was condemned and in line to be destroyed. He would not have fixed it and Lisa (his client) was willing to take this on. He wishes that they could see some of the work she has done to the property. He thinks they should remand this back to the HPC and let his client deal with the permit people. She should be allowed to put her door up.

Mr. Gordon noted that Mr. Smith wanted to know early on whether she obtained a permit and why she did not get a permit. On page 13, Mr. Smith asked if she got a permit to build that door. She answered that she did not. On page 17, Mr. Smith stated that he was going to excuse himself, that he was there to give advice on building Code issues. Mr. Gordon argued that Mr. Smith is a Commissioner and he is not there to do that. Mr. Smith stated they must have permits and be inspected and that the Commission always looks over the fact applications. He asked to be excused and was told he would have to ask his fellow Commissioners that. Mr. Smith was not willing to look at the Historical issue without looking at the permit issue. Mr. Smith threatened to quit at the end of the meeting. So, they had to appease him. His client is asking to have the Commissioners look at all the other doors that look like her doors such as 709 Walker Avenue. He can show the Board pictures of steel doors of the same design repeatedly. They can't rule this door out because it's metal. If one person can have metal doors why can't she? They have got to be fair to people. So, let her come in and bear the burden, show all the others that are in the area that are metal and same design. There are 90 different styles of doors on commercial buildings in that area. It is the same thing with the sloped roof. On page 31, Ms. Hodiernie calls the door superfluous and on page 22, she states that she is trying to get past the hurdle that there was some compelling reason to add the door. He wants to know what reason his client has to have a "compelling reason" to add a door. There is a compelling reason, most states require that they have two doors in case of fire. However, North Carolina does not have that law, but the fire department will make you have two exits. There are two apartments there and she added a door that was previously there, and its 78 inches and the building Code says that you must have a 78-inch door at least one exit. The roof and failure to get permits made some people mad, but he also must follow the rule that his lane is historical which means the material and the design. He would go out and look at all the others and take into consideration that she is willing to put in the time, money and the effort to restore these old buildings. He doesn't think he would come down too hard on her if he was part of an HPC. He has pictures of other doors if anybody wanted to see them.

Mr. Oliver asked if the subject building was commercial or residential. Counsel Gordon stated that the door was put on the residential side. Mr. Oliver asked if the \$15,000 threshold was applicable to this work. Counsel Gordon stated that he thinks it was. Mr. Oliver asked how much this project would cost. Counsel Gordon stated that he would think no more than \$2,000. Counsel Jones stated that she would need a COA no matter what the cost of work would be. The building Code standard does not apply. You must get a COA to plant a tree in the yard. Ms. Bowers stated that it has no monetary threshold. When this house was built, it was a residence. It was later converted and altered and they understand that. When HPC looks at the exterior features they are looking at something that appears to be a house. This is not her home it is a rental property and she doesn't think the

\$15,000 applies to this property. Counsel Gordon stated that he is a licensed attorney and he doesn't agree. There were other things that come into play and that is whether it is a structural change. He does agree with Counsel Jones about coming before the HPC. Ms. Necas asked if he was wanting this to be remanded and HPC would approve contingent on a new design of the door? Counsel Gordon stated that he thinks remand is the right thing to do. He wants them to look at the other similar design doors and see if this one qualifies for an exception. He thinks that due process requires that she be accorded clear charges for what she has done wrong and remedied. They don't need an angry architect in there demanding that she abide by the permit issues. That is not a basis for denying the application. Maybe they need to do a better job on their part bringing before the HPC, all the other doors to show them what is being done in that area. Ms. Bowers asked if the COA was supposed to be obtained before the building permit? Counsel Gordon stated that was correct. Ms. Bowers asked if the HPC was supposed to determine if she was to get a COA and then she would get a building permit? Counsel Gordon stated that was correct. Ms. Bowers asked if the HPC was supposed to decide if she got the building permit? Counsel Gordon stated that was correct. Ms. Bowers asked if the way it was supposed to work is they get the COA first, then the building permit. Counsel Gordon stated that was correct.

Counsel Jones stated that the City of Greensboro is a certified local government under Federal and State laws. The City Council must make a good faith effort to appoint professional members from the disciplines of architectural history, planning, architecture and other related disciplines. So, the "stay in your lane" comment from Counsel Gordon is not applicable to the HPC. City Council has a requirement to appoint people from the historic districts. There was a lot of discussion about the timing of the project. Part of Mr. Smith's role is to give them advice about architecture and building processes. This is the first time she has heard of the appellant being an engineer. She was never recognized as an expert engineer at the HPC hearing. The standards of Section 160A-393(k) talk about competent evidence. So, the HPC is looking at the structure as it was originally built. When they look at the photo that is in the Board's packet they can see that the two doors on the same side of the building are not consistent. There was no evidence presented at the HPC that these doors would predate the Historic District. It is hard to say just because there are other doors doesn't necessarily decide to deny one application. Mr. Oliver asked if the remedy is to close it back in and then apply for a building permit. Counsel Jones stated that if they remand it the applicant would have to go back and get a COA. If the COA is not approved, she must restore it back to the way it was. That is why they look at it as if the work had not been done. If they affirm tonight, then she must restore the property. On the other hand, the Board could remand this back with instructions for the HPC to consider additional information or make additional findings. Ms. Eustathiou would have an opportunity to appeal the HPC decision or she can go with a different application and go through the process. Ms. Skenes stated that Google photos would not show a door there because it had been covered over with siding. Counsel Jones stated they did not have any archival photos of this property. So, there is a conflict between what could be best as they could see and the testimony of the applicant. If the appellant were getting a building permit, then they would have gone inside and been able to see the door that was there before. The HPC discussion did not include a motion that says the door would not be allowed. You can create new openings in historic structures, but there are Guidelines to be followed. The statement by Stefan-leih Geary was not incorrect. A new opening could be allowed by the Commission under certain circumstances. Ms. Skenes asked if staff could approve the door design. Counsel Jones stated that if it is a replacement, yes.

Chair Truby stated that he read the entire transcript of the meeting. However, reading a transcript and being there and hearing the tone of the voice or the attitude of the speakers is different. He stated he has never been in a meeting where someone threatened to leave or quit. Counsel Jones stated that she has sat at many meetings and she has never seen that happen before either. Chair Truby asked if Commissioner Smith was mad. Counsel

Jones said that it was not a friendly and cordial exchange. Chair Truby asked if that would be a reason to remand it, if she did not get the proper hearing. Counsel Kelly stated that he didn't know if temperament is a reason to remand. Counsel Jones stated that if it was remanded Commissioner Smith may be there, or he may not be there. Counsel Kelly stated that if they thought because of those comments that the appellant did not get a fair hearing then that would be a reason to remand. Counsel Jones stated that the HPC also has an opportunity for a reconsideration. Sometimes that is based on evidence that was not presented at the time of the hearing. The applicant has asked for an appeal not a reconsideration.

Counsel Gordon stated that they all needed to come together on this. If they can all come together on how to fix this, he thinks that the fix is to remand. They need to encourage people to restore these buildings. If they don't remand this she will have to close that in, but first she will have to have a building permit. This should have a reconsideration, but they will get there.

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

David Arneke, 922 Carr Street, stated that he is a member of the HPC and needs to respond to a couple of points that Counsel Gordon made. The way that the Commission works is that they make their decisions based on the facts of the specific property before them. To say that a door that is approved for one property must be approved for another property can't be done because there is a great variation to all the buildings. The roof for example is a flat roof and he lives in a two-story house that was built in 1895. If he wanted to put a flat roof on it, that would look very out of place. By Counsel Gordon's logic because there is a building with a flat roof in College Hill then he should be able to put a flat roof on this property. It would not further the objective of maintaining the historic character of the district to make decisions on one property based on the facts of another property. That is why they were being asked if that door was appropriate for this specific building. One thing Counsel Gordon didn't mention in his discussion was the basis of the decision. Mr. Arneke himself made the motion on the Findings of Fact. He stated that the Staff comments, Windows and Doors guidelines and Changes to Non-contributing Structures were the Findings of Fact. The vote was not based on permits. It was based on the Guidelines, the information in the application, and the Staff comments. Members of the Commission went by and looked at that building. They do that routinely as individuals before deciding on these applications go by and looked at the structure. The basis of the decision had nothing to do with building permits. Ms. Bowers asked if the reference to the project being incongruous was about the style of door or the opening. Mr. Arneke stated that was about the style of the door. The Windows and Doors guidelines shows examples of doors that can be approved. That does not mean any of those doors could be put on that specific property. Mr. Oliver stated that if this was remanded, it sounds like the Commission would not change its determination. Mr. Arneke stated that it depends on what the facts of the case are.

James Keith, 303 S. Mendenhall Street, stated that he is the President of the College Hill Neighborhood Association. They are asking that the Board uphold the HPC decision to deny, because they see this process as a very simple one. He noted that he had added an entry onto his home and he went through the process of finding the appropriate door and it cost a lot of money. It had to be made of the right material. He accepts that as an owner in College Hill and they all must accept that there are Guidelines that dictate how they treat the exterior of their home. It is no different than buying a new house in a neighborhood with an HOA.

Stefan-leih Geary stated that she works for the Planning Department as an historic preservation planner and she is one of the Staff members for the HPC. She stated she had done the presentation the evening of the HPC meeting. Ms. Skenes stated that she was interested in Stefan-leih Geary's comment about if the appellant had come in and sat down and worked through the design and material issues, that it could have been approved at the staff level.

Ms. Skenes asked if staff was even concerned about whether there had been a door opening there previously. Stefan-leih Geary stated that they received a COA application that simply said replace the door. After getting a COA application staff does research, visits the site, and do archival research that can use Google Maps. When she did that she found the image that showed the opening was covered by siding. Staff is only able to look at the exterior of the property that there is no way of knowing if there is framing for a door on the inside. When they are contacted by a property owner they always visit the site, meet with the property owners and their contractors. Most likely they would be taken into the building where they would have been able to tell that there was a door there previously.

Ms. Geary then noted that when they are talking about matching door styles they are talking about the two doors on the side of the building. Staff did offer to look at different door designs and the applicant was not willing to do that. Ms. Skenes asked if the Board agrees with the denial from the HPC, the applicant can apply for a COA with an appropriate door, design and material is that enough of a change to warrant her being able to come back and not have to close that door up until she went through the process the second time. Stefan-leih Geary stated that there must be a substantial change. They would have to show some evidence that the opening has some historic merit. She does not recall the argument about having a second fire escape door was made at the HPC meeting. Procedurally, if the denial is upheld then yes, the applicant would be required to come in and remove the door and framing and put siding back in place. If they wanted to pursue the fire safety issue there would be some discussion on that. If the Building Inspector came in and said that they have to have two entrances and that is what Ms. Hodiern was trying to get at when she asked about a compelling reason for this opening. Ms. Skenes stated that if they remand it back they can document whether that door was there or bring into play fire safety and talk about proper materials and design. Stefan Leih Geary stated that would be up to the applicant to provide that level of documentation. Ms. Skenes asked to clarify if everything would stay the way it is until it went through the full procedure, Counsel Jones stated that when after-the-fact COAs are denied, they normally would say you have to restore the property in so many days. Stefan-leih Geary stated that if they are leaning toward remanding it is there a time limit that requires the applicant to come back to HPC. The earliest it could be heard is at the February meeting. Counsel Jones stated that if they affirmed the HPC decision then it becomes the decision of the Zoning Administrator as to when to start imposing civil penalties for noncompliance since the applicant is under a Notice of Violation. If they remand it no enforcement action would be taken, but they would have to give them instructions on the remand as to why it was not enough and what they need to do. Mr. Oliver asked them to clarify when the COA was applied for. Stefan-leih Geary stated that application was received on October 12, 2018 and it was heard on October 31, 2018. Mr. Oliver stated that the application was made after they had already done the door. Stefan-leih Geary stated that was correct.

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 stated that he knows nothing about historic stuff or roofs. It is the HPC's decision to decide what goes on with this house. The applicant knows they live in an Historic District and they know what the rules are. He doesn't think it is fair that she didn't go through the process like everybody else in College Hill has to do. The Board is caught in a situation that if they uphold the HPC decision, the appellant will have to fill in that door opening and start all over again. If they remand it back, then maybe they could come up with a design that would satisfy the HPC. Remanding it back to the HPC gives them the opportunity to work something out. If they don't remand it back, they may have to wait a year to reapply unless there is substantial change. Mr. Waddell stated

that he agrees with Chair Truby that they should remand. He has questions about the actual review period and the time that was available to look at this case. Reading through the minutes there was a lot of confusion about the fire Codes and its use. Ms. Bowers stated that she agrees they should remand. It was unclear about what was being voted on, the door or the door opening. Mr. Oliver also agrees with remanding. Ms. Bowers stated that they need to make it clear on what they are voting on. Ms. Skenes stated that she suggests that they remand it back to the HPC to consider with the opportunity to present evidence regarding; the existing of the door opening; to work with Staff regarding the proper material and design with the replacement door; and to present evidence regarding fire safety. Ms. Necas stated that she agrees with everyone else. Ms. Skenes stated that she suggests remanding it back to HPC to consider those items. Counsel Kelly stated that they could do that. Mr. Waddell wanted the Commissioners and Staff to have time to get that evidence, to do their due diligence and to be clearer on what facts they are using to make their decision. Chair Truby suggests that they get somebody to see if that door can even be there based on Building Code requirements. Counsel Kelly stated that the application said only "change side doors" and he thinks one of the things they want HPC to consider is whether a door opening is appropriate and what type of door would be appropriate. He wonders how that would work when that was not originally applied for. Ms. Skenes stated that they talked all around it. Ms. Bowers stated that they are not asking them to consider it. They did consider that and what was the vote based on. They were told tonight that it was based on not agreeing that the door was the appropriate style, but that is not apparent from the record. Counsel Kelly stated that when they are remanding it, remand it to consider what they do. Remand for them to rehear the case and let them do what they normally do. Ms. Skenes stated she was going to put in to reconsider the following items.

Ms. Skenes moved that in regard to BOA-19-02, 820 Spring Garden Street, to remand this case back to the Historic Preservation Commission to reconsider with the opportunity to present evidence regarding; the existence of the previous door opening; to work with Staff regarding the proper material and design for replacement door if found reasonable; to present evidence regarding fire safety, seconded by Mr. Waddell. The Board voted 6-0 to remand the matter back to HPC. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, and Skenes. Nays: None).

OTHER BUSINESS: NONE

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Blackstock and Mr. Ramsey were acknowledged as excused.

ADJOURNMENT

There being no further business before the Board, the meeting ended at 7:33 p.m.

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

CT/jd:pr

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

FEBRUARY 25, 2019

The meeting of the Greensboro Board of Adjustment was held Monday, February 25, 2019 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, Deborah Bowers, Leah Necas, Mary Skenes and Vaughn Ramsey. Representing the Planning Department were: Shayna Thiel, 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

Ms. Skenes moved approval of the November and December 2018 minutes, with the correction noted, seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Oliver, Waddell, Bowers and Necas. 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-19-09, Special Exception for 611 Joyner Street would be withdrawn from the agenda by the applicant.

OLD BUSINESS

None

NEW BUSINESS

VARIANCE

- a. BOA-19-04: **4809 PENN WYNE DRIVE** Sharon A. Canovali Revocable Living Trust requests three variances. (1) To allow an existing accessory structure smaller than 600 square feet of floor area to be separated by 4 feet from another structure on a lot, when at least 5 feet is required. Section 30-8-11.1(E)(1). (2) To allow a proposed accessory dwelling to encroach 6.3 feet into a required 10 foot side setback. The accessory dwelling will be 3.7 feet from the side property line. Section 30-8-11.2(D). (3) To allow a proposed accessory dwelling to be 246 square feet when at least 400 square feet is required. Section 30-8-11.2(E). Zoning R-3 (Residential Single-Family); Cross Street – Coronado Drive. **(GRANTED)**

Shayna Thiel stated that the applicant requests three variances. Variance #1: To allow an existing accessory structure smaller than 600 square feet of floor area to be separated by 4 feet from another structure on a lot, when at least 5 feet is required. Variance #2: To allow a proposed accessory dwelling to

encroach 6.3 feet into a required 10 foot side setback. The accessory dwelling will be 3.7 feet from the side property line. Variance #3: To allow a proposed accessory dwelling to be 246 square feet when at least 400 square feet is required. The subject lot is located on the south side of Penn Wyne Drive, east of Coronado Drive, and is zoned R-3. Tax records indicate the lot contains approximately 13,939 square feet and the house was constructed in 1972. Based on the submitted site plan, the applicant proposes to convert an existing 246 square foot detached garage into an accessory dwelling. The existing detached garage meets the minimum 3 foot side setback requirement, but not the minimum 5 foot separation requirement for accessory structures. If converted into an accessory dwelling, the structure will not meet the required 10 foot side setback (R-3) or the 5 foot separation requirement between structures. It will remain 3.7 feet from the side property line and 4 feet from the existing house. Because the applicant plans to utilize the existing footprint of the structure, the proposed accessory dwelling does not meet the minimum 400 square foot area requirement for accessory 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 there was anyone wishing to speak in favor of this matter.

Sharon Canovali, the applicant, 4809 Penn Wyne Drive, was sworn in and stated that a few years ago she lost her mother and that her younger brother is mentally disabled and in her care. She has put the home in a Special Needs Trust for him, should she pass before him. She wants to convert the garage so that her brother will have his own living space, and yet, still be close to her. He also has a vascular condition in his legs which may, in the future limit his mobility and cause problems with him using the few steps from the garage area to the interior of the home. This would be a way that he could utilize the house and a place that he could comfortably live.

Ms. Skenes asked if the garage had been in the same location for several years. Ms. Canovali replied that she has lived there for over 17 years and the garage was in place when she purchased the house. She also responded that the neighbors are aware of this structure and the only change would be to the inside of the house creating accessibility from the garage to the house.

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:

The Board members felt that this was a very reasonable request.

Ms. Necas moved that, in regard to **BOA-19-04, 4809 Penn Wyne Drive**, 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 it will create a hardship for travel from the garage to the interior of 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 existing garage cannot be placed anywhere else due to the look and landscaping of the property. The hardship is not the result of the applicant's own actions because the garage already existed when the owner 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 age and location of the existing garage makes this conversion logical and it is in harmony with the character of the neighborhood and no harm will come to the public as the building already exists. Converting garage to a dwelling unit will not create additional impact to the neighborhood, Mr. Waddell seconded the motion. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, Bowers and Skenes. Nays: None).

- b. BOA-19-05: 6811-A WEST MARKET STREET, 6330 BURNT POPLAR ROAD & 6340-R1 BURNT POPLAR ROAD** Kinder Morgan Plantation Pipeline Company requests a variance to allow industrial and manufacturing operations to be setback 0 feet from any property line, when a minimum 50 feet is required. Zoning HI (Heavy Industrial); Section 30-8-10.5(A)(1)(a); Cross Street – PPG Road. **(GRANTED)**

Shayna Thiel stated that the applicant requests a variance to allow industrial and manufacturing operations to be setback 0 feet from any property line, when a minimum 50 feet is required. The subject lot consists of three parcels located on the south side of West Market Street, at the intersection of PPG Road, and is zoned HI. Tax records indicate the three lots contain approximately 44.46 acres. The applicant indicates that current tank farm has been in existence for over 75 years and is utilized for the storage and transportation of petroleum products. The applicant has concurrently applied for a Special Use Permit for consideration by the City's Zoning Commission, which is now required under the Land Development Ordinance for facilities that manufacture and store chemicals, petroleum products, explosives and allied products. In order to approve the Special Use Permit all dimensional requirements, including additional use standards for industrial and manufacturing uses, must be met. The submitted site plan shows an existing storage warehouse and accessory structure located within the required 50 foot property line setback and abutting the eastern property line. The applicant requests a variance to allow the storage warehouse and accessory structure to remain in their existing locations. The HI (Heavy Industrial) District is primarily intended to accommodate a wide range of assembling, fabricating, and manufacturing activities. The district is established for the purpose of providing appropriate locations and development regulations for uses which may have significant environmental impacts or require special measures to ensure compatibility with adjoining properties.

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

Gavin Parsons, an attorney with Coates and Bennett in Cary, NC, representing the applicant, stated that with him are Jody Como, Engineering Manager from Alpharetta, GA and John Colupa. Kinder Morgan Plantation Pipeline Company wishes to allow a couple of buildings located within a 50-foot setback to remain. This property has been in use for some 75+ years and this was identified as a TRC Review process. The buildings were all built prior to the current zoning ordinances. These buildings were constructed and used legally as were not in violation for many, many years. As part of another improvement they are making, it was discovered that a variance would be needed. The UDO has been updated, making the buildings out of compliance. In order to move forward with their Special Use Permit they are requesting this variance.

Jody Como, Suwanee, GA, Engineering Manager representing Kinder Morgan Plantation Pipeline Company stated that this is an interstate pipeline company that transports refined liquids throughout the southeast and Greensboro, NC is one of their facilities and has been in this location since 1999. The previous owners also used the property as a fuel holding facility. There is a building that is used for holding a lot of their critical safety equipment and it has been in existence for many, many years. They now feel that this is the time to update and upgrade. Their main goal is safety and they wish to continue in that effort.

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:

The Board members felt that this was a very reasonable request.

Ms. Skenes moved that, in regard to **BOA-19-05, 6811-A West Market Street, 6330 Burnt Poplar Road and 6340-R1 Burnt Poplar Road**, 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 their adherence to the ordinance would require removing buildings in order to proceed with their repairs and 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 the subject buildings have been on the site for more than 75 years and are pertinent to the daily operations. The property where the buildings are located was acquired in 1994. The hardship is not the result of the applicant's own actions because the buildings predated the current Land Development 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 expansion of the business has triggered the need for a variance and the business has existed for 75 years and is located in

the existing Heavy Industrial area. Continued operation will not detract from the area. Mr. Waddell seconded the motion. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, Bowers and Skenes. Nays: None).

- c. BOA-19-06: 1400 LEXINGTON AVENUE** Margaret Stouten requests two variances. (1) To allow a proposed accessory structure over 15 feet tall to encroach 8 feet into a required 10 foot rear setback. The accessory structure will be 2 feet from the rear property line. (2) To allow a proposed accessory structure over 15 feet tall to encroach 6 feet into a required 10 foot side setback. The accessory structure will be 4 feet from the side property line. Zoning R-5 (Residential Single-Family); Section 30-8-11.1(C)(2); Cross Street – Grove Street
(GRANTED)

Shayna Thiel stated that the applicant request two variances. Variance #1: To allow a proposed accessory structure over 15 feet tall to encroach 8 feet into a required 10 foot rear setback. The accessory structure will be 2 feet from the rear property line. Variance #2: To allow a proposed accessory structure over 15 feet tall to encroach 6 feet into a required 10 foot side setback. The accessory structure will be 4 feet from the side property line. The subject lot is located on the west side of Lexington Avenue, south of Grove Street, and is zoned R-5. Tax records indicate the lot contains approximately 6,098 square feet and the house was constructed in 1928. Based on the submitted site plan, the applicant proposes to construct a new accessory structure in the same location as a recently demolished structure, using the existing pad. Because the original accessory structure was less than 15 feet tall, it met the required 3 foot side and rear setback requirements. The applicant proposes to include, as part of the new accessory structure, a second story and exterior stairs towards the rear property line. Because of the second story, the rear and side setbacks increase to 10 feet, so variance requests are needed. 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.

Margaret Stouten, the applicant, 1400 Lexington Avenue, was sworn in and stated that she has a letter to add to the record from her neighbor who is in support of this request. A copy of this letter was shown to the Board members for their review. She and her husband moved to this address in 1999 and at that time there was a garage that was sandwiched into the southwest corner of the lot, taking up the entire corner and near the edges of the lot lines. That garage was in very poor condition and was leaking. They replaced that garage in 2005 with a 12' x 14' Dutch Barn, which was a one-story structure with a gabled roof. When Hurricane Michael came through in October 2018, a very large tree fell on the Dutch Barn structure and demolished it. She would now like to construct a new garage in the same foot print but have a two-story structure. She is an art teacher and would like to use the upper floor for a studio for her art and crafting projects. This upper floor would be big enough to allow her to use her drawing table, sewing machine and other art accessories and they plan to have a lot of windows to allow sunlight in that room.

In response to questions, Ms. Stouten stated that the roof of the proposed two-story garage would be lower than that of the main house and would not intrude into the neighborhood. She will also be planting a lot of flowers and shrubs to help make it look nicer.

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:

The Board members felt that this was a very reasonable request.

Ms. Bowers moved that, in regard to **BOA-19-06, 1400 Lexington Avenue**, 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 the applicant has no place to expand and wishes to use the existing concrete pad from the demolished storage shed to build another storage shed and add a second story art studio to be used by 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 small and the only available space is in the southwest corner where a storage shed was located before it was destroyed by a falling tree. The hardship is not the result of the applicant's own actions because the winds from Hurricane Michael caused a tree to fall on the existing garage and destroyed it. 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 structure will be sized and built to harmonize with the surrounding architectural style and no area borders on open space in the back and it will not be congested. Ms Skenes seconded the motion. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, Bowers and Skenes. Nays: None).

- d. BOA-19-07: **703 CARDIGAN COURT** Kevin and Elizabeth Curley request two variances. (1) To allow a proposed screen porch to encroach 10 feet into a required 30 foot rear setback. The addition will be 20 feet from the rear property line. Section 30-7-3.2 – Table 7-1. (2) To allow a proposed porch addition to encroach 13.8 feet into a required 52 foot front setback. The porch addition will be 38.2 feet from the front property line. Section 307-1.4. Zoning R-3 (Residential Single-Family); Cross Street – Westbourne Road (**GRANTED**)

Shayna Thiel stated that the applicants request two variances. Variance #1: To allow a proposed screen porch to encroach 10 feet into a required 30 foot rear setback. The addition will be 20 feet from the rear property line. Variance #2: To allow a proposed porch addition to encroach 13.8 feet into a required 52 foot front setback. The porch addition will be 38.2 feet from the front property line. The cul-de-sac lot is located on the west side of Cardigan Court, south of Westbourne Road, and is zoned R-3. Tax records indicate the lot contains approximately 11,761 square feet and the house was constructed in 1972. 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 10 feet into a required 30 foot rear setback. The applicants also propose to construct a porch addition at the front of the existing house that will encroach 13.8 feet into a required 52 foot front setback. The Land Development Ordinance allows an open air/covered porch addition to encroach up to 10 feet into a required setback. However, since the existing house already encroaches into this setback, the proposed porch addition will encroach more than the allowed 10 feet and a variance is required. 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.

Kevin Curley, the applicant, 703 Cardigan Court, was sworn in and stated that he wishes to enclose an existing deck and make it into a screened porch at the rear of the house. It would remain the same dimensions of the existing deck. In the front of the house, the existing porch is very short and small and he only wants to increase the length of the porch and not the depth. He does not feel that either of these projects would have a negative impact on his neighbors. He has notified his neighbors of his plans and has not received any notification that anyone is in opposition.

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:

The Board members felt that this was a very reasonable request.

Mr. Ramsey moved that, in regard to **BOA-19-07, 703 Cardigan Court**, 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 the applicant would not be increasing the size of the deck for the proposed screened porch, and the front porch which would only be lengthened and not widened. 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 property in a cul-de-sac limits the space available for building. The hardship is not the result of the applicant's own actions because the house was located on the property prior to being purchased by the applicant. 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 of the front and back porch is consistent with the character of the existing neighborhood and would increase the value of the subject property. Mr. Waddell seconded the motion. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, Bowers and Skenes. Nays: None).

- e. BOA-19-08: **3807 Brown Bark Drive** Hannah and Young Kim request two variances. (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 30-7-3.2 – Table 7-1. (2) To allow a proposed addition to encroach 10 feet into a required 55 foot front setback. The addition will be 45 feet from the front property line. Section 30-7-1.4. Zoning R-3 (Residential Single-Family). Cross Street – Winview Drive **(GRANTED)**

Shayna Thiel stated that the applicants 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. Variance #2: To allow a proposed addition to encroach 10 feet into a required 55 foot front setback. The addition will be 45 feet from the front property line. The lot is located on the south side of Brown Bark Drive, east of Winview Drive, and is zoned R-3. Tax records indicate the lot contains approximately 13,939 square feet and the house was constructed in 1972. The applicants propose to construct an addition along the side of the house that will encroach 6 feet into a required 10 foot side setback and be 4 feet from the western side property line. The proposed addition will also encroach 10 feet into a required 55 foot front setback and be 45 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.

Young Kim, the applicant, 3807 Brown Bark Drive, was sworn in and stated that he wishes to add a two-car garage at the front half of the house. The rear of the garage would be used as a studio as he is an artist and this would allow him to work at home more and create more visual creative work. He also plans to include an above-ground storm shelter within that space. The proposed garage would be a single story and would have a flat roof because the existing house has a flat roof. He has contacted his neighbors but has not heard anything from them either in favor or in opposition.

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:

The Board members felt that this was a very reasonable request.

Mr. Oliver moved that, in regard to **BOA-19-08, 3807 Brown Bark Drive**, 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 the applicant wishes to construct a two-car garage on the existing driveway with an art studio. The way the house is centered on the lot, there is no room for the proposed project and to comply with the ordinance. 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 is centered in the lot in an unusual way and does not allow room for the project. The hardship is not the result of the applicant's own actions because placing the home on the lot was determined prior to the current owners purchasing 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 it adds value to the property as many homes in the neighborhood have garages and the project is a small deviation and there is plenty of

room for access to the rear yard. Mr. Waddell seconded the motion. The Board voted 7-0 to grant the variance requested. (Ayes: Truby, Waddell, Oliver, Necas, Ramsey, Bowers and Skenes. Nays: None).

SPECIAL EXCEPTION

- a. BOA-19-09: **611 JOYNER STREET** Katie Kersey and Datus Rwechungura request a special exception to allow a proposed addition to encroach 1.6 feet into a required 5 foot side setback. The addition will be 3.4 from the side property line. Zoning R-7 (Residential Single-Family); Section 30-7-3.2 – Table 7-3; Cross Street – Spring Garden Street. **(WITHDRAWN)**

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 6:31 p.m.

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

CT/jd

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT
MARCH 25, 2019**

The meeting of the Greensboro Board of Adjustment was held on Monday, March 25, 2019 at 5:37 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey Ted Oliver, Leah Necas, and Deborah Bowers. Chair Truby explained the procedures and policies of the meeting. City staff present: Shayna Thiel, Mike Kirkman and Andrew Kelly, City Attorney.

Chair Truby welcomed everyone to the meeting and advised of the policies and procedures in place for the Board of Adjustment. Chair Truby further explained the manner in which the Board conducts its hearings and method of appealing any ruling made by the Board.

Approval of the Minutes of February 25, 2019

Mr. Waddell made a motion to approve the minutes, second by Ms. Necas. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; 0.)

Swearing in of Staff

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

Continuance/Withdrawals

There are no continues or withdrawals.

OLD BUSINESS

No old business.

NEW BUSINESS

1. Variance

Kenneth and Susann Daly were sworn to present testimony regarding BOA-19-10.

a. BOA-19-10: 4202 Tallwood Drive. Kenneth and Susann Daly request a variance to allow a proposed addition to encroach 5-feet into a required 10-foot side setback. The addition will be 5 feet from the property. **(Granted)**

Ms. Thiel stated in BOA-19-10, 4202 Tallwood Drive, the applicants, Kenneth and Susann Daly request a variance to allow a proposed addition to encroach 5 feet into a required 10 foot side setback. The addition will be 5 feet from the side property line.

Ms. Thiel advised that evidence provided by the applicant includes Exhibits A and B. Supporting documentation from staff includes Exhibits 1, 2, 3, 4, 5, 6 7, and 8. Land Development Ordinance reference Section 30-7-3.2, Table 7-1. The R-3 minimum side setback is 10 feet.

Background and Site information: The subject property is located on the north side of Tallwood Drive, west of Kemp Road West, and zoned R-3. Tax records indicate the lot contains approximately 15,683 square feet. The house was constructed in 1966.

The applicants propose to construct a carport storage addition along the side of the house that will encroach 5feet into a required 10 foot side setback and be 5 feet from the western side property line. At its meeting on February

19, 2019, the Planning Board approved a 5-foot by 32-foot easement release request along the side property line that corresponds to the proposed carport addition.

There are no applicable overlays or plans. The land use is single-family. The adjacent zoning to the north, east, west, and south 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 and the overall growth density in R-3 will typically be 3 units per acre or less.

Chair Truby requested the Applicant to come forward and provide their name and address for the record.

Kenneth and Susann Daly, 4202 Tallwood Drive, Greensboro, NC. Mr. Daly stated that they have lived at 4202 Tallwood Drive for 25 years and would like to place a two-car attached carport on the property. To get the width that is needed they will have to go into the setback by 5 feet. It is the most practical place, located at the top of the driveway and where they currently park. The property line at the back where the project would be concluded, takes a good angle making it very difficult to put the carport anyplace else. He has gone through the easement release process and has worked with Shayna. All of the utility companies signed off on it and they are now requesting permission from this Board to go and ahead and construct this carport. Mr. Daly produced letters from the two adjacent property owners who are favorable to this request and they share the property lines. The notarized letters were provided to Ms. Thiel.

Chair Truby inquired if there were any questions for the Applicant. No questions from the Board of the applicant. Chair Truby inquired if there was anyone who wished to speak in favor of the request. No one came forward. He inquired if there was anyone in opposition. No one came forward. Seeing none, Chair Truby requested a motion to close the public hearing.

Ms. Bowers so moved, seconded by Mr. Waddell. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; 0.)

Board Discussion

The Board members indicated their support of the request as it seemed to be reasonable.

Ms. Necas made a motion for approval based on the stated findings of fact and moved that 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 side property angles creating a difficulty in placement of a proposed carport/storage addition. Also, the backyard topography slopes 1-5 feet downhill away from the property.
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 of that angle and topography in the rear of the yard. Both present hardships to adding additional structures.
3. The hardship is not the result of the applicant's own actions because the house was constructed in 1964 prior to the current owners. The topography is unchanged.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the proposed carport/storage addition will seamlessly blend into the character of the neighborhood by matching existing residences as closely as possible. Complementary landscaping will be installed around the perimeter of the new construction.

Motion by Ms. Necas, second by Mr. Waddell. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; 0.)

2. Special Exception

b. BOA-19-11: 1207 Ross Avenue. Kevin Brown on behalf of Clifton Parker, requesting two special exceptions. **(Denied)**

Chair Truby advised that all those planning to speak on this matter will need to be sworn in. Those in favor were sworn in first and those in opposition were sworn in next.

Ms. Thiel stated in case BOA-19-11 at 1207 Ross Avenue, Kevin Brown, on behalf of Clifton Parker, requests two special exceptions.

I. To allow a proposed family care home to be 412 feet from another family care home located at 1403 South Benbow Road when 2,640-feet is required.

II. To allow a proposed family care home to be 2,323 feet from another family care home located at 1628 Dunbar Street when 2,640 feet is required.

Ms. Thiel advised that evidence provided by the applicant are Exhibits A and B. Supporting documentation from staff includes Exhibits 1, 2, 3, 4, 5, 6, and 7. Land Development Ordinance reference Section 30-7-10.1(B)(1), no new family care home may be located within ½ mile of an existing family care home unless a Special Exception is granted by the Board of Adjustment for reduced separation.

Background and Site Information: Ms. Thiel advised the subject property is located on the north side of Ross Avenue at the intersection of Ellis Street and is zoned R-5. Tax records indicate the lot contains approximately 21,780 square feet and the house was constructed in 1954. The applicant wishes to establish a GP Sober House and Recovery Program at the subject property which is located within a half mile of two other existing facilities. A family care home, Benbow Manor, operates at 1403 South Benbow Road which is 412 feet away. A family care home, Rickard's Residential Family Care, operates at 1628 Dunbar Street, which is 2,323 feet away. There are no applicable overlays or plans. The land use is single-family dwelling. The adjacent zoning to the north, 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 growth density in R-5 will typically be 5 units per acre or less.

Chair Truby requested the applicant to come to the podium and provide their name and address.

Kevin Brown, 1207 Ross Avenue, Greensboro. Mr. Brown provided information on himself on what he is trying to do in the community. He stated the GP Sober House and Recovery Program was developed as a safe and supportive place for recovering addicts to live during their first months of being sober. It was developed by himself, a minister with Good News Ministries since 2014, at 930 Walker Avenue in downtown Greensboro. It is connected with UNCG Saint Mary House. Mr. Brown has been involved in helping people in the 12-step program for over 20 years. During his 20 plus years of sobriety, he has identified a need for clean living communities for individuals whose goals are to remain clean from alcohol and other illegal substance. He has provided a GP Sober Recovery Program as a transitional tool that will provide a bridge to those who are in recovery to teach the skills necessary to avoid a relapse back into addiction. The goal for sober living homes is to help people in the early stage of their sobriety journey to have the tools to maintain sobriety, and to progress into the path for their new and better life.

Mr. Brown stated that he lives at this facility. It is really great what is going on America where the country as a whole is willing to try to help individuals get their life. In order for him to have federal funding, he needs to have zoning approval. Everything has to be order to receive funding from the government to get this started. He is currently working without federal funding and is using out of pocket monies and whatever can be raised through churches or Uber driving.

Mr. Brown has lived in this house since May 2018. The landlord lowered the rent to help to get the program started. It is not a shelter house, which is different from a lot of transition houses. There are three meetings a day, starting at 7:30 a.m., a meal, meeting at night, and church service on Sunday. He knows this works because it worked for him over 27 years ago through the Gospel Mission, a Catholic Diocese. Mr. Brown never knew that he

was going to come full circle and be in a position to do this. He came to North Carolina and received his call for ministry while in the House of Refuge Delivery Ministry, now the Refuge. It is a men's ministry where they reach out to people in the community struggling with drugs and alcohol and feed them breakfast and have a meeting. It started with just a handful of people and within a short period of time almost every seat at the table was taken.

Mr. Brown has since opened his own ministry at 930 Walker Avenue and was led to obtain this house. He ran into a snag and discovered that the City of Greensboro does not allow family care homes within ½-mile of each other. In order for him to operate a house, he has to go before the Board. He is here letting the Board and citizens know what kind of house he is asking permission for and letting the community know he is living at the house. He will be there 24/7. It will be a safe environment. If it's unsafe, he'll call the police and have anybody removed from the property. His door is open to anyone who wants to come over and help, as it would be truly appreciated.

Mr. Brown expressed surprise at how many people were there in opposition but feels they want to make sure their neighborhood is safe and will continue to be safe. The whole block is a very nice neighborhood and that is one of the reasons why he wants to start out with a GP Sober House there. One of the main things for a person leaving treatment is for them to not go back into the environment they were in previously. The most important part is to provide hope. He spoke of his struggle and how his life was turned around by the Gospel Mission. He knows it can work and is very passionate in that belief. He indicated that two people were present to testify in favor, Jackie Pate and Scott Jones.

Chair Truby asked if there was anyone who had questions for the applicant. No questions were presented. Chair Truby asked for anyone in favor.

Speakers in Favor

Jackie Pate, 1433 Grantland Place, Greensboro, NC. Ms. Pate stated she met Kevin as she is a recovering alcoholic of 21 years. She volunteers for the District VA in Guilford County and as a correctional coordinator to bring AA meetings into the jails. She is currently doing service work and does meetings at treatment facilities. She will do whatever anybody asks her to do, as helping each other is a part of recovery. They are a fellowship of men and women who share their experience, strength, and hope with each other that may solve a common problem and help others to recover from alcohol addiction. She believes very much in what Kevin is doing and has known him 3 years or more. Ms. Pate will vouch for his character as a minister and as the person who has been in recovery himself. She imagines the stigma of alcoholism and drug use has hurt them today with the current Opioid crisis more than anything. People do not want to be around it and do not want to live in it.

From her personal experience with these houses, she is not aware of any trouble in the neighborhoods of the houses. There are a group of houses called the Oxford Houses and currently those houses are full. There is a shortage of places for people to go and have money to stay as a lot of them have lost everything. She worked for 32 years for the VF Corporation and works as hard today as she did then and is now helping people get sober and realize the problems with alcoholism. There are 120 or more meetings in Guilford County for people working the 12-step program. Ms. Pate vouched for herself that recovery works, if the person works it. A house like this one is very important as most alcoholics and addicts do not know how to stop. They have tried and failed because they were doing it on their own. They did not have a group of people helping them.

Ms. Pate thinks this housing is very important and that Kevin is a good man who would operate it within the law within the area of the community. She does fully understand the opposition against it.

Chair Truby inquired if there were any questions for this speaker. Mr. Ramsey asked how many clients they plan on having at the house at any given time. Mr. Brown responded that he would start off with two and will transition over 30 to 45 days to 4. If he has funding, there will be people to drive back and forth to meetings. The Bishop is going to help with the cooking. People will clean up for themselves and eventually will cook and clean for themselves. The maximum will be 6 people and the next two as they transition in and out. That way he will keep safe, hopes to have people drive back and for to meetings.

Mr. Oliver inquired if these people would stay all day or come in morning and leave in afternoon. Mr. Brown responded that the 12-step program will be done in the morning. The first meeting is at 7:30, so they will get up at 6:00 or 6:30 am, prepare and eat breakfast, and head out to the first meeting. The power of recovery and staying

clean are the meetings. It's the fellowship of the 12-step program that will be used as a tool. Everyone attends the program meetings at least 3 to 4 times a day.

Mr. Oliver asked if they will live there. Mr. Brown responded yes. Ms. Bowers asked what population is served by the other two-family care homes within the restricted area, Benbow Manor and Rikard's Residential Family Care. Ms. Thiel responded that Benbow Manor is licensed for six residents and Rikard's Residential Family Care has one. Ms. Bowers asked if the purpose of the other family care homes and if they served youth. Ms. Thiel replied that staff doesn't know.

Counsel Kelly clarified that the City doesn't differentiate the type of disability the family care home is serving and doesn't record that type of information.

Ms. Bowers inquired if the rationale behind the restriction on location was based on populations served so you don't have the same folks clustering together. Counsel Kelly responded that clustering together, maintaining and preserving the character of the neighborhood are considerations before the Board, but there is no legal distinction between disabilities.

Ms. Necas inquired if the occupants have their vehicles with them. Mr. Brown responded no, they will not. The only vehicle at this time will be the transportation that he has until there is funding. He currently has an SUV and when he receives funding, will purchase a van and there will be five people plus himself. He does not want to overcrowd the house or put himself or the community in jeopardy. The house is 2,700 square feet that can accommodate that amount of people. Ms. Necas stated she saw four vehicles outside the property. Mr. Brown state those four vehicles are from the people present tonight.

Ms. Bowers inquired if the people that are being taken into this home live there but meet elsewhere. Mr. Brown responded that the AA meetings are held elsewhere. They would never be held at the house as they are large meetings and have to get permission to have a meeting at any facility. He will take people to the meetings.

Ms. Bowers asked if the occupants live there, were transported to meetings elsewhere three times a day, ate meals at the house, and were transported to church on Sunday. Mr. Brown responded that is correct and is thankful for the bus route. He has researched the bus route because when they go looking for work, they will be able to get on their own, learn to be responsible, not depending on the house. Part of the criteria is to acquire work within 30 days, get to a point where they can pay rent. Some may want to stay longer and would not be refused. He will charge a \$100.00 or so for rent so they can adjust. All are tools for getting them transitioned into the community, to be able to cook, clean, pay their rent, save money and move out on their own.

Mr. Waddell inquired about the proposed property being just a little over 400 feet from one of the current properties and asked the reasoning for that close distance between the two homes. Mr. Brown responded that he didn't know there was one in the area. Neither one knew of each other's existence. They will not know when he starts the program because it is a low-key program. There is no program advertising because these houses are under family care and information regarding the type of home is protected. He does not think it is a program for people struggling with addiction as he would have heard about it through the fellowship of the AA meetings.

Mr. Oliver inquired if he owned the home. Mr. Brown responded that he currently rents and hopes to be able to rent the home with an option to buy. Mr. Clifton Parker, the owner, is present and knows what this is about and is supportive. Mr. Oliver asked if he has to do it at this location or if it could be done at another leased location. Mr. Brown stated if need be, yes, but this is an ideal location because of the transportation.

Mr. Ramsey inquired if Mr. Brown had backup because if he is doing this 24/7, it could be very draining. Mr. Brown responded that he does have backup. One of the main ones is Dr. Carl Wilkinson, who is 30 years sober and semi-retired. He is licensed in counseling and is an ordained minister. He will be counseling every other weekend, has done this and is familiar with all of it. Dr. Wilkinson was his sponsor in New York City. His Bishop and other people at his church can also help.

Mr. Ramsey asked for confirmation from staff that there is a restriction on no more than four unrelated people living in a house and how this could be a licensed house for six people. Mr. Kirkman responded that both of those are correct. One of the definitions of a family according to the Greensboro Land Development Ordinance is four unrelated persons living in a single dwelling. With a family care home, if established by right, you can go up to six

individuals. You would have to have that additional permission which is what he thinks Mr. Brown is saying. He may start small but is looking to eventually expand up to the six.

Chair Truby inquired if there were any other questions for the applicant. He then inquired if there was anybody else who wished to speak in favor of this request.

Ms. Jackie Pate requested to say one thing more. The World Health Organization states that alcoholism is the third largest untreatable disease killer in this country, far exceeding any street drugs.

Scott Jones, 1207 Ross Avenue. Mr. Jones is a roommate of Mr. Brown has lived there since August 2018. He provided the background of how they met and the friendship they have built. He felt very comfortable from the beginning with him. He had not been to the neighborhood before and was unsure of the neighborhood but was assured by Mr. Brown. He stated Mr. Brown is a good man and that the men gained each other's trust right away. It has been very positive for him.

Mr. Jones stated that he worked as personal trainer in a small gym and now owns it, which he attributes to meeting Mr. Brown. He is not in the program, but in his own way, he needed a peaceful re-start of his life and a place to feel safe. They share the same faith and he helps with bible study on Sundays. Now that he owns the gym, he will use it as part of Mr. Brown's program and offer it for his people to discipline their lives through working out, like military training.

Chair Truby thanked him for speaking. Ms. Bowers asked how Mr. Clifton Parker fits in as the owner of the property. Chair Truby responded that the Reverend leases the house from the owner. Ms. Bowers inquired if the owner consented to this use. Mr. Brown responded yes and that the owner is here. Staff also indicated that the owner signed the application.

Chair Truby inquired if there was anyone who wished to speak in favor of the request. No others came forward. Seeing none, requested the people speaking in opposition to come forward and provide your name and address for the record.

Speakers in Opposition

Barbara Washington, 1208 Eastside Drive, Greensboro, NC. Ms. Washington is a block from 1207 Ross Avenue. She provided information on the unique character of her neighborhood. She grew up in the neighborhood and when she was young, there were doctors, lawyers, educators, blue collar workers. They all shared a common desire to live in a good community. During the times she was young, the southeast quadrant of Greensboro was the area that they could live in. The house in question, along with other houses, are custom designed houses by W.E. Jenkins, the first black architect licensed in the state of North Carolina, and William Street. These houses are in historic Dudley Heights. Most of them have come back because their parents have passed away. The daughter of W.E. Jenkins is living in the home across the street from this property.

People in the neighborhood walk their dogs in the morning, sometimes before daybreak because they know each other. They interact, visit each other's homes for coffee. They are all struggling to hold on to the character of the community. They have ownership and interest in their homes. They do not want their community to become rented houses with no one living there and are concerned about this house changing the character of their neighborhood.

Chair Truby inquired if there were any questions for Ms. Washington. No questions were presented. Chair Truby advised if they have questions, they will bring her back up. He asked the next speaker to come forward.

Christina Yongue, 1103 Ross Avenue. Ms. Yongue advised her back yard butts up behind South Benbow Road. She is a working mother of two small children and is concerned about changing the character of their neighborhood. She would like for it to remain a residential neighborhood. Her evidence for why the special exception should not be granted is her concern regarding the history of the neighborhood. If residents in the house present new foot traffic to the bus station, her house is between the subject property and where one of the bus stops is located, which is also where her children wait for their school bus. Continued new traffic flow would change the dynamics of the neighborhood and she would not be in favor of that.

Not only is it a personal concern of safety and the change of the flow of walking traffic, she is a public health professional and is in favor of these types of recovery programs, but there are other locations where they can be had. There is a church in the area supporting AA programs. There are other places where individuals can have the programs that the Reverend has offered. It's a good program but it should be in another location.

She spoke on why this is economically affordable. The neighborhood has had various levels of housing property values going down and because they are situated where they can be more affordable, it makes the area seem like a prime place for a family care home. This program could be in another neighborhood.

Chair Truby inquired if there were any questions. There were none. Chair Truby asked the next speaker to come forward and state their name and address for the record.

Wanda Morehead, 1208 Ross Avenue, Greensboro, NC. Ms. Morehead stated she has lived there for over 18 years. She is concerned about maintaining and preserving their community as it is. Neighbors United is the name of their community. They get together and know each other and come together to share. It's concerning to have a continuous flow of people that we don't know coming in and out. The subject property is directly across from her and she has observed people coming in and out, did not know it was going to the Board of Adjustment for consideration.

Ms. Morehead stated that there is one family care program on Benbow Road very close to where they are residing and another one on Dunbar Street. Her community will then be gravitated to this type of housing accommodation. She knows there is a need, however you don't want to put it all in the same community. Houses will start to depreciate over the years. When people come and want to buy your house, they want to know what's going on in this neighborhood. She stated people are not going to want to buy a house if they know that you have three different family care homes in your area. It is a very big concern for her.

These people are recovering from alcohol and/or drugs and there is concern over their access to acquire drugs. Currently, drugs are available on Ross Avenue and Martin Luther King Boulevard. They are not in a safe haven.

There is also a concern about Mr. Brown being the one in the house who will be transporting the gentlemen back and forth all day. There is a lot of concern, a lot of things going on that have yet to be worked out. Members of the community want to preserve the community as it is.

Chair Truby thanked the speaker. A new speaker was sworn in for testimony.

Patrice Hinnant, 1102 Ross Avenue. Ms. Hinnant grew up at 1011 Broad Avenue, about a block or so away. She did live on Benbow Road in the block contiguous with the block where the family group home. Ms. Hinnant discussed the history of the homes in the neighborhood.

To her knowledge, the family care home on Benbow Road is for older and sickly people. There are not young people running around in the yard or coming in or out. It was originally brought by a husband and wife who have since moved out into the county and no longer reside there. A second house on Pickett Street is across US 29, not in their neighborhood, and there is a definite divide between where that home is and where their homes are. She can say that because she was the co-founder of the Raymond Alexander Drug Treatment Court and was the first presiding Judge. Her mother served on the Board of Drug Action Council for about 20 years, and her family has invested in drug treatment.

Ms. Hinnant stated that most residents in the community are older. She is a retired Superior Court Judge and has sentenced a lot of people to prison for use and dealing of drugs. She spoke about the density of overgrowth, which is not against this person, but is to say that they are holding on to the quality of their neighborhood. They don't need any more transients or rentals that are insensitive to the quality of the neighborhood.

Ms. Hinnant mentioned some of the other residents living in the neighborhood. She discussed their professions and the various amenities and characteristics of the area homes.

The neighborhood is not against the concept of the family care home, but it is disingenuous to suggest the owner has bought the house assuming that the tenants appreciate the historical nature of the neighborhood and is asking the Board to consider the type of homes that are there already.

Ms. Hinnant told the Board that they don't need this house used as a family care home, don't want it and it's not fair to them as homeowners. She would tell Mr. Parker that the neighborhood does not appreciate that he uses it for this purpose. She has never met the tenants in the home. The community all know each other. They are not trying to be a part of the neighborhood. She hopes the Board considers the decision being made and strongly encourages the Board to vote no. Ms. Hinnant thanked Mr. Brown for what he does but asked him to please try to find someplace else. He is welcome to stay in the neighborhood to live but to not use the house for this purpose. It is a safe place and they want to keep it safe.

Chair Truby asked if there were any questions. There were no questions.

Miltrine Jenkins Barden, 1301 Ross Avenue. Ms. Barden said that everything has been said but she is standing there as the daughter of the architect, Mr. W.E. Jenkins, and that the house that they would like to use as a family care home, he designed. She lives in the house her father designed years ago and was raised there.

Ms. Barden stated they are thankful for those recovering from anything because everyone has problems. But that is not the place for it. She stated that she also speaks as the former President of Neighbors United. It is a nice neighborhood because the residents have worked hard. Their parents and grandparents before them worked hard to keep the community this way.

Chair Truby thanked the speaker and inquired if there was anyone else who wished to speak in opposition. No one came forward. Chair Truby asked if there were any questions. Chair Truby asked if there was rebuttal from the applicant. Mr. Kirkman replied that rebuttal is not officially built into the agenda, but would be if the Board has questions for any of the speakers.

Chair Truby inquired if the Board has any questions. Chair Truby stated the Board has heard all the evidence that they need to hear and requested a motion to close the public hearing.

Motion to close the public hearing by Mr. Waddell, second by Ms. Skenes. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; 0.)

Discussion by Board

Ms. Skenes stated that when the Land Development Ordinance was created, the spacing requirements were not pulled out of thin air. They were done for a reason, which was to preserve neighborhoods and make sure that these properties were not clustered. The second special exception request where there is 2,300 feet separation and it's on the other side of 29 is not a problem. Her memory was they have never approved properties only 412 feet apart from each other. It goes against what this ordinance is supposed to do to preserve and protect. She is in total agreement and has great admiration for what Mr. Brown is attempting to do. It is the wrong location because of the other group home that is already there. She is not in favor of granting this special exception.

Chair Truby stated he was on the Planning Board when the distances were closer, and he thought they approved increasing them because these homes were getting clustered in the same neighborhoods, mostly in eastern and southeastern Greensboro. He does not think it's fair. The other home is too close. He admires what Mr. Brown is doing and wishes there wasn't another home this close so he wouldn't have to be here requesting a special exception. He has been on this Board for five years and does not ever recall approving one that was this close to another one. He will be voting against it.

Ms. Bowers stated she was voting against it as well for the same reasons. She applauds Reverend Brown's efforts but it is not the right location. As previously stated, the reason for the proximity requirements to other group homes is done for a reason and it's just too close. She also understands the concerns of the occupants of the neighborhood that are there now and have been there for a long time. As much as they applaud his goals, she will be voting against it because of the proximity to the other homes and does not see the justification for ignoring the requirements of the ordinance.

Mr. Waddell stated the same for him. He is voting against it. He has a deep respect for the neighborhood as he grew up there, went to Dudley and now his daughter will be graduating from there. The home across the highway is only a few feet from being within the ordinance but the 412 feet is just too close. He also knows that the neighborhood is struggling to hold on to everything it can to preserve what they have.

Mr. Waddell read the motion sheet for BOA case 19-11 at 1207 Ross Avenue. The motion should either be to approve the special exception request, approve the special exception request with conditions, or deny the special exception request. He indicated that conclusions must be made for both approvals and denials.

Mr. Waddell made a motion that, based on the stated Findings of Fact, I move that the Zoning Enforcement Officer be upheld and the Special Exception denied based on the following:

1. The special exception is not within harmony of the general purposes and intent of the ordinance and does not preserve its spirit because the requested special exceptions 1 and 2 do not meet the 2,640 foot separation requirement.
2. The granting of the special exception does not assure the public safety and welfare and does not do substantial justice because the proposed property implicates the safety and public welfare of the residents due to not meeting the zoning requirements for a single-family dwelling.

Motion by Mr. Waddell, second by Ms. Skenes. Chair Truby made sure that everyone understood that a yes vote is voting against special exceptions 1 and 2 as stated in the motion by Mr. Waddell.

Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; 0.)

Chair Truby advised the applicant he was sorry and the Board really likes what he is doing and hopes he can find another house.

OTHER BUSINESS

Mr. Kirkman advised staff has no other business.

ACKNOWLEDGEMENT OF ABSENCES

Ms. Blackstock is absent, with Ms. Bowers in her place.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 7:00 p.m.

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

**MEETING OF THE
GREENSBORO BOARD OF ADJUSTMENT**

April 22, 2019

The meeting of the Greensboro Board of Adjustment was held on Monday, April 22, 2019 at 5:37 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Ted Oliver, Leah Necas, and Deborah Bowers. City staff present: Shayna Thiel, Mike Kirkman and Terri Jones, Deputy City Attorney.

Chair Truby welcomed everyone to the meeting and advised of the policies and procedures in place for the Board of Adjustment. Chair Truby 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 THE MINUTES

Mr. Waddell made a motion to approve the minutes, seconded by Ms. Necas. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

Ms. Thiel advised that BOA-19-14, 410 Sunset Drive, was withdrawn per a request from the applicant.

OLD BUSINESS

None.

NEW BUSINESS

1. VARIANCES

a. BOA-19-12: 2501 HILL-N-DALE DRIVE. Melissa Morford requests two variances. (1) To allow a proposed accessory dwelling to encroach 2 feet into a required 5-foot side setback. (2) To allow a proposed accessory dwelling to encroach 10 feet into a required 20 foot rear setback. **(GRANTED)**

The applicant was sworn in to present testimony regarding BOA-19-12.

Ms. Thiel stated in BOA-19-12, at 2501 Hill-N-Dale Drive, the applicant, Melissa Morford request two variances.

1. To allow a proposed accessory dwelling to encroach 2 feet into a required 5 foot side setback. The accessory dwelling will be 3 feet from the side property line.
2. To allow a proposed accessory dwelling to encroach 10 feet into a required 20 foot rear setback. The accessory dwelling will be 10 feet from the rear property line.

Evidence provided by the applicant includes Exhibits A and B. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance references are Section 30-8-11.2(D) and Section 30-7-3.2 -Table 7-2: R-5 minimum side setback is 5 feet and R-5 minimum rear setback is 20 feet.

Background and Site Information: The subject property is located on the west side of Hill-N-Dale Drive at the intersection of Westmoreland Drive and is zoned R-5. Tax records indicate the lot contains approximately 12,197 square feet and the house was constructed in 1959.

The applicant proposes to enlarge an existing 240 square foot storage building to 432 square feet and convert it into an accessory dwelling. The existing storage building meets the minimum 3 foot side and 3 foot rear accessory structure setback requirements. If converted into an accessory dwelling, the structure will not meet the R-5 minimum 5 foot side setback or the 20 foot rear setback requirement. It will remain 3 feet from the side property line and 10feet from the rear property line.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there were no applicable overlays or plans.

Chair Truby asked the applicant to come forward to provide her name and address for the record.

Melissa Morford, 2501 Hill-N-Dale Drive, Greensboro, NC. Ms. Morford stated she is requesting a variance to expand a previous structure that was on the property when purchased in 2012. She would like to make it an additional dwelling unit to allow an aging parent to have both independence and privacy. She produced a notarized letter of support from her neighbor indicating it had never been a nuisance and had always been there.

The Board asked questions of the applicant. In response, the applicant stated that she is trying to stay where the structure is currently by using the same footprint but expanding inward on her property. In response to another question, Ms. Morford stated that the structure meets all current requirements. Chair Truby stated that setback differences are because it is going from an accessory structure to an accessory dwelling. Chair Truby asked if there was anyone else to speak in favor or in opposition. No one came forward. Chair Truby requested a motion to close the public hearing.

Mr. Waddell so moved, seconded by Mr. Ramsey to close the public hearing. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

BOARD DISCUSSION

The Board members indicated their support of the request as it seemed to be reasonable.

Mr. Waddell moved that, in case BOA-19-12, 2501 Hill-N-Dale Drive, based on the findings of fact, the zoning enforcement officer be overruled and that variances 1 and 2 be 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 this structure existed at the time the applicant purchased the 2501 Hill-N-Dale property.
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 ordinance requires specific setbacks but is to be built using the existing structure.
3. The hardship is not the result of the applicant's own actions because the hardship is due to proximity of the existing structure and property lines.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the style will be similar to the existing structure and will not detract from the neighborhood.

Seconded by Ms. Skenes. The Board voted 7-0 in favor of granting the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

b. BOA-19-13: 7 MANOR RIDGE COURT. Karthy and Amelia Cates requesting a variance to allow a proposed addition to encroach 11 feet into a required 34 foot front setback. **(GRANTED)**

The applicants were sworn in to present testimony regarding BOA-19-13.

Ms. Thiel stated in BOA-19-13, at 7 Manor Ridge Court, the applicants, Karthy and Amelia Cates, request a variance to allow a proposed addition to encroach 11 feet into a required 34 foot front setback. The house will be 23 feet from the front property line.

Evidence provided by the applicants includes Exhibits A and B. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference is Section 30-7-1.4: street setback computations.

Background and Site Information: The subject property is located on the east side of Manor Ridge Court, south of Manor Ridge Trail and is zoned R-3. Tax records indicate the lot contains approximately 11,761 square feet and the house was constructed in 1996. The existing house is considered a non-conforming structure as it encroaches into the required 34 foot front setback. Any enlargement of a nonconforming structure must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance. The applicants propose to construct an addition at the front of the existing house that will encroach 11 feet into the required 34 foot front setback and be 23 feet from the front property line, so a variance is required.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there were no applicable overlays or plans.

Chair Truby asked the applicants to come forward to provide their names and address for the record.

Amelia Cates, 7 Manor Ridge Court, Greensboro, NC. Ms. Cates stated they need a master suite on the ground floor as her husband has bad knees and joint issues making it very difficult to go up and down the stairs currently and only sees that becoming worse as they age. They want to stay in their house but be able to fully live on the ground floor.

The Board asked questions of the applicants. Ms. Necas asked them to clarify that their house is non-conforming and is 8 feet within the front setback. Ms. Cates responded they were not aware of that until this process but, yes. Ms. Necas stated they are only asking for 3 feet more than the house already encroaches. Ms. Cates responded the porch is 6 feet out from the house itself and they want to add a full bathroom and a walk-in closet on one side which is about 9 feet, so it is 3 feet more from where the porch ends. Chair Truby stated they were caught in an ordinance change where they're using a prevailing street setback now to determine front yard setbacks that didn't exist when their house was built. If this is approved, it will take care of their non-conforming issue.

Chair Truby asked is there were any further questions. None. Chair Truby asked if there was anybody to speak in favor. Ms. Cates provided a notarized support letter from a neighbor. She did talk 95 percent of their neighbors who are aware of their project and have no issues. Chair Truby asked if there was anyone else to speak in favor or in opposition. No one came forward. Chair Truby requested a motion to close the public hearing.

A motion was made by Ms. Skenes, seconded by Mr. Ramsey to close the public hearing. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

BOARD DISCUSSION

The Board members indicated their support of the request.

Ms. Necas moved that, in case BOA-19-13, 7 Manor Ridge Court, based on the findings of fact, the zoning enforcement officer be overruled and that the variance be 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 property only includes a bedroom and a full bath upstairs and it will be a physical hardship to climb the stairs for the owners.
2. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicants' property because it is a slab foundation and plumbing issues make adding a bedroom and bath to any other location in the house difficult.
3. The hardship is not the result of the applicants' own action because the house is nonconforming and any addition will automatically require a variance. Plumbing issues and necessary square footage for the new bedroom prohibit additions to the back of the house.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the size of the addition just 3 feet beyond the current porch will not detract from the character of the neighborhood and will add value to the property.

Seconded by Mr. Waddell. Board voted 7-0 in favor of granting the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

d. BOA-19-15: 2435 BATTLEGROUND AVENUE. James Sipsis, on behalf of Oakcrest Center, LLC requests a variance to allow the area of an existing freestanding sign to exceed the maximum allowed by 21 square feet. **(GRANTED)**

The applicants were sworn in to present testimony regarding BOA-19-15.

Ms. Thiel stated in BOA-19-15, at 2435 Battleground Avenue, the applicant, James Sipsis, on behalf of Oakcrest Center, LLC requests a variance to allow the area of an existing freestanding sign to exceed the maximum allowed by 21 square feet. The free standing sign is 221 square feet and the maximum allowed is 200 square feet.

Evidence from the applicant include Exhibits A and B. Supporting documentation from staff includes Exhibits 1 through 12. The Land Development Ordinance reference is Section 30-14-7.3, Table 14-2: maximum area of a free standing sign in C-M District is 200 square feet.

Background and Site Information: The subject lot is located on the west side of Battleground Avenue, south of Oakcrest Avenue, and is zoned C-M. Tax records indicate the lot contains approximately 2.97 acres and the building was constructed in 1964. The existing 221 square foot sign is considered nonconforming as it exceeds the maximum area allowed by 21 square feet. The original sign, as shown in Exhibit 7, was approved on July 11, 2011 and erected on the property. At that time, it met the 200 square foot maximum requirement. Sometime after 2011, the applicant installed a 21 square foot (7 foot by 3 foot) electronic message board at the bottom of the existing sign without a permit.

On July 5, 2018, the City issued a Notice of Violation for installing a sign without a permit and for exceeding the maximum allowable footage. On July 11, 2018, the applicant submitted a sign permit application for the addition of the electronic message board. On December 13, 2018, the applicant was notified that the sign permit could not be approved because the addition of the electronic message board to the existing free standing sign caused the total area to exceed the maximum allowed. On March 5, 2019, the City issued a civil penalty for not remedying the Notice of Violation. The applicant seeks a variance to exceed the maximum area allowed for a free standing sign and thus allow the added electronic message board to remain.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there were no applicable overlays or plans.

Ms. Skenes stated that the staff presentation indicated that there was not a permit requested for the 21 square foot message board, but in two different places in the applicant's presentation, it is stated he had a permit in place for the sign since July of 2018. She asked if the applicant applied for a permit, but it was not issued. Ms. Thiel responded that is correct.

Chair Truby asked how the Notice of Violation came about. Mr. Kirkman responded that staff received an inquiry to look at the sign. It was investigated and determined the electronic message board did not have a permit. The applicant came in to request a permit and staff determined it was too large for the overall square footage, so the applicant was informed to request a variance.

Ms. Bowers asked if the banners that were there previously below where the signage is were okay. Mr. Kirkman did not know the specifics of the banners that had been there before, but suspected they were not since banners are supposed to be attached by a semi-rigid frame and secured. Without all the specifics, he was unable to answer the question fully. Ms. Skenes asked if temporary banners are acceptable. Mr. Kirkman responded that there is a provision for special promotion banners for commercial uses. There are also provisions in the ordinance for a banner sign that requires a permit and must be attached to a semi-rigid frame and secured. Ms. Skenes asked if the banners were legal. Mr. Kirkman responded to his knowledge, they would not have been allowed.

Chair Truby asked the applicant to come forward to provide his name and address for the record.

Jimmy Sipsis, 2925 New Hanover Drive, Greensboro, NC; Sam Helmi, Oakcrest Family Restaurant at 2435 Battleground Avenue, Greensboro, NC; Robert Benson, Attorney for Oakridge Shopping Center. Mr.

Benson stated the previous banner had been there for 15 years and was held by a wooden plaque behind the sign so it would not blow in the wind. It was taken down when Mr. Helmi replaced it with the electronic sign. Mr. Helmi did not know the electronic sign was out of order because the banner had been there for 15 years. Mr. Helmi has run the Oakcrest restaurant for 19 years. The new electronic message sign has been there for 2 years, and Mr. Helmi was not aware of any complaints regarding the sign. Mr. Benson stated since Mr. Helmi had the electronic sign, he had about a 10 percent increase in business. Mr. Benson stated both Mr. Sipsis and Mr. Helmi are here to address any questions.

Chair Truby inquired if there were questions for the applicants. For clarification, Ms. Skenes asked how long the message board has been up. Mr. Helmi responded about two years. Ms. Bowers inquired if there were any comments from the other occupants of the shopping. Mr. Helmi responded to his knowledge no one has complained about the sign. Mr. Sipsis stated if he went in each unit, they would not have a problem with the sign, and no one has ever said anything to him about it.

Chair Truby inquired if there were any other questions. Chair Truby inquired for anyone else to speak in favor. No response. Chair Truby inquired of anyone in opposition. A motion to close the public hearing was made by Ms. Necas, seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

BOARD DISCUSSION

Ms. Bowers asked who had the sign on top. Mr. Sipsis responded that Fleet Plumbing does. Ms. Necas asked staff if the sign is approved, is it just for the sign or will they need approval for size and then go before a board because it's electronic. Mr. Kirkman responded if the variance is granted to allow the total square footage to increase, staff should be approving the sign permanently. The electronic message board is considered part of the overall sign and if it meets certain standards in the ordinance, it would also be approved. Ms. Bowers asked if it is taken down, it is just open space. Mr. Kirkman responded that was correct. Chuck Truby inquired when the LDO was established, did it change the square footage of signs. Mr. Kirkman responded there were not any changes related to sign dimensions and felt these are consistent with what was in the Unified Development Ordinance. Ms. Skenes stated her memory was they did not touch on the signs as they did not want to create any nonconforming scenarios and left the signage size in place across the board in terms of zoning.

Chair Truby stated because of the location, he is in support of this, but generally is not in support of giving a competitive advantage over another business because of a larger sign. Because the electronic message board is low on the sign, he does not see it as having a negative impact and is good with the variance. Ms. Necas stated she is in support of the variance as the variance is small and makes a big difference in their livelihood. Mr. Oliver stated the restaurant now gets two spaces on the sign, everyone else has one. When he drove by, he noted that you can see it coming toward downtown on Battleground but not going out because cars block the sign.

Ms. Skenes moved that, in case BOA-19-15, 2435 Battleground Avenue, based on the findings of fact, the zoning enforcement officer be overruled and the variance be 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 the strict application of the ordinance because the 21 square foot message board at the bottom of the name sign would have to be removed.
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 for 15 years, the applicant has been using banners for additional exposure.
3. The hardship is not the result of the applicant's own action because a permit was applied for after the message board was installed and at the time the message board had been in place for two years.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and ensures public safety, welfare, and substantial justice because the sign has been in place for two years and has led to an increase in business of 10 percent for a locally owned business.

Seconded by Mr. Waddell. The Board voted 7-0 in favor to approve the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

e. BOA 19-16, 1711 Forest Valley Road. Douglas and Jennifer Cason request a variance to allow a proposed deck addition to encroach 14.8 feet into a required 37-foot front setback. **(GRANTED)**

The applicant was sworn in to present testimony regarding BOA-19-16.

Ms. Thiel stated in BOA-19-16, at 1711 Forest Valley Road, the applicants, Douglas and Jennifer Cason request a variance to allow a proposed deck addition to encroach 14.8 feet into a required 37-foot front setback. The deck addition will be 22.2 feet from the front property line.

Evidence from the applicant include Exhibits A, B and C. Supporting documentation from staff include Exhibits 1 through 7. The Land Development Ordinance reference is Section 30-7-1.4: street setback computations.

Background and Site Information: The subject lot is located on the west side of Forest Valley Road, north of Wembley Court, and zoned R-3. Tax records indicate the lot contains approximately 11,761 square feet and the house was constructed in 1968. The existing house is considered a nonconforming structure as it encroaches into the required 37 foot front setback. Any enlargement of a nonconforming structure must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance.

The applicants propose to construct a deck addition at the front of the house that will encroach 14.8 feet into the required 37 foot front setback and be 22.2 feet from the front property line, so a variance is required. There are no applicable overlays or plans. The land use is single-family dwelling.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there were no applicable overlays or plans.

Chair Truby asked the applicant to come forward to provide his name and address for the record.

Douglas Cason, 1711 Forest Valley Road, Greensboro, NC. Mr. Cason moved here from Texas in August and purchased this house but was not happy with yard and pursued how to extend the current porch. The house encroaches into the front setback by about 4 feet. He is asking for a 5 ½ foot extension off the existing porch to build a deck of about 14-16 feet that would be faced with wood to look like a solid deck and be harmonious with the architecture. Mr. Cason provided an image of the proposed deck. This is a unique lot, with an angular, small back yard and lots of trees. There will be a tree between the proposed deck and the street. The front yard has a very steep grade and by having the deck, the family could be outside and be a part of the Connections 2025 movement by fostering a front porch culture. He has spoken with the neighbors and they are in favor.

Chair Truby inquired if there were questions for the applicant. Mr. Oliver asked if the tree remained and how close the proposed deck would be. Mr. Cason responded that the tree will remain and from where the extension ends, the tree would be another 4-4 ½ feet, which he believes is ample room between the porch and the tree.

Chair Truby asked for any other questions. Nothing further. Chair Truby asked for a motion to close the public hearing. A motion to close the public hearing was made by Mr. Ramsey, seconded by Ms. Necas. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

BOARD DISCUSSION

The Board agreed it was a reasonable request and agreed the picture (provided by applicant) was very helpful.

Mr. Oliver moved that, in case BOA 19-16, 1711 Forest Valley Road, based on the stated findings of fact, 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 home's lot has an angled front and back yard with a deep slope that makes use of the yard very limited.

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 there are very limited options to improve this property.
3. The hardship is not the result of the applicants' own actions because the house was already built when the owner purchased it. There are very limited options for outside use of the yard.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the porch will adhere and blend with the architecture of the home and blend in with the neighborhood. Other houses nearby have similar and even larger porches.

Seconded by Ms. Necas. The Board voted 7-0 in favor of granting the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

OTHER BUSINESS

None.

ACKNOWLEDGEMENT OF ABSENCES

Laura Blackstock is absent.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 6:18 p.m.

Respectfully submitted,

Chuck Truby,

Chair of the Board of Adjustment

MEETING MINUTES
OF THE
GREENSBORO BOARD OF ADJUSTMENT
May 28, 2019

The meeting of the Greensboro Board of Adjustment was held on Tuesday, May 28, 2019 at 5:37 p.m. in the Council Chamber Room of the Melvin Municipal Office Building. Board members present: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Ted Oliver, Leah Necas, and Deborah Bowers. Chair Truby explained the procedures and policies of the meeting. City staff present: Shayna Thiel and Mike Kirkman (Planning) and Andrew Kelly, Assistant City Attorney.

Chair Truby welcomed everyone to the meeting and advised of the policies and procedures in place for the Board of Adjustment. Chair Truby 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 THE MINUTES (April 22, 2019)

Mr. Waddell made a motion to approve the minutes, second by Ms. Skenes. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; 0.)

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

Ms. Thiel advised in regard to case number BOA-19-20, 410 Sunset Drive, the applicant is requesting a continuance. **(GRANTED)**

Ms. Amanda Hodierno, 804 Green Valley Road, Suite 200 presented on behalf of the Greensboro Country Club requesting a 30-day continuance.

Chair Truby inquired if there was anyone else to speak on the matter. No one came forward. Chair Truby requested the reason for the continuance.

Ms. Hodierno stated the Country Club is governed by a volunteer board with a large membership. Additional time is needed to ensure members interested in this matter have all the details regarding the proposal and ensure everyone is on the same page moving forward with the plans. Chair Truby clarified the last request for this property was withdrawn and not a continuance. He did not see any issue with it. Chair Truby requested a motion to continue this item to next month. Ms. Necas made a motion to continue, second by Mr. Waddell. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; 0.)

OLD BUSINESS

No Old Business.

NEW BUSINESS

1. VARIANCES

The applicants were sworn in for testimony.

a. BOA-19-17: 400 HOBBS ROAD. Brandon and Jessica Ma requesting a variance to allow a proposed addition to encroach 3.3 feet into a required 30-foot rear setback and will be 26.7 feet from the rear of the property. **(GRANTED)**

Ms. Thiel stated in BOA-19-14, at 400 Hobbs Road, the applicant Brandon and Jessica Ma request a variance to allow a proposed addition to encroach 3.3 feet into a required 30 foot rear setback. The addition will 26.7 feet from the rear property line.

Evidence from the applicants include Exhibits A and B. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference is Section 30-7-3.2, Table 7-1. R-3, minimum rear setback is 30 feet.

Background and Site Information: The subject lot is located on the north side of Hobbs Road, west of Beverly Place and zoned R-3. Tax records indicate the lot contains approximately 15,682 square feet and the house was constructed in 1984. The applicants propose to construct an addition at the back of the existing house that will encroach 3.3 feet into the required rear setback and be 26.7 feet from the rear property line.

Ms. Thiel provided the land use, zoning for this property and surrounding properties, and noted there are no applicable overlays or plans.

Chair Truby requested the applicant come to the podium and provide their name and address.

Brandon and Jessica Ma, 400 Hobbs Road, Greensboro. Ms. Ma stated they are requesting to add a proposed addition for a master bedroom, bath, closet and a one car garage.

Chair Truby asked if there are questions for the applicant. Ms. Necas asked if neighbors have been notified regarding the addition. Mr. Ma responded yes. The next door neighbor on Beverly called him and wanted to know which way the car would enter from, how many feet of variance was being requested and what was being built but did not express any opposition. Ms. Necas asked if they are adding something to the garage. Mr. Ma responded it would be an attached garage with a first-floor master, bath, and small sitting area. Ms. Necas asked if it was only 3 feet back. Mr. Ma responded that was correct. Ms. Skenes inquired of the height of the addition. Mr. Ma responded it is one story. Ms. Skenes stated there is an addition in back and asked if was going to be an addition to the sunroom. Ms. Ma responded it would be incorporated as the living area. Ms. Skenes asked if they had any renderings of what it will look like. Ms. Ma responded they did not have any definite plans. It will be a standard 8 to 9 foot ceiling height. She assumed the builder would adjust the roof lines to accommodate the runoff. Mr. Ma stated the builder's initial external elevation will be roughly the same height as the current garage and the back room will become a sitting room. A new door where the current door is located for entrance to the home. The area will be incorporated with the rest of the addition in the first- floor master. Ms. Skenes asked if the height would be the same as the existing garage as that is two stories. Mr. Ma responded the garage is one story with dormers and will not be any higher than that. It will not be a two-level addition, only one level. Mr. Waddell asked if an existing garage on the side of the house would no longer be a garage. Ms. Ma stated it would be a three-car garage. The current garage will be the same and attached to second garage with the entrance off the existing driveway. A diagram was provided and explained to the Board.

Chair Truby inquired if there any further questions for the applicant. No further questions. Chair Truby inquired if there was anyone to speak in opposition to the request. No one came forward. Chair Truby requested a motion to close the public hearing.

Mr. Waddell so moved, second by Ms. Bowers to close the public hearing. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

BOARD DISCUSSION

The Board members indicated their support of the application. Chair Truby did suggest having staff advise all applicants to provide renderings with their application to aid the Board.

Mr. Oliver stated based on the stated Findings of Fact, moved that the Zoning Enforcement Office 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 and unique circumstances related to the applicant's property because it appears that the option of an addition would not be possible.

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 there is no other place on the lot to put an addition. The front setback is almost 2 times the ordinance requirement.
3. The hardship is not the result of the applicant's own actions because the home was built in 1984, which the current owners acquired in December of 2015.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the proposed addition complies with the character of the surrounding neighborhood.

Second by Mr. Waddell. The Board voted 7-0 in favor of the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

b. BOA-19-18: 3736-3742. CARDINAL DOWNS DRIVE. Thomas D. Carruthers, on behalf of GL Sutphin Properties, LLC requesting a variance to allow proposed deck additions on four townhouses to encroach 10-feet into a required 20-foot rear setback. **(GRANTED)**

Ms. Thiel stated in BOA-19-18, 3736-3742, Cardinal Downs Drive, the applicant, Thomas D Carruthers on behalf of GL Sutphin Properties, LLC, request a variance to allow proposed deck additions on four townhouses to encroach 10-feet into a required 20-foot perimeter setback. The deck additions will be 10 feet from the perimeter property line.

Evidence provided by the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 10. The Land Development Ordinance reference is Section 30-7-3.2, J1, Perimeter setback for a four-unit townhouse is 20-feet.

Background and Site Information: The four subject properties are located on the east side of Cardinal Downs Drive, north of Cardinal Way, zoned RM-5. Tax records indicate the properties contain a total of approximately 5,227 square feet. The site plan for this phase of the Cardinal Downs Drive development was approved on May 31, 2018, with footing and foundation permits issued on November 6, 2018. When the applicants submitted as built surveys, City staff noted the locations of the units did match the approved site plan and included elevated decks instead of concrete patios. Completion permits were issued March 7, 2019, following approval by applicable city staff. At grade patios can encroach into required setbacks and uncovered decks less than 4-feet above grade can encroach up to 50% into the setback but elevated decks cannot encroach without a variance.

The applicant is seeking to allow the proposed deck additions to encroach 10 feet into the required perimeter setback. If the variance is approved, city staff can approve the final plat for these units, including the elevated decks and then be recorded with the Register of Deeds. When the final plat is recorded, completion permits can be approved and if all inspections have passed, certificates of occupancy can be issued.

Ms. Thiel provided the land use and zoning for this property and surrounding properties. There are no applicable overlays or plans.

In response to a question, Mr. Kirkman responded the completion permits listed for March were for the townhome units without decks because they could not meet the setbacks. If the variance is granted, it will allow the decks to be built and the completion permits will be updated based upon that. In response to a question, Mr. Carruthers stated no Certificate of Occupancy has been granted yet. Chair Truby elaborated further on the steps involved for the permits in order to be granted a Completion Permit.

Chair Truby requested the applicant to come forward and provide their name and address for the record.

Thomas D. Carruthers, 3316 VanAllen Circle, Greensboro. Mr. Carruthers responded to a question regarding doors in the balconies that if a variance were not granted they would create what is called a Juliette balcony. He stated this development has faced two challenges related to Infill Development. His client GL Sutphin Properties, LLC, had constructed a 3-unit townhome, two of which were occupied, and are completing the four-unit townhome complex before the Board. Mr. Carruthers provided an exhibit of a proposed plat indicating the four units. He pointed out a dotted line left and in front of the finished building. He noted the building had to be shifted both to

the right and to rearward to meet the needs of the construction, which created a problem as Cardinal Downs HOA had been, deeded the property by plat and deed. In working with the Slaughter Black Law firm and the HOA who had to vote a 75% approval to adjust the property lines and change the HOA bylaws to permit the adjustment of the property lines. It has been completed. The final deeds have not been exchanged, but the HOA at the request of the City, signed off on the final plat which is the outline showing the new property lines and the placement of what would either be rear patios or rear decks of the same size. He has the plat but feels it speaks well that for the HOA had signed off on it and they are waiting for direction from the Board of Adjustment on what is the last step.

Ms. Skenes asked to clarify the approval by the HOA, that was for the repositioning units but the HOA did not get into patios versus decks. Mr. Carruthers responded that was correct. Mr. Carruthers provided pictures of the four unit building currently. They are not occupied and final COs have not been entered. The units were built in harmony with the neighborhood under close supervision of the HOA. Pictures were shown indicating the rear of the building with no deck constructed. Mr. Carruthers advised the Board if they look to the west or southwest of the building they will see rear decks 4 feet or less which is typical in the neighborhood. Pictures were shown indicating a 10 foot encroachment into the rear setback and pictures depicting southeast of the property of an existing building and what is typical in the neighborhood.

Mr. Carruthers stated the primary unnecessary hardship is that without the deck variance and this would be the only townhome units in this community without rear decks overlooking the Cardinal golf course. This is a golf club community with each person having the exact same setup of a rear deck overlooking the golf course. This is part of the desirability and uniformed design of the neighborhood. The hardship is because of the topography. From the parking lot to the rear property line, the topography lines reveal about an 18 foot drop. He stated this is not a hardship as a result of the applicants' own action and indicated on a photograph depicting the original design of the project. Marked utilities were underground and it was understood all the utilities were between the water meter and street. When construction began a power line was severed and had to shift the building 6-feet backwards exactly against the rear setback. It was not chosen originally but occurred because of how the utilities were placed and the building had to be moved. Mr. Carruthers advised the decks could have been 6 feet deep at that point and not touch the rear setback. One could have been 6 feet, two could have been 10 feet and one could have been 8 feet since the property line runs diagonally along the back and only would corner would allow decks being within 10-feet of the property line. Mr. Carruthers feels this is in harmony with the neighborhood as it is exactly the design of the other townhomes in this neighborhood. People are buying these townhomes to enjoy for their view of the golf course. He stated this request supports public safety and the common welfare and does substantial justice for the citizens because they can enjoy the deck and survey the rear of the lot and property to include the golf course, and it would give them the same general welfare of every other townhome in this neighborhood. The HOA has been very active with work on the townhomes and is aware of the variance request. Everyone wants to move to the final stage with the variance. Three of the four units are under contract but there will be no sale until this issue is clarified. He stated they are here requesting that permission.

Chair Truby asked if the foundation survey was done and since it wasn't in the exact location as the original plan, how was the completion permit approved. Mr. Kirkman responded the discovery was the foundation was not matching up with property lines and there was an effort to redo the lots to match up with those foundations. There was also a building code issue that caused a slight shift. It is important with townhomes that walls match with the foundation. Mr. Kirkman stated the lots now match up with the foundation and if the variance is approved, they will be allowed to do the elevated decks within that footprint of the revised lot. Ms. Bowers asked if there are safety concerns with the decks being closer to the golf course. Mr. Carruthers stated he did not think so. In looking at the overall topography, the property line drops 20-feet to the course below where there is a creek and a golf cart path. There is substantial space overlooking the course and trees that provide a buffer. These are not decks looking over other neighbors in the backyards; they will be looking down a small valley of a golf course and across the course. There are single-family homes on the other side. Mr. Oliver asked if they did not have to move the units after the discovery of the utility line, would there have been a need to come before this Board. Mr. Carruthers stated they could have built a 6 foot deep deck on the unit closest to the rear setback, an 8-foot and two 10-foot decks. Ms. Necas asked if it was only one townhome encroaching into the 10 feet. Mr. Carruthers stated it might be 6, 6, and 8 feet. The last unit does not encroach except for a few inches. The decks cannot be larger than shown on the footprint or they would extend into common areas. Ms. Necas referred to the photos indicating the

topography and asked if the bottom floor area is a basement. Mr. Carruthers responded they are daylight basements in the units. Mr. Waddell asked if there are any written statement from the HOA about the hearing. Mr. Carruthers stated due notice was sent and he talked with their attorney, Harmony Taylor. Their signature is on the recorded plat indicating the squares will either be patios or decks and feels that indicates their support for this design.

Chair Truby asked if there were any further questions. No further questions. Chair Truby asked if there was anyone else to speak in favor.

Ben Herndon, 5709 Birchbrook Circle, Greensboro. Mr. Herndon stated he lives directly across these townhomes and his wife's parents are moving into the unit that is least encroaching and are intending to build a sunroom once the main construction is done. Mr. Herndon asked is the variance request only for the deck or would a variance be required to put a sunroom where the deck is. Mr. Carruthers asked if this was a sunroom that would not be considered furnished by a heated addition requiring a proper foundation with sub-floor construction and would be an enclosure of the deck. Mr. Herndon stated he did know what the intentions are. Mr. Carruthers asked if it was going to be an enclosure of a deck and if adjusted in size and did not encroach, would it require any further variance from the Board. Mr. Kirkman stated if the Board grants a variance to the setback the broader answer was yes, when the deck is covered with a roof and the structures extended, it is then considered part of a house and must meet the rear setback requirements. In this case the deck is elevated and is already asking to be encroaching into the rear setback and would not make a substantial difference as it is still at the same requirement of meeting the rear setback line. The Board may decide the facts themselves lend differently but he felt the question is if you allow an encroachment of a deck more than 4-feet high into the rear setback, an enclosure of a sunroom would be allowed. Mr. Carruthers advised it might be more of an HOA question than a City question. Chair Truby thought they would have to get permission from the HOA.

Chair Truby asked if there were any other questions. No further questions. Chair Truby requested a motion to close the public hearing. A motion was made by Ms. Bowers, seconded by Mr. Waddell to close the public hearing. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

BOARD DISCUSSION

Chair Truby stated it appeared to be a comedy of errors and a lot of people at fault. They have jumped through many hoops to get where they are today and he would hate to be the Board that squashed it which could hurt the units and be unsightly. The other Board members also indicated their support of the request.

Ms. Bowers made a motion in case BOA-19-18, 3736 to 3743 Cardinal Downs Drive, based on the stated findings of fact, moved that 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 all the other townhomes in the neighborhood have rear decks which overlook the golf course. Without a deck, these four units would not have the same usefulness and desirability as other units in the neighborhood and it would deny these owners the same uses of their properties as others in the neighborhood.
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 lot for the four units slopes approximately 18 feet from the street to rear property line, while other lots are flat or have a slight grade to the rear and are able to have low decks (4 feet or less), which do not require a variance.
3. The hardship is not the result of the applicant's own actions because the building structure as originally sited did not encroach into the rear setback. During construction, the private utilities were marked and an unknown main electrical cable (installed by others and pre-existing) was discovered where the building was supposed to go. The building site had to therefore be moved back towards the rear setback.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because each other townhome in the

neighborhood has a deck overlooking the golf course. This will permit consistent reasonable use with the other properties while preserving the spirit of the ordinance.

Second by Mr. Waddell. The Board voted 7-0 in favor to grant the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

c. BOA-19-19: 1198 NEALTOWN ROAD. Thomas H. Johnson with Williams Mullen, Raleigh, NC., on behalf of PeakNet, LLC, requesting a variance to allow access to a wireless telecommunication facility compound from a separate driveway connection to a public street when access from the street is required. **(GRANTED)** Ms. Thiel stated in case BOA-19-19, at 1198 Nealtown Road, Thomas H. Johnson on behalf of PeakNet, LLC, requests a variance to allow access to a wireless telecommunication facility compound from a separate driveway connection to a public street instead of from the interior of the site.

Evidence from the applicant include Exhibits A - E. Supporting documentation from staff are Exhibits 1 through 7. The Land Development Ordinance reference is Section 30-8-10.2, K-6, Access to the compound must be from the interior of the site and not from a separate driveway connection to a public or private street.

Background and Site Information: The subject property is located on the north side of Nealtown Road, south of Tuskegee Street and is zoned R-5 and CD-HI. Tax records indicate the property contains approximately 14.69 acres. The subject property is owned by the City of Greensboro and adjacent to the White Street Landfill. Duke Energy holds an electrical easement and has an existing tower on the subject property subject to this variance request. PeakNet, LLC is a subsidiary of Duke Energy, Inc. and authorized to proceed with work on the subject property. In December of 2018, the applicant submitted plans for a review by the City's Technical Review Committee to construct unmanned telecommunications facilities at an existing tower site, number 2018-2593. During the review, staff advised the applicant access to the wireless telecommunications facility compound must be from the interior of the site and not from a separate driveway. The applicant seeks a variance to allow access to the site from a separate driveway off Nealtown Road instead of the interior of the site via the landfill.

Ms. Thiel stated there are no applicable overlays or plans. Ms. Thiel provided the land use and zoning for this property and surrounding properties.

Mr. Thomas H. Johnson, Attorney with Williams Mullin, 301 Fayetteville Street, Suite 1700, Raleigh, N.C. Here on behalf of PeakNet. Mr. Johnson clarified this will be a wireless telecommunications site but the antennas will be located on the top of existing electrical transmission towers that Duke Energy has there. There is no new structure or typical wireless towers there and are using existing infrastructure. The difference is the development restricted site meaning it is intended to serve as a buffer for the landfill. The only access is a landfill access road, which has a different elevation and is restricted in terms of its usage to normal business hours. For the tower site, they need to have access 24/7 if there is an issue with the wireless equipment on site. Normally the intent would be going in on a developed piece of property and provide the access within the development, but this will not be developed as it is a buffer area. They are not doing a new access outside of the interior access as none is there and not intended to be there and why they are in this unique situation. Mr. Johnson went through each of the factors in requesting the variance.

Ms. Skenes asked Mr. Johnson if he could show where the access will come from Nealtown Road. Mr. Johnson indicated on the diagram where the access will come in from Nealtown Road and provided the exhibit indicating where the tower is located. Mr. Oliver asked how long the new road is versus the existing access. Mr. Johnson responded based on the width of the road, approximately 150 to 200-feet into the site. He then noted that using the landfill road it would a 1000 feet or more and indicated the distance from the landfill road to the site on the diagram.

Chair Truby inquired if there were any other questions. Chair Truby then inquired if there was anyone else to speak on this item. No one came forward. Chair Truby requested a motion to close the public hearing. A motion was made by Mr. Waddell, seconded by Mr. Ramsey to close the public hearing. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

BOARD DISCUSSION

Chair Truby stated a driveway permit could be obtained if it is a safe place to access that doesn't conflict with any of the adjacent property owners and is not sure why this variance is in the ordinance. He stated the only way to change it is to give him a variance. Ms. Necas stated it is good for the environment and using a tower already built. Board members indicated their support of the request.

Ms. Necas made a motion based on the stated Findings of Fact, moved that 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 only access would be using a portion of the road that services a landfill and has limited accessibility during hours it is open to the public.
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 property shared a road with the landfill and accessibility is limited to public use hours and wireless carriers need 24/7 access to the site.
3. The hardship is not the result of the applicant's own actions because the parcel has been owned by the City of Greensboro since 1984 and an easement with Duke Energy and the transmission tower have been in place since 1959.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it avoids the need for a new tower and increases access to wireless service and 911 for surrounding areas.

Second by Ms. Skenes. The Board voted 7-0 in favor to grant the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

2. SPECIAL EXCEPTION

a. BOA 19-21, 602 MUIRS CHAPEL ROAD. Zakiyyah Jones requesting two special exceptions. **(APPROVED)**

Zakiyyah Jones was sworn in for testimony.

Ms. Thiel advised in case BOA 19-21, at 602 Muirs Chapel Road, Zakiyyah Jones requests two special exceptions.

1. To allow a proposed family care home to be 2, 615 feet from another family care home located at 722 Muirs Chapel Road when 2,640 feet is required.
2. To allow a proposed family care home to be 2, 615 feet from another family care home located at 603 Montrose Drive when 2,640 feet is required.

Evidence from the applicant include Exhibit A. Supporting documentation from staff include Exhibits 1 through 7. Land Development Ordinance reference is Section 30-8-10.1, B1. No new family care home may be located within 1/2 mile of an existing family care home unless a special exception is granted by the Board of Adjustment for reduced separation.

Background and Site Information: Ms. Thiel stated the subject property is located on the east side of Muirs Chapel Road, north of Meade Drive, zoned R-3. Tax records indicate the lot contains approximately 11,761 square feet. The house was constructed in 1955. The applicant wishes to operate a licensed residential family care home for individuals diagnosed with developmental disabilities at the subject property located within 1/2 mile of two other existing facilities. A family care home operated by Umar Services, Inc. is located at 722 Muirs Chapel Road, 2615 away. A family care home operated by Rising Phoenix, Inc. is located at 603 Montrose Drive, 2,615 away.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there were no applicable overlays or plans.

Ms. Zakiyyah Jones, 3801 Rock Haven Drive, Greensboro. Ms. Jones stated when the application was submitted she did live at 602 Muirs Chapel and has since moved. She would like a special exception in order to provide services for clients with development disabilities such as Autism, Downs Syndrome, Intellectual Developmental disabilities. She stated she had been providing services for these individuals for 25 years. She also stated there is a huge need for this population for quality residential placement homes when families are no longer able to care for them. The ordinance states .5 miles and the two group homes are .6 miles and are just a few feet from being within the ordinance requirement. She feels strongly because there is such a need for this population that a special exception should be granted.

Chair Truby asked how many people would be in the house. Ms. Jones responded 3 individuals, one staff per shift from 6:30 a.m. to 6:30 p.m. She does the selection of the people who will live in the home and will ensure they are a good fit for the community. She spoke with neighbors on left and right side who have no complaints and a neighbor who is familiar with group homes. Chair Truby asked the ages of the residents. Ms. Jones responded 18 and above but she is focusing on 30 and above. Mr. Oliver asked if she owned the home. Ms. Jones responded she does. Chair Truby inquired of any other questions. No further questions. Chair Truby requested a motion to close the public hearing. A motion was made by Mr. Waddell, seconded by Ms. Necas to close the public hearing. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

BOARD DISCUSSION

Chair Truby stated he does not generally support these types of request but because this was so close and there is a need, he will support this request. Board members indicated their support of the request. Ms. Skenes made a motion.

Ms. Skenes advised in BOA-29-21, 602 Muirs Chapel Road, based on the stated Findings of Fact, moved that the Zoning Enforcement Officer be overruled and the Special Exception granted based on the following:

1. The special exception is in harmony with the general purpose and intent of this ordinance and preserves its spirit because the requested special exception is to allow a new group home to exist 25 feet closer to other group homes than the ordinance currently allows.
2. The granting of the special exception assures the public safety and welfare and does substantial justice because based on testimony given there is a need for additional group homes for adult citizens with disabilities in Guilford County.

Mr. Waddell asked if it should be noted both special exception 1 and 2 would be in the motion. Ms. Skenes stated this is for both requested special exceptions with the same findings of fact. Second by Mr. Waddell. The Board voted 7-0 in favor to grant the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays; none.)

OTHER BUSINESS

Mr. Kirkman presented the Boards and Commissions Guidelines and Code of Conduct adopted by City Council and outlined the changes to attendance and punctuality, code of conduct, communication, dress code, use of personal devices and personal data. Mr. Kirkman detailed each of the specific changes in the Board and Commissions Guidelines handbook and in the Code of Conduct handbook. Mr. Kirkman expressed staff's appreciation for the Board's service and dedication as a volunteer position.

Ms. Skenes asked what would happen if they refuse to sign it. Mr. Kirkman stated his understanding was Council would consider in terms on whether the person would continue to serve on the Board or not. So far, it has not gotten to that point. Ms. Skenes stated she thinks it is well beyond the scope of what should be dictated as they are appointed in good conscience and they show up at the meetings. Mr. Kirkman feels part of this approach is to ensure that there is an appropriate number of people at the meetings so business is able to be done and for due notice ahead of time when possible so the City is aware. Mr. Kirkman reiterated it is 3 unexcused absences in a 12-month period and it is a rolling 12 months. He understands what is being said and will be happy to convey the information back to the City Council. Ms. Skenes stated if Council is truly that concerned about attendance and quorums on Boards and Commissions, they need to be timelier in making their appointments, which has been an

issue more so than absences. Mr. Kirkman advised he would make that known. Ms. Skenes stated Council needs to observe their own requirements by making sure the Boards and Commissions have a full complement of membership and alternates before attempting to dock them because a regular sitting member does not show up.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 6:55 p.m.

Respectfully submitted,

Chuck Truby,

Chair of the Board of Adjustment Commission

**MEETING MINUTES
OF THE
GREENSBORO BOARD OF ADJUSTMENT
JULY 8, 2019**

The meeting of the Greensboro Board of Adjustment was held on Monday, July 8, 2019 at 5:38 pm. in the Council Chamber Room of the Melvin Municipal Office Building. Board members present: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Laura Blackstock, and Ted Oliver. City staff present: Shayna Thiel, Steve Galanti and Andrew Kelly, Assistant Attorney.

Chair Truby welcomed everyone to the meeting and advised of the policies and procedures of the Board of Adjustment. Chair Truby 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 (May 28, 2019)

Ms. Skenes made a motion to approve the minutes, seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver and Blackstock. Nays: 0).

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

OLD BUSINESS

1. Variance

a. BOA-19-20: 410 SUNSET DRIVE. Marc L. Isaacson, on behalf of Greensboro Country Club, requests a variance to provide less than the minimum required parking. **(APPROVED)**

Ms. Thiel stated in BOA-19-20, Marc L. Isaacson on behalf of Greensboro Country Club requests a variance to provide less than the minimum required parking. The existing facility and proposed improvements will result in the provision of 209 parking spaces when 352 parking spaces are required.

Evidence from the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 9. Land Development Ordinance reference is Section 30-11-5: parking ratios.

Background and site information: The subject property is located on the north side of Sunset Drive in the Irving Park neighborhood and is zoned R-3. Tax records indicate the properties contain approximately 99.12 acres. Based on information provided, the Greensboro Country Club will provide 209 parking spaces. Proposed improvements would require an additional 143 spaces, bringing the total required parking to 352 spaces. On 7/23/2007, the Board of Adjustment granted a parking variance allowing 34 spaces less than the minimum required associated with a fitness center renovation and expansion. Currently the applicant proposes improvements to the existing country club facilities requiring compliance with current parking requirements. The applicant indicates the seasonal nature of the pool facilities and existing topography of the property limit the need and ability to provide additional parking spaces. The applicant stated providing the required parking would decrease the appeal of the country club and impede the function of the existing golf course. The applicant is seeking a variance to allow the reduced number of parking spaces.

Ms. Thiel provided the land use and zoning for this property and surrounding properties.

Chuck Truby asked the applicant to come to the podium and provide their name and address.

Marc Isaacson, 804 Green Valley Road, Greensboro. Mr. Isaacson stated he represents Greensboro County Club and presented materials to the Board for their review. He provided the background of the Greensboro Country Club and advised of expansions and facilities that have been built over many years. Currently, the facilities include a clubhouse, swimming pool, tennis courts, golf course, and a fitness center. This is a private club where many of the nearby property owners are members. The club proposes to expand the clubhouse, replace the aging swimming pool and add to the existing family activity center. These changes are being implemented in response to member expectations of how they want their county club to operate and to address long overdue maintenance and repair needs. Mr. Isaacson stated the hardship is a result of parking requirements triggered by the expansion of the club. He referred to applicant exhibits included with the application that had an error related to parking spaces and proposed parking lot, which has been deleted. He advised that the net number of parking spaces needed is 143 and that is the number of spaces requested for the variance.

Mr. Isaacson asked that the amended exhibits become part of the variance application. He discussed the club's property in regards to the topography and character of the area and stated it was important for the Board to understand and appreciate that this is a very old neighborhood, a very old property, a very old facility and that much of the charm and character are because the homes back up or face the existing golf course. Mr. Isaacson referenced an overlay map that showed the current facilities, parking spaces, buildings and the entrance to the country club. A landscape plan was also provided that showed the area along Sunset Drive and along the entrance into the club property and indicated where overflow parking would be. Renderings were provided to the Board depicting the entrance improvements. Mr. Isaacson referenced minutes from a 2007 Board of Adjustment meeting where a parking variance was previously approved for the country club. Mr. Isaacson stated that letters were sent to all of the property owners listed on the notification list regarding the variance. There have been meetings with neighbors in the area, and there was no opposition to the variance request to his knowledge. He felt that the overwhelming opinion of the neighbors favors the request as it will allow the club's property to operate as is. Mr. Isaacson addressed the hardships that may result in not allowing the variance and stated no new use will be made of the property.

Chair Truby inquired if there were questions for the applicant. Mr. Oliver asked how many overflow spaces will be located at Sunset. Mr. Isaacson responded parking will be on an as needed basis; maybe 40 or so spaces. Mr. Oliver asked if there were plans to expand membership. Mr. Isaacson responded the membership number will stay the same, as there is no plan or intent to expand. Mr. Waddell stated it appeared that the size of the family activity center will be significantly increased and asked if the intent was to make it some type of event center. Mr. Isaacson responded that the kitchen and grill area will be expanded to accommodate people dining at the facility. Mr. Ramsey clarified that there would no paving of the overflow area and that only landscaping enhancements are being proposed. Mr. Isaacson responded that was correct that the club will have enhanced landscaping at the front. There will be someone directing overflow parking and will have golf cart shuttles during large events. The overflow parking will be used for special events only. Ms. Skenes asked if this is the same area currently being used for overflow parking. Mr. Isaacson responded that was correct as the intent is to leave everything the same to enhance the natural beauty of the property.

Chair Truby inquired if there was anyone wishing to speak in favor of the request. No one came forward. Chair Truby inquired if there was anyone wishing to speak in opposition. No one came forward. Chair Truby requested a motion to close the public hearing. Mr. Ramsey so moved, seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsay, Blackstock, and Oliver. Nays: 0).

BOARD DISCUSSION

Chair Truby stated he has been to the Greensboro Country Club for events and has parked in the area discussed. He feels that the Country Club has plenty of parking and to force parking spaces appears silly to him and as an engineer, paving to make the area compliant with Greensboro requirements would be unattractive. He supports of this variance.

Mr. Oliver moved that in case BOA-19-20, 410 Sunset Drive, based on the stated findings of fact, 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 creating more parking spaces will reduce

the appeal of the private club. Many of the needed spaces are seasonal use only and there is a finite number of members.

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 there is limited viable space for the required number of spaces the ordinance requires. Inconvenience will be borne by club members who choose to be members of the club.

3. The hardship is not the result of the applicant's own actions because the property is landlocked with a limited amount of land available to expand.

4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the club was built and developed prior to any zoning or other ordinances were in place.

Seconded by Ms. Skenes. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsay, Blackstock, and Oliver. Nays: 0).

NEW BUSINESS

1. Variance

a. BOA-19-22: 1400 SHERROD-WATLINGTON CIRCLE. John and Barbara Waller request a variance to allow an existing house and proposed deck addition to encroach 13 feet into a required 30-foot setback and will be 17-feet from the rear property line. **(APPROVED)**

Ms. Thiel stated in BOA-19-22, 1400 Sherrod-Watlington, John and Barbara Waller request a variance to allow an existing house and proposed deck addition to encroach 13 feet into a required 30 foot rear setback. The house and deck addition will be 17 feet from the rear property line.

Evidence from the applicants included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. Land Development Ordinance reference is Section 30-7-32, Table 7-1. R-3: minimum rear setback is 30 feet.

Background and site information: The subject property is located at the western end of Sherrod-Watlington Circle, west of Kilpatrick-White Road, and is zoned R-3. Tax records indicate the lot contains approximately 54,450 square feet. The house was constructed in 1987. The existing house includes an existing second story deck and is considered to be a nonconforming structure as it encroaches 13 feet into the required 30 foot rear setback. The applicants propose to remove the existing deck, which encroaches 9 feet into the rear setback, and rebuild a new one with the same dimensions and footprint as the current deck. The removal of the existing deck results in the loss of the nonconforming status and the replacement of the deck would be required to meet all dimensional standards unless the Board of Adjustment grants a variance. The applicants request a variance of 13 feet to ensure all portions of the house meet the required rear setback.

Ms. Thiel provided the land use and zoning for this property and surrounding properties. There are no applicable overlays or plans.

Chuck Truby asked the applicants to come to the podium and provide their name and address.

John and Barbara Waller, 1400 Sherrod-Watlington Circle, Greensboro. Ms. Waller stated they have lived in this house since 1998 and would like to improve the deck as it is completely debilitated. They want the deck to be replaced and everything to be compliant. They were annexed into the city 10 plus years ago and were previously in the county. These are safety concerns and only want a new deck that will be safe.

Chair Truby asked if there were any questions for the applicants. No questions. Chair Truby inquired if there was anyone wishing to speak in favor of the application. No one came forward. Chair Truby inquired if there was anyone wishing to speak in opposition. No one came forward. Chair Truby requested a motion to close the public

hearing. Mr. Waddell so moved, seconded by Mr. Ramsey. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsay, Blackstock, and Oliver. Nays: 0)

BOARD DISCUSSION

Chair Truby expressed how sorry the Board was that the applicants had to seek approval come and pay the fee.

Mr. Waddell moved that in case BOA-19-22, 1400 Sherrod-Watlington Circle, based on the findings of fact, 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 plans to make changes to the existing structure would not be able to proceed. The home was originally constructed in 1987.
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 home sits on a cul de sac and has a unique terrain design and topography.
3. The hardship is not the result of the applicant's own actions because the residence was purchased in 1998 prior to annexation. The home was built in 1987 without any prior modifications.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the homeowners were not aware of any setback violations. Completion of the proposed project will improve safety, access for public vehicles, and improve property value.

Seconded by Ms. Skenes. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsay, Blackstock, and Oliver. Nays: 0).

b. BOA-19-23: 5708 GREENVIEW DRIVE. Roger Pyatt, on behalf of Roger Pyatt Living Trust requests two variances. (1) To allow a proposed porch addition to encroach 14 feet into a required 58-foot front setback and will be 44 feet from the front property line. (2) To allow and 720 square foot detached garage be separated by 5 feet from other structures on the when at least 10 is required. **(APPROVED)**

Ms. Thiel stated in BOA-19-23, Roger Pyatt, on behalf of Roger Pyatt Living Trust, requests two variances. (1) To allow a proposed porch addition to encroach 14 feet into a required 58 foot front setback and the house will be 44 feet from the front property line. (2) To allow an existing 720 square foot detached garage to be separated by 5 feet from other structures on the lot when at least 10 feet is required.

Evidence from the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 8. Land Development Ordinance references are Section 30-7-1.4: street setback computations and Section 30-8-11(E)(2): accessory structures larger than 600 square feet must be separated by at least 10 feet from other structures on the lot.

Background and site information: The subject lot is located on the north side of Greenview Drive, west of Friendswood Drive and is zoned R-3. Tax records indicate the lot contains approximately 20,038 square feet and the house was constructed in 1964. The existing house is considered a nonconforming structure as it encroaches into the required 58 foot front setback. Any enlargement of a nonconforming structure must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance. The applicant proposes to construct a porch addition at the front of the existing house that will encroach 14 feet into the required 58 foot front setback and be 44 feet from the front property line. The Land Development Ordinance allows an open air/covered porch addition to encroach up to 10 feet into a required setback. Since the existing house already encroaches into this setback, the proposed porch addition will encroach more than the allowed 10 feet and a variance is required for approval. An existing 720 square foot detached garage on the lot is 5 feet from the existing house and 5 feet from the existing storage building when at least 10 feet is required. The applicant also seeks a variance to address this nonconformity and allow the detached garage to remain.

Ms. Thiel provided the land use and zoning for this property and surrounding properties. There are no applicable overlays or plans.

Roger Pyatt, 5708 Greenview Drive, Greensboro. Mr. Pyatt stated he has lived at this house since 1973. He has always wanted a front porch to enjoy with his spouse in his later years. He requests approval for the porch to be built.

Chair Truby asked if there were any questions for the applicant. Mr. Ramsey asked if the nonconforming garage was built the same time as the house. Mr. Pyatt stated he didn't know as it was there when he purchased the house. Ms. Skenes asked if he would speak about the garage since he has already told them about the porch. Mr. Pyatt advised the garage was there when he purchased the house. Ms. Skenes stated that she assumed this issue came up in conjunction with the porch. With the new ordinances, he is attempting to address everything at the same time. Mr. Ramsey asked if there was a curve in the road. Mr. Pyatt responded that Greenview Drive turns slightly toward the south. Mr. Ramsey asked if that affected part of the setback. Mr. Pyatt responded he didn't think so but did not know for sure.

Chair Truby asked if there was anyone else to speak in favor of the request. No one came forward. Chair Truby asked if there was anyone to speak in opposition. No one came forward. Chair Truby requested a motion to close the public hearing. Mr. Waddell so moved, seconded by Ms. Skenes. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsay, Blackstock, and Oliver. Nays: 0)

BOARD DISCUSSION

Chair Truby stated this is another case that the house itself is in the new setback and the garage has been there forever. He did not blame Mr. Pyatt for wanting to clean up the nonconformities. Ms. Skenes stated her guess was this house was not in the City of Greensboro when it was built. Mr. Pyatt responded it was annexed about 1978.

Mr. Ramsey moved that in case BOA-19-23, 5708 Greenview Drive, based on the stated findings of fact, the Zoning Enforcement Officer be overruled and the variances granted based on the of 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 house was built 54 years ago before the adoption of applicable regulatory ordinances. The owner would not be able to fully enjoy the use of the front porch of the house and the garage has been in the same location for the past 54 years and compliance would require its destruction.
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 house itself was built 54 years before adoption of the ordinance in question.
3. The hardship is not the result of the applicant's own action because the house was built before the adoption of the ordinance. The owner acquired the property in 1973.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because addition of the porch and ratification of the garage location are in harmony with the neighborhood and will increase the value of the owner's property.

Seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsay, Blackstock, and Oliver. Nays: 0).

c. BOA-19-25: 1200 Hill Street. Graham Moore, on behalf of Natalie Alexander, requests two variances. (1) To allow a proposed accessory dwelling to encroach 18.6 feet into a required 20-foot rear setback and will be 1.4 feet from the rear property line. (2) To allow the heated floor area of a proposed accessory dwelling to be 324 square feet when at least 400 square feet is required. **(APPROVED)**

Ms. Thiel stated in BOA-19-25, 1200 Hill Street, Graham Moore, on behalf of Natalie Alexander, requests two variances. (1) To allow a proposed accessory dwelling to encroach 18.6 feet into a required 20 foot rear setback

and will be 1.4 feet from the rear property line. (2) To allow the heated floor area of a proposed accessory dwelling to be 324 square feet when at least 400 square feet is required.

Evidence from the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. Land Development Ordinance references are Sections 30-8-11.2(D) and 30-8-11.2(E).

Background and site information: The subject lot is located on the east side of Hill Street, north of Northwood Street, and zoned R-5. Tax records indicate the lot contains approximately 10,019 square feet and the house was constructed in 1928. The existing 324 square foot storage building is considered a nonconforming structure as it encroaches into the required 10 foot rear setback for accessory structures taller than 15 feet. The applicant proposes to convert the storage building into an accessory dwelling in the same location without enlarging the footprint. Accessory dwellings must meet the same setbacks required for the principal dwelling. If converted into an accessory dwelling, the structure will not meet the R-5 minimum 20 foot rear setback requirement. It will remain 1.4 feet from the rear property line and 21.6 feet from the side street property line.

Ms. Thiel provided the land use and zoning for this property and surrounding properties.

In response to a question from Ms. Skenes, Mr. Galanti responded the structure would remain nonconforming and would be allowed to remain under the Land Development Ordinance if the variance is denied.

Natalie Alexander and Graham Moore, 1200 Hill Street, Greensboro. Mr. Moore stated the accessory structure was there when they bought the property, is original to the property and is made with the same brick as the main house. He believes it was used mainly for storage, and they would like to make it a useable space requiring a variance to allow for a bathroom and sewer connections. They have found reclaimed bricks from the same era and will match the building. Mr. Moore's background is in restoring historic houses and wants to keep the building as is and enhance the functionality of the building. Chair Truby asked if they have talked to their neighbors since the use of the structure is changing. Mr. Moore responded they have spoken with all of their neighbors and have received encouraging feedback, not any negative feedback. Mr. Waddell asked if only the use of the building is being changed and not the footprint. Mr. Moore responded it is a two-story building and are not adding to it. He would like to connect the two floors and add an exterior door at some point.

Chair Truby inquired for anyone else to speak in favor. Mr. Christoph Bender was sworn in.

Christoph Bender, 1205 Briarcliff Drive, Greensboro. Mr. Bender stated he lives in the area of the Country Club, which is trying to maintain the historic preservation of the buildings. He did not feel there should be two dwellings on one lot. Chair Truby stated you can have a primary dwelling and an accessory dwelling on a lot. There are rules associated with the accessory dwelling. Mr. Galanti advised there are locational and dimensional standards and that the setback and square footage are what the variances are for. Chair Truby stated the applicants can use the building as an accessory dwelling if the variance is approved. Mr. Bender wanted the Board to know what is being done with the building. He is concerned that it will be a work place. Chair Truby advised it cannot be used as a commercial use but can be used for other purposes. Mr. Bender was also concerned about signage. Mr. Galanti responded signage is not permitted. Home occupations are not allowed within an accessory dwelling unit. Mr. Bender inquired what it means to have two dwellings but not two home occupations.

Mr. Kelly responded one is commercial use and one is residential use. Home occupation means to be conducting a business out of the home. The Board of Adjustment does not grant variances as to uses and the applicants are asking the Board to consider some variances to dimensional requirements with respect to what is there. This Board does not have the power to put conditions on uses. Staff is saying to the extent that there are zoning regulations play, those are in effect at this property and other properties with respect to usage. Mr. Bender is very concerned about parking and access to his home and feels the use of this building in a certain way may limit his access. He feels regulations should be in place for the building and access. He is concerned that the applicant will build more and block access. Mr. Bender expressed his concern of houses being used for different types of things and feels the applicants need to be very clear of what the usage will be for the accessory dwelling. He is concerned about meetings being held, signs being posted, and access to parking.

Chair Truby advised Mr. Bender there is a Land Development Ordinance with rules and restrictions on what people can do in residentially-zoned property, and that the applicant would not be able to have meetings or use

the building as a place of business. Mr. Bender feels the Board of Adjustment is the board that can address these issues. Chair Truby responded the Board is only addressing the setback and area issues related to the structure already there. He advised Mr. Bender to contact the City of Greensboro's Zoning Enforcement if he has complaints about what the dwelling is being used for. Enforcement officers would then go to the property and determine how it is being used and determine if a violation is warranted. Mr. Bender stated something should be done now and that the applicant should submit clear intentions.

Mr. Waddell stated the Board of Adjustment can only address items related to the variances being requested at this time. Mr. Bender feels the Board is not listening to all of them. He feels that the applicant should state what he plans to do as part of the proposal. Mr. Waddell responded that the applicant has provided information related to the variances and anything items other than that are outside the Board's jurisdiction. Mr. Waddell suggested that Mr. Bender contact the City of Greensboro Zoning Enforcement to discuss his concerns not related to the variance requests. This Board can only entertain the variance requests. Mr. Waddell advised the Board can only address setbacks and square footage related to the variance. Chair Truby stated he believes the applicant has heard Mr. Bender's concerns loud and clear and understands he cannot conduct business in this accessory structure or have any signage on the structure. Ms. Skenes advised that the Zoning Commission and Enforcement Officers would address his concerns. Ms. Thiel provided Mr. Bender with contact information to address his concerns.

Margaret Bender, 1205 Briarcliff Drive, Greensboro. Ms. Bender, spouse of Christoph Bender. Ms. Bender stated she wanted the applicants to understand that she totally supports everything they are doing and thinks it will be just fine. She advised her husband has the best intentions but since he is from Germany, she does not feel he totally understands how the government works in the US. She feels that is why there is confusion about whom he should address when asking some of these questions. Ms. Bender apologized to the applicants and wanted them to know she supports them. Chair Truby stated the correct number will be provided and if this building is being used for something else, there is an option. He stated they are listening to him and understand. Chair Truby asked if there was anyone else to speak in favor of the request. No one came forward. Chair Truby asked if there was anyone to speak in opposition. No one came forward.

Chair Truby requested a motion to close the public hearing. Mr. Waddell so moved, seconded by Mr. Ramsey. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsay, Blackstock, and Oliver. Nays: 0)

BOARD DISCUSSION

In response to a question by Ms. Skenes, Mr. Galanti did not believe there were any development ordinances in the 1920s. Chair Truby stated the structure is there and nothing is being changed and it will probably look better. The uses are limited and the applicants will have to abide by what the Land Development Ordinance requires.

Ms. Skenes moved that in case BOA-19-25, 1200 Hill Street, based on the stated findings of fact, 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 building which is original to the property would be considered nonconforming and could not be improved.
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 detached garage building is original to the property.
3. The hardship is not the result of the applicant's own actions because the garage was constructed prior to the current development ordinance and most likely prior to any development ordinance.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because there will not be any changes to the footprint of the garage. Visually there will be no negative impact to the neighborhood.

Seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsay, Blackstock, and Oliver. Nays: 0).

OTHER BUSINESS

Ms. Skenes moved to nominate Chuck Truby as Chairman. Seconded by Mr. Ramsey. The Board voted 6-0 in favor of the motion. (Ayes: Skenes, Waddell, Ramsay, Blackstock, and Oliver. Nays: 0).

Chair Truby moved to nominate Mary Skenes as Vice Chair. Seconded by Mr. Ramsey. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Waddell, Ramsay, Blackstock, and Oliver. Nays: 0).

ACKNOWLEDGEMENT OF ABSENCES

Ms. Necas was acknowledged as an excused absence.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 6:53 pm.

Respectfully submitted,

Chuck Truby
Chair of the Board of Adjustment

**MEETING MINUTES
OF THE
GREENSBORO BOARD OF ADJUSTMENT**

July 29, 2019

The meeting of the Greensboro Board of Adjustment was held on Monday, July 29, 2019 at 5:34 p.m. in the Council Chamber of the Melvin Municipal Office Building. Board members present: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Ted Oliver, Danielle Brame and Deborah Bowers. City staff present: Shayna Thiel, Steve Galanti and Andrew Kelly, Assistant City Attorney.

Chair Truby welcomed everyone to the meeting and advised of the policies and procedures in place for the Board of Adjustment. Chair Truby 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 THE MINUTES (July 8, 2019)

Mr. Waddell moved to approve the minutes, seconded by Mr. Ramsey. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers, and Brame. Nays: 0.)

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

Ms. Thiel advised that the applicant of BOA-19-24 at 2907 Spring Garden Street is requesting a continuance. **(GRANTED)**

Chair Truby requested the applicant to come forward and provide their name and address for the record.

Drew Wofford, 2901 Spring Garden Street. Mr. Wolford stated the Neighborhood Association is still working on preparing comments and has requested a continuance, which he has no problem with.

Adam Spivey, 2406 Springwood Drive. Mr. Spivey, representing the Lindley Park Neighborhood Association, agrees to a 60-day continuance.

Chair Truby inquired if there was anyone else to speak on the matter. No one came forward. Chair Truby stated he did not see any issues with it and requested a motion.

Mr. Ramsey moved to grant a 60-day continuance, seconded by Mr. Oliver. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers, and Brame. Nays: 0.)

OLD BUSINESS

No Old Business.

NEW BUSINESS

1. VARIANCES

a. BOA-19-26: 1809 SAINT ANDREWS ROAD. Scott and Tiffany Crenshaw request a variance to allow a proposed detached garage to encroach 3.5 feet into a required 10 foot side setback. **(APPROVED)**

Ms. Thiel stated in BOA-19-26 at 1809 Saint Andrews Road, Scott and Tiffany Crenshaw request a variance to allow a proposed detached garage to encroach 3.5 feet into a required 10 foot side setback. The detached garage will be 6.5 feet from the side property line.

Evidence from the applicants includes Exhibits A through D. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference is Section 30-8-11.1 (C)(2): Accessory structures over 15 feet tall must be set back at least 10 feet from side and rear lot lines.

Background and Site Information: The subject lot is located on the west side of Saint Andrews Road, east of Dalton Road, and is zoned R-5. Tax records indicate the lot contains approximately 22,216 square feet and the house was constructed in 1994. The existing 576 square foot accessory structure, which was constructed in 2003, is considered a nonconforming structure as it encroaches into the required 10 foot side setback for accessory structures taller than 15 feet. The applicants propose to enclose the existing accessory structure, changing it from a carport to a garage in the same location without enlarging the footprint. The accessory structure will remain 6.5 feet from the side property line and requires a variance to encroach 3.5 feet into the required 10 foot side setback.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted the applicable overlay.

Chair Truby asked the applicants to come to the podium and provide their name/address for the record.

Scott Crenshaw, 1809 Saint Andrews Road. Mr. Crenshaw stated there is an existing carport that is a beautiful structure and well designed. They would like to utilize as much of the existing structure as possible to maintain the current look and feel. They want to enclose the walls to create a closed in garage to match the house.

Chair Truby inquired if there were any questions of the applicant.

Peter Zook, 709 Sunset Drive. Mr. Oliver asked Mr. Zook if the existing carport was being made into a garage, required more land. Mr. Zook responded no and said that when the existing carport was constructed, the roof exceeded the 15 foot height limit to be less than 10 feet from the property line. The current roof is 16 or 17 feet.

Chair Truby inquired if there were any further questions of the applicant. Ms. Skenes asked if by enclosing the structure it into a garage is where you get into the side lines issues. Mr. Zook responded that if the structure was less than 15 feet tall, it could be 3 feet from the side property line. Mr. Crenshaw added that the structure was existing when they brought the home five years ago. Mr. Oliver asked if the structure height is what makes it encroach 3.5 feet into a required 10 foot side setback. Mr. Crenshaw responded that the structure currently is encroaching.

Chair Truby asked if there were any other questions. No questions. Chair Truby asked if anyone wished to speak in favor of the request. No one came forward. Chair Truby asked if there was anyone in opposition to the request. No one came forward. Chair Truby requested a motion to close the public hearing. Ms. Skenes so moved, seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers, and Brame. Nays; 0.)

BOARD DISCUSSION

The Board members indicated their support of the application.

Mr. Waddell moved that, in BOA-19-26 at 1809 Saint Andrews Road, based on the stated findings of fact, the Zoning Enforcement Office 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 strict application of the variance would prevent the desired use of the property. The garage would not achieve its intended purpose.
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 location of the existing carport and its configuration.
3. The hardship is not the result of the applicant's own actions because the carport was originally constructed prior to the time the property was acquired by the owner.

4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the location of the garage is consistent with the current architecture. No benefit will be derived by the public by denying the variance.

Seconded by Ms. Skenes. The Board voted 7-0 in favor of the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers, and Brame. Nays:0.)

b. BOA-19-27: 309 SOUTH CHIMNEY ROCK ROAD. Marc Isaacson, on behalf of Jason and Annie Speer, requests a variance to allow an accessory structure to encroach 19 feet into a required 30 foot street setback. **(APPROVED)**

Ms. Thiel stated in BOA-19-27 at 309 South Chimney Rock Road, Marc Isaacson, on behalf of Jason and Annie Speer, requests a variance to allow an accessory structure to encroach 19 feet into a required 30 foot street setback. The accessory structure is 11 feet from the property line along Interstate 40.

Evidence from the applicant includes Exhibits A through C. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference is Section 30-8-11.1(B)(3): Accessory structures may be located in front of the principal structure but are not allowed in a required street setback, and Section 30-7-6, Table 7-15: Minimum street setback (thoroughfare) in HI District is 30 feet.

Background and Site Information: The subject lot is located on the east side of South Chimney Rock Road, north of Swiggett Road, and is zoned HI. Tax records indicate the lot contains approximately 3.04 acres. The Technical Review Committee approved a site plan for the property on May 25, 2018, but that plan did not include the accessory structure. The accessory structure was constructed during site development and the property owners submitted a plan for building inspection review after-the-fact to address the accessory structure. During that review, staff noted the accessory structure encroached into the required 30 foot street setback for accessory structures associated with nonresidential development. The applicant requests a variance to allow the accessory structure to be 11 feet from the property line along Interstate 40, encroaching 19 feet into the required 30 foot street setback.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted the applicable overlay.

Chair Truby asked the applicant to come forward and provide their name/address for the record.

Marc Issacson, 804 Green Valley Road. Mr. Issacson provided materials to the Board members. He represents Jason and Annie Speer, owners of the Redi Mix Concrete business located at this property. This property adjoins Interstate 40, has good access to I-40 for their trucks and other vehicles. The area is zoned HI (Heavy Industrial). During the development of the property and construction of various facilities/equipment, the Speers were advised by the Fire Department during the last inspection of the process that they needed to place the storage building in a certain area on the property. The storage building houses various ground-up materials and other mixed materials that need to remain absolutely dry. It was important to the Speers to locate the storage building on the highest point on the property where there would not be any drainage, risk of flooding or any type of moisture getting into the building. The property is subject to many regulations, restrictions, and constraints which are outlined on the site plan. There is a wide drainage easement running through the property because the property slopes to the east. Another reason to pick this location for the storage building was because it required a long travel taper. Once a building is placed on a piece of property like the one shown, it is required to have ADA compliance/disability access, and needed a long concrete ramp installed.

The street setback ordinance normally is intended to govern the uniformity of the setbacks of buildings from a public street and to provide safe site lines and access of vehicles. The adjoining public right of way here is I-40, sitting approximately 30 feet above this property into which there is no direct access and is why there is a 30 foot setback. I-40 in this location is subject to scenic corridor regulations and the building was required to be painted a certain color, made of certain materials, and certain landscaping was installed to comply with the scenic corridor regulations. This building is located there specifically to provide safe access for employees. There are 53 foot trailers entering and exiting the property every day picking up concrete and dropping off materials. The storage building is located on the driver's side and in an area safe and efficient for drivers and employees to exit the

property. The location takes into account the maneuvering of the trucks, long vehicles, and the site drainage. Mr. Isaacson stated when all the facts are applied in the hardship test, the variance should be granted.

Chair Truby asked if there were any questions by Board members. Chair Truby asked the applicant why the storage building wasn't shown on the original site plan. Mr. Isaacson responded that he believed initially there was to be a trailer on the property to serve as a storage area, but because of the scenic corridor regulations, they were advised that a trailer was not permissible. A building was then considered, which led to discussions about required foundation, ADA compliance, concrete taper, 90 foot ramp, and walkway area. A simple matter became a complicated matter. Mr. Oliver asked if it was the Fire Department who advised about the location. Mr. Isaacson responded yes, the Fire Inspector was the last inspection who said this needed to be a certain level of building and needed to be located in the current location.

Chair Truby asked if there were further questions, and there were none. Chair Truby inquired if there was anyone to speak in favor of the application. No one came forward. Chair Truby inquired if there was anyone to speak in opposition. No one came forward. Chair Truby requested a motion to close the public hearing. Ms. Skenes so moved, seconded by Mr. Oliver. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers and Brame. Nays: 0.)

BOARD DISCUSSION

Chair Truby inquired if there was any discussion. Ms. Skenes stated the argument was valid in terms of placement and why. She does not think anyone on I-40 will complain about the building being close to the highway. The general consensus of the Board was in agreement to approve.

Mr. Oliver moved that, in BOA-19-27, 309 South Chimney Rock, based on the stated findings of fact, 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 location of the building will need to be altered and a hardship will ensue. The applicant will not have adequate space to move machinery. It would increase safety hazards.
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 property has a unique layout, in that it is surrounded by right aways. This creates a restraint on the ability to use the space.
3. The hardship is not the result of the applicant's own actions because moving the structure to any other location on the lot would also violate set back restrictions. The land is being used as intended.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because this variance is the least possible deviation from the intent of the ordinance. There will not be a negative impact on the intent of the ordinance.

Seconded by Mr. Waddell. The Board voted 7-0 in favor to grant the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers, and Brame. Nays: 0.)

Chair Truby requested the applicant to approach and be sworn. The applicant was sworn.

c. BOA-19-28: 602 MEADOWOOD STREET. Ada Castro requests two variances to allow an existing accessory structure over 15 feet to encroach 2 feet into a required 10 foot rear setback and to allow an existing accessory structure larger than 600 square feet to be separated by 6.5 feet from the other structures on the lot when at least 10 feet is required. **(APPROVED)**

Ms. Thiel stated in BOA-19-28 at 602 Meadowood Street, Ada Castro requests two variances. (1) To allow an existing accessory structure over 15 feet tall to encroach into a required 10 foot rear setback. The accessory structure is 8 feet from the rear of the property line. Section 30-8-11.1(C)(2). (2) To allow an existing accessory structure larger than 600 square feet to be separated by 6.5 feet from another accessory structure on the lot when at least 10 feet is required.

Evidence from the applicant includes Exhibits A and B. Supporting documentation from staff includes Exhibits 1 through 9. The Land Development Ordinance reference is Section 30-8-11.1(C)(2), Rear setback for accessory structures over 15 feet tall is 10 feet. Section 30-8-11.1(E)(2), Accessory structures larger than 600 square feet must be separated by at least 10 feet from other structures on the lot.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there are no applicable overlays/plans.

Background and Site Information: The subject 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 23,958 square feet and the house was constructed in 1963. On March 2018, building permit #201802656 was issued to allow for the construction of a 17 foot by 25 foot accessory building. During the inspection process, an inspector noticed that the building under construction was larger than approved by the permit and encroached into an easement. A stop work order was issued on April 3, 2019. To address the easement encroachment, the applicant requested an easement release, which was granted on June 19, 2019. The applicant is now seeking variances to allow the larger accessory structure to encroach 2 feet into a required 10 foot rear setback and be separated by only 6.5 feet from another accessory structure on the lot when at least 10 feet is required. If these variances are granted, the applicant will be able to apply for a new building permit to complete the work in progress.

Ms. Thiel stated there are no applicable overlays or plans. Ms. Thiel provided the land use and zoning for this property and surrounding properties.

Ms. Ada Castro, 602 Meadowood Street. Ms. Castro stated a stop work order was issued because they used the existing foundation and did not know it was 2 feet into the 10 foot setback requirement. The structure is needed to house excess furniture. She wants to move forward and apply for another permit to finish what has been started.

Chair Truby asked if the foundation was already there. Ms. Castro responded it was existing when they moved there and did not know when the foundation was built. She has applied for a permit and showed plans to the City to move forward. Ms. Skenes asked if the permit previously issued for a two story building and if a foundation was there. Ms. Castro responded it appeared to have been started and they decided to use what was there. She called it a foundation, but then said it's not really a foundation. Ms. Skenes inquired if it was one story or two. Ms. Castro responded it was two story, but only for storage. Ms. Skenes asked if the foundation was larger than was originally permitted. Ms. Thiel responded that two covered porches were added that were not shown on the original permit application. Ms. Skene asked if it was the square footage of the building that caused the stop work order or the addition of the two porches. Ms. Thiel responded because the structure was in the easement and was not a storage building. Plans were not submitted for a storage building. Ms. Skenes asked what was done differently than from the issued permit. Mr. Galanti responded that the porches were not shown on the original permit. Ms. Skenes asked if the porches are what pushed it closer to the back of the existing gazebo. Mr. Galanti responded that was correct. Ms. Skenes asked, under the ordinance, what triggers the difference between an accessory building and accessory dwelling unit. Mr. Galanti responded an accessory dwelling unit must have three components in order to be a dwelling unit. A storage building only would not have those three components.

Ms. Skenes confirmed this is not going to be a dwelling unit. Mr. Galanti responded she was correct. Mr. Galanti responded the ordinance calls for the three items to be separate living quarters with cooking, sleeping and sanitary facilities. Ms. Skenes asked if a bathroom, kitchen, and a bedroom would constitute accessory dwelling. Mr. Galanti responded that was correct. Ms. Skenes asked Ms. Castro if there was any plumbing in the building. Ms. Castro responded there is because it will be a pool house and a storage building. As part of separate permits, the house will be enlarged in the front, as approved by a variance. Ms. Skenes asked if the foundation in the back of the house has been permitted and approved. Ms. Thiel responded that a two story addition to the back of the house has a building permit. Ms. Castro stated they are not intending to use the accessory structure as a second dwelling. Mr. Waddell asked where the accessory structure get electricity. Ms. Castro responded that power would come from her house. Mr. Ramsey asked if there was a foundation in the back yard when the house was purchased. Ms. Castro said it wasn't really a foundation, so that's why she acquired a permit. Mr. Waddell asked where the pool will be placed. Ms. Castro responded it will be in the middle, approximately 10 feet from the back addition and 10 feet from the accessory structure. Mr. Ramsey confirmed the work was started and had a building

permit, but then inspectors determined the foundation didn't match the permit and encroached into an easement. Ms. Castro stated it had been approved, and that she did not know about the encroachment. Mr. Ramsey asked about the work started but not finished. Ms. Castro responded there was a stop work order and the work did not get finished. Mr. Ramsey asked if someone else had started the work and she decided to finish it. Ms. Castro responded yes, and said that's why she applied for a permit with the City to move forward with the accessory structure. Ms. Skenes asked if there was any existing brick or other materials there when she decided to use what was there to build up from. Ms. Castro responded just the box. Mr. Waddell stated that Exhibit 2: 2018 Aerial Map, shows a box where the accessory structure is proposed. Mr. Oliver asked if Ms. Castro put the structure there that is indicated in Exhibit 2. Ms. Castro responded she did not.

Chair Truby asked if there were any further questions from the Board. Chair Truby inquired if there was anyone to speak in favor of the request. No one came forward. Chair Truby asked if there was anyone in opposition to the request. Chair Truby asked them to come forward and be sworn in.

Whitney Cobia and Ryan Krause, 5604 Sagebrush Trail. Ms. Cobia stated their house was purchased in September of 2018 and there was nothing in the location of the accessory structure. The foundation referred to in Exhibit 2 looked like a garden box. When construction started, they thought was going to be a storage building, but it became a house close to theirs. There is no privacy in their yard because the accessory structure is right on their fence line. Ms. Cobia said there is no pool and is not sure where one would go as there is a brick structure with a cover over it and no walls in the middle of the yard that was there when they moved in. Mr. Cobia stated since they've added the house, they feel it is encroaching on their privacy. The accessory structure looks like another house on a single-family lot. Chair Truby asked if it was pretty far along. Mr. Krause responded that it is almost done. Ms. Cobia stated it looks like a house, as it has windows, porches, plumbing and electricity. Ms. Cobia stated if they had known this accessory structure was going to be built, they would not have brought their house, as they enjoy sitting out back, having privacy and they feel they no longer have privacy. Chair Truby asked if they believe this is actually an accessory dwelling unit, not a storage building. Ms. Cobia responded yes. Ms. Cobia believes the outline on the Exhibit was a garden box. Ms. Thiel stated the aerial photos are from 2018. Ms. Bowers stated it looks like the accessory structure backs up to the area just beyond their driveway. Ms. Cobia responded that the left side of Ms. Castro's yard is the back side of their yard. Theirs is the third house down on Sagebrush Trail if looking at Exhibit 2. Chair Truby stated the pictures of the two story accessory structure that the Board is asked to approve a variance for shows that it is pretty much built.

Chair Truby asked of any further questions for the opposition. No further questions. Chair Truby asked the applicant to approach the podium.

Mr. Oliver asked what is upstairs. Ms. Castro responded it is just space to be used as storage. Mr. Ramsey asked if a contractor built the house. Ms. Castro responded that she built it. Mr. Ramsey asked if the Board does not grant the variance, will the house have to be removed. Mr. Galanti responded the building would have to be removed or made compliant by cutting off pieces. Ms. Skenes asked if the two porches are what is not in compliance. Mr. Galanti responded the easement and the accessory structure are not related to one another. This accessory structure was in the easement, which has been released. Ms. Skenes asked if the two story accessory structure without the porches is in compliance now that the easement has been released. Mr. Galanti responded no, it is still within 2 feet of the setback. The required setback is 10 feet and they are within 2 feet which is the subject of one of the variance requests. Mr. Ramsey asked if even though the easement was released by the Planning Board, the request is now before this Board for a variance. Mr. Galanti responded that was correct, for the setback. Mr. Ramsey asked if the easement is released what exactly does it mean then. Mr. Kelly responded the easement is a separate issue. Mr. Galanti was saying there was an easement running along the back property line, which has been released and no longer an issue. Even if there was not an easement, the location of this accessory structure is still 8 feet from the property line and is required to be 10 feet. It is a setback issue. Mr. Ramsey asked if this building had been 2 feet back, exactly as it is now, would it be in compliance or not. Mr. Galanti responded it still would not meet the 10 foot separation from other structures requirement. Chair Truby stated there has to be a separation of 10 feet between structures.

Chair Truby asked if there were any other questions for the applicant. None were presented. Chair Truby requested a motion to close the public hearing. Mr. Waddell so moved, seconded by Mr. Ramsey. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers, and Brame. Nays: 0.)

BOARD DISCUSSION

The idea of removing the porch close to the gazebo was discussed. Mr. Galanti advised it is the other porch that is in the 10 foot rear setback, not the porch that is 6½ feet from the gazebo. If the porch was removed the two foot problem would not be solved. Chair Truby stated the applicant is only asking for a 2 foot variance and the structure is going to remain and discussed whether the 2 feet encroachment makes that big of a difference for the neighbors. The architectural drawings clearly indicate that this is a storage building and a pump house. There should not be anybody living in that upstairs. There is no plumbing other than for the pump house for the pool. There are no bathrooms or bedrooms shown on the upper level. A suggestion was made that to create peace, harmony and privacy for the neighbors, there could be no windows on the rear of the structure and a privacy fence be placed between the properties instead of the current wire fence. Mr. Galanti stated that the plan submitted by the applicant shows the side of the building facing the neighbors on Sagebrush Trail labeled as the left side elevation and that there are no windows on that side. Mr. Waddell stated that the height appears to be at issue because it is tall and is invasive. Mr. Ramsey stated that he struggles with having the structure torn down, but is also concerned with privacy issues. Chair Truby asked if this variance is approved, could the applicants make the structure an accessory dwelling unit if they came back before the Board. Mr. Galanti responded that he could not answer that as there are several regulations that would be different between an accessory structure and an accessory dwelling. Chair Truby stated that if he thought there was any chance the accessory structure could be converted into an accessory dwelling, he would not be in favor of these variances. If it stays as storage and can be assured that it stays as storage, he would be in favor. It would violate zoning if it became an accessory dwelling. Chair Truby suggested that if the neighbors see people living there, they should call Zoning Enforcement for an investigation. Chair Truby is concerned about the structure being set up as a dwelling. The applicant was asked if the building was air conditioned. Ms. Castro responded yes, because of the pool and the bathroom. Chair Truby asked if upstairs was air conditioned. Ms. Castro responded that it is not; it is only for the bathroom. Mr. Kelly advised the variance requests are to allow an existing accessory structure to be this close and is separate under the LDO.

Chair Truby asked if there was any other discussion. Nothing further. Chair Truby asked for a motion to be made.

Mr. Ramsey moved that, in BOA-19-28, 602 Meadowood Street, based on the stated findings of fact, the Zoning Enforcement Officer be overruled and the variances 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 strict application of the ordinance will prevent the applicant from completing the current construction project which will improve the property.
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 strict application will prevent the current construction of the existing structure that inadvertently intrudes 2 feet into the allowed setback.
3. The hardship is not the result of the applicant's own actions because the applicant inadvertently encroached without intention of violating the ordinance and found out as a result of a separate building permit application.
4. The variances are in harmony with the general purpose and intent of this ordinance and preserve its spirit and assures public safety, welfare and substantial justice because the improvement is in conformance with the neighborhood and improves the value of the applicant's property.

Seconded by Mr. Waddell. The Board voted 7-0 in favor to grant both variances. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers and Brame. Nays: 0.)

2. SPECIAL EXCEPTION

a. BOA-19-29: 305 West Bessemer Avenue. Joseph Bugni requests a Special Exception to allow a proposed addition to encroach 10 feet into a required 20 foot rear setback. **(APPROVED)**

Ms. Thiel stated in BOA-19-29, 305 West Bessemer Drive, Joseph Bugni requests a special exception to allow a proposed addition to encroach 10 feet into a required 20 foot rear setback. The addition will be 10 feet from the rear property line.

Evidence from the applicant includes Exhibits A through E. Supporting documentation from staff includes Exhibits 1 through 7. The Land Development Ordinance reference is Section 30-7-3.2, Table 7-2: R-5 rear setback is 20 feet.

Background and Site Information: The subject property is located on the south side of West Bessemer Avenue, west of Virginia Street, and is zoned R-5. Tax records indicate the lot contains approximately 10,890 square feet and the house was constructed in 1922. The applicant wishes to construct an addition at the back of the house that will encroach 10 feet into a required 20 foot rear setback. The applicant also proposes to add a covered deck at the back of the house that will encroach 8 feet into the same rear setback. As part of the improvements to the property, the applicant also proposes to add an uncovered deck less than 4 feet above grade and replace a nonconforming accessory garage. Both proposed improvements will meet setback requirements. At its meeting on May 29, 2019, the Historic Preservation Commission approved a Certificate of Appropriateness for the proposed work and recommended that a special exception be granted.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted the applicable overlays.

Joseph Bugni, 305 West Bessemer Avenue. Mr. Bugni stated he is doing a complete renovation on the property and is adding an addition. He would like to have a master bedroom on the first floor for value. The builder and architect are with him for any specific questions concerning the plans.

Chair Truby inquired if there were any other questions for the applicant. Ms. Bowers referred to Exhibit C and asked if the bedroom was going in the green area. Mr. Bugni responded the master bedroom stays inside the current structure. The yellow/green area is the kitchen space. The blue is the deck that is no higher than 4 feet off the ground. Chair asked if there were any other questions for the applicant. Seeing none, Chair Truby inquired if there was anyone to speak in favor.

Greg Seifert, 523 Woodland Drive. Mr. Seifert is the general contractor who has been working on this project and all the paperwork since March. They have worked with Fisher Park and came to a resolution for what they were trying to achieve. They have talked to several neighbors who are in support. They have worked with the Greensboro Historic Preservation Commission and have their approval. They are hoping this is the last meeting.

Chair Truby inquired if there was anyone else wishing to speak in favor or in opposition. No one came forward. Chair Truby requested a motion to close the public hearing. Ms. Bowers so moved, seconded by Mr. Ramsey. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers, and Brame. Nays: 0.)

BOARD DISCUSSION

The Board was in general consensus to approve the special exception request.

Ms. Skenes moved that, in BOA-19-29, 305 West Bessemer Avenue, based on the stated findings of fact, the Zoning Enforcement Officer be overruled and the special exception granted based on the following:

1. This special exception is in harmony with the general purpose and intent of this ordinance and preserves its spirit because the addition will be 10 feet from the rear lot line. Part of the improvements include replacing a nonconforming garage. The Historic Preservation Commission has approved a Certificate of Appropriateness for the proposed work.
2. The granting of the special exception assures the public safety and welfare and does substantial justice because the applicant met with adjoining property owners who have given consent and the Historic Preservation Commission has granted a Certificate of Appropriateness.

Seconded by Mr. Waddell. The Board voted 7-0 in favor to grant the special exception. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers and Brame. Nays: 0.)

OTHER BUSINESS

No other business was presented.

ABSENCES:

The absence of Ms. Necas was acknowledged as excused.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 6:53 p.m.

Respectfully submitted,

Chuck Truby,

Chair of the Board of Adjustment

MEETING MINUTES
OF THE
GREENSBORO BOARD OF ADJUSTMENT
AUGUST 26, 2019

The meeting of the Greensboro Board of Adjustment was held on Monday, August 26, 2019 at 5:31 p.m. in the Council Chamber Room of the Melvin Municipal Office Building. Board members present: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Leah Necas, Danielle Brame and Stephen Barkdull (Alternate). City staff present was Shayna Thiel, Mike Kirkman and Andrew Kelly, Assistant City Attorney.

Chair Truby welcomed everyone to the meeting and advised of the policies and procedures in place for the Board of Adjustment. Chair Truby 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 THE MINUTES (July 29, 2019)

Mr. Waddell made a motion to approve the minutes, second by Mr. Ramsey. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

OLD BUSINESS

No old business.

NEW BUSINESS

1. VARIANCES

The applicant was sworn.

a. BOA-19-30: 3803 MANOR DRIVE. Emily Vergamini and Amy Travis requested a variance to allow a proposed accessory structure to exceed 50% of the building coverage of the principal structure on the lot. **(APPROVED)**

Ms. Thiel stated that in BOA-19-30 at 3803 Manor Drive, Emily Vergamini and Amy Travis request a variance to allow a proposed accessory structure to exceed 50% of the building coverage of the principal structure on the lot. The accessory structure will be 1,100 square feet when not more than 769 square feet is allowed.

Evidence from the applicant included Exhibits A through D. Supporting documentation from staff were Exhibits 1 through 5. The Land Development Ordinance Reference is Section 30-8-11.1(A (3)). Maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot.

Background and Site Information: The subject lot is located on the south side of Manor Drive, west of Berry Lane, and is zoned R-5. Tax records indicate the lot contains approximately 10,890 square feet and the house was constructed in 1954. Per the Land Development Ordinance, the maximum building coverage of all accessory structures may not exceed 50% of the building coverage of the principal structure on the lot. The building coverage of the principal structure is 1,538 square feet and the maximum building coverage allowed for all accessory structures is 769 square feet. The applicants propose to construct a 1,100 square foot accessory

structure which will be 72% of the building coverage of the principal structure. Based on drawings submitted by the applicants, the proposed accessory structure will contain a carport, workshop, and storage. The applicants indicate that the proposed structure will be under 15 feet tall and will meet side/rear setback and separation requirements.

Ms. Thiel provided the land use and zoning for this property and surrounding properties. Ms. Thiel noted the applicable overlays and plans.

Chair Truby requested the applicant to come to the podium and provide their name and address.

Steve Vergamini, 3803 Manor Drive. Mr. Vergamini stated this property is owned by his wife and sister-in-law which was inherited from their father. The house as originally built has no covered parking, no workshop, and very little storage. They would like to have covered parking, a workshop area, and additional storage in addition to the attic inside the home. An architect has been hired and drawings were provided to the Board that conforms with all applicable setbacks. There will be additional concrete work to make sure everything flows and drains properly. They want to bring the house to current standards and without the variance, the house becomes much less livable and difficult to do daily things.

Chair Truby inquired if there were any questions of the applicant.

Mr. Waddell asked if there had been any improvements to the property at all. Mr. Vergamini stated his father in law added a storage building at the back of the property. It is about 30 years old, in very bad condition and will come down as part of this project. Other than that, the house is pretty much as originally designed and built.

Ms. Necas stated that all the reasons stated were personal circumstances, not a justification for a variance. She asked if there was another necessity he could provide. Ms. Necas further stated that he could have a structure of 769 square feet and asked why would that not be useful. Mr. Vergamini responded that it would be too small to do what he would need.

Mr. Waddell asked if the building was for a business or hobby. Mr. Vergamini stated there is no business, it is all personal.

Chair Truby asked if there were any further questions. There were none. Chair Truby asked if there was anyone else who wished to speak in favor or opposition. No one came forward.

Ms. Skenes made a motion to close the public hearing, seconded by Mr. Ramsey. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

BOARD DISCUSSION

Chair Truby stated his opinion on why he felt this was a valid request due to the size of the home. Ms. Skenes stated she felt it was a replacement storage structure. A question was asked if covered parking is counted in the square footage. Mr. Kirkman responded if a structure has a roof and supporting structures, including columns, it does not have to have solid wall to be considered a building for building coverage. Ms. Necas stated her concern over the allowable square footage. The Board members indicated their overall support of the application.

Mr. Waddell moved that in BOA-19-30 at 3803 Manor Drive, based on the stated findings of fact, 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 there is a lack of covered parking, workshop space or outdoor storage space, with limited improvements.
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 home was originally built in 1954. The existing shed is in poor condition and does not fit the needs of the owner.
3. The hardship is not the result of the applicant's own actions because the home was constructed in 1954. There is currently not enough space for activities of the owner.

4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the structure is in the rear of the property, partially visible from the street and will be architecturally structured to fit the space.

Seconded by Skenes. The Board voted 7-0 to approve the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays:0.)

b. BOA-19-31: 1104 MEADE DRIVE. Stephen and Paula James requested a variance to allow an addition to encroach 3 feet into a required 10 foot setback. **(DENIED)**

The applicant was sworn.

Ms. Thiel stated that in BOA-19-31 at 1104 Meade Drive, Stephen and Paula James request a variance to allow a cantilever addition to encroach 3 feet into a required 10 foot side setback. The addition is 7 feet from the side property line.

Evidence provided by the applicant included Exhibits A through E. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance Reference is Section 30-7-3.2. R-3 minimum side setback is 10 feet.

Background and Site Information: The subject lot is located on the east side of Meade Drive, south of Leonard Drive, and zoned R-3. Tax records indicate the lot contains approximately 13,504 square feet and the house was constructed in 1953. The applicants constructed a cantilever addition in 2003 to accommodate their washer and dryer without a building permit. In response to a complaint, a zoning enforcement officer visited the property and confirmed that the house with the cantilever addition encroached into the side setback. Per the Land Development Ordinance, cornices, overhanging eaves and gutters, window sills, bay window or similar architectural features, chimneys and fireplaces, fire escapes, fire balconies, and fire towers may project up to 2.5 feet into any required setback. Because the cantilever addition encroaches 3 feet into the required 10 foot side setback, a variance is needed to allow it to remain. If the variance is granted, the applicants will apply for a building permit for the previously constructed cantilever addition.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there was no applicable overlay or plans.

Chair Truby asked to hear more about the complaint. Ms. Thiel responded that based on the zoning case report from the code enforcement officer, the complaints were that the house encroached into the side setback. That was all that was in the notes from the code enforcement officer.

Chair Truby requested the applicant to come forward and provide their name and address for the record.

Paula James, 1104 Meade Drive. Ms. James stated that she was requesting a variance to allow for the cantilever addition to remain on their house which was built in 1992. It was recently brought to their attention of the encroachment of 3 feet into the required side setback of 10 feet. At the time of construction, they did not believe it would be an issue as there were no footings dug. This was added to an existing laundry room and they were under the impression their property extended further than what it does. In order to correct this situation, they are requesting a variance to make this wrong a right.

Ms. Necas asked if the carport was new. Ms. James responded there is no carport, the end of the gravel driveway comes up to but not past that area. The gravel is new and the reason for the complaint from the neighbor. Ms. Necas asked if there was ever a survey of the property. Ms. James responded from a previous survey they were told they had more property than what they do and she is going by the new survey.

Chair Truby asked when the expansion was done was it already a laundry room. Ms. James responded it was a small utility room that they added 3 feet to house the washer and dryer. Plumbing and electrical was already there. Chair Truby asked if there was a 220 volt outlet for the dryer. Ms. James believes that power was extended to that area. She did not know as she did not do it herself. Chair Truby asked who actually did the addition. Ms. James responded that her husband did the addition as he is a contractor.

In response to a question regarding the complaint made, Ms. James stated the complaint was from their neighbors. The gravel shown on the picture was put in for a driveway to park her husband's trailer as they were being tagged monthly from another complaint. They wanted to stay in good graces with the City and keep everything off the street. The next door neighbors were not happy with where the driveway was placed and wanted them to place a circular driveway in the front of their home. They could not do that as all the plumbing is housed for their street in that location. The neighbors stated they would fight it, took pictures on their property, which escalated the issue and the neighbor called the City to file a complaint. The cantilever has been there for 27 years and her neighbors have lived there for 25 years.

Chair Truby inquired if there was anyone else wishing to speak in favor of the case. No one came forward. Chair Truby inquired if there was anyone to speak in opposition to the case. No one came forward. Chair Truby closed the public portion of the hearing.

Mr. Ramsey made a motion to close the public hearing, seconded by Ms. Necas. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

BOARD DISCUSSION

Chair Truby stated the hardship is a result of the applicants' own actions and does not see how the Board can work around the hardship issue. There is nothing peculiar to the property or any unique circumstances related to the property. Mr. Waddell stated it appears the hardship is not being able to park the work vehicle. Chair Truby asked in regards to the ordinance when this addition was built, has it always been 2 ½ feet. He remembered at one time cantilever being a part of the building foundation and the setback would be measured from actual foundation of the building, not from the cantilever. Mr. Kirkman stated he would need some time to research that issue. Mr. Ramsey asked if the cantilever encroached 6 inches. Chair Truby responded it is not considered a cantilever because it technically encroaches 3 feet. If it had been built at 2 ½ feet, they wouldn't be here. Mr. Waddell asked if the applicant had an estimate on what it would cost to remove the cantilever versus leaving it where it is. Ms. James responded it would be very costly as another place would have to be built for her washer and dryer. The wall would have to be replaced, and remodeling is approximately double new construction. She stated it could be up to \$5,000 or more. Mr. Ramsey inquired if the Board has any type of equity power or only statutory power. Mr. Kelly responded what the Board is asked to review is based on the competent evidence presented and to make findings on the criteria to affirm or deny a request for a variance. The decision is immediately appealable. The Board's task is to consistently apply the rules. If rules are arbitrarily applied to one case and not another, it jeopardizes future decisions. Chair Truby stated legally he did not see how this request could be granted and has not heard any compelling evidence that it is not the result of the applicants own actions. Mr. Kirkman advised he found the provision in the Unified Development Ordinance which is consistent with what the LDO states currently: cornices, eaves, and all those things can project up to 2 ½ feet into a required setback and be no closer than 3 feet from the property line. The current standard is the same standard that was in place under the Unified Development Ordinance.

Chair Truby moved that in BOA-19-31 at 1104 Meade Drive, based on the stated findings of fact, the Zoning Enforcement Officer be upheld and the variance denied based on the following:

1. 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 the applicant built the addition without a building permit.
2. 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 the lot is rectangular and there is no reason the setback requirements could not be met.
3. The hardship is the result of the applicant's own actions because they constructed the addition without a permit and did the construction themselves.
4. The variance is not in harmony with the general purpose and intent of this ordinance and does not preserve its spirit and does not assure public safety because the applicant did not obtain a building permit as required.

Seconded by Mr. Waddell. The Board voted 7-0 to deny the variance request. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.) Chair Truby advised the applicant that this decision can be appealed to Superior Court.

c. BOA-19-32, 1413 LEXINGTON AVENUE. Samuel Masters, Jr. requested a variance to allow a proposed house to encroach 20 feet into a required 35 foot street setback. **(APPROVED)**

The applicant was sworn.

Ms. Thiel stated that in case BOA-19-32, at 1413 Lexington Avenue, Samuel Masters, Jr. requests a variance to allow a proposed house to encroach 20 feet into a required 35 foot street setback. The house will be 15 feet from the property line along West Florida Street.

Evidence from the applicant included Exhibits A and B. Supporting documentation from staff were Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-7-3.2, Table 7-2. R-5 minimum street (thoroughfare) setback is 35 and Section 30-2.2.2(B)(1). A nonconforming lot of record may be built upon if compliance is achieved with regard to all ordinance requirements except for a lot area or width.

Background and Site Information: The subject lot is located on the east side of Lexington Avenue, north of West Florida Street, and is zoned R-5. Tax records indicate the vacant lot contains approximately 6,970 square feet. The subject lot is considered nonconforming since it does not meet the minimum 7,000 lot area and 58 foot corner lot width requirements of the R-5 District. Per the Land Development Ordinance, a nonconforming lot of record may be built upon if compliance is achieved with regard to all ordinance requirements except for lot area or width. The applicant proposes to construct a single-family house on the subject lot and seeks a variance to encroach 20 feet in the required 35 foot street setback. The house will be 15 feet from the property line along West Florida Street, which is classified as a thoroughfare. If the variance is granted, the applicant will apply for a building permit to construct a new house.

Ms. Thiel stated there are no applicable overlays and plans. Ms. Thiel provided the land use and zoning for this property and surrounding properties.

Samuel Masters, Jr. and Earl Henry, 1413 Lexington Avenue. Mr. Masters stated Mr. Henry is the owner of the lot and he has entered into a contract with him to buy the lot provided a variance is approved. The lot has never been subdivided and is unusually narrow, but is how the lot was created when the Glenwood subdivision was created. The house on the lot was burned down about 15 years ago and with the incident, the Henrys lost any grandfathering at the time. Mr. Henry now has a vacant lot he would like to sell, but the hardship for him is he won't be able to sell it if there is not a reasonable amount of area in the lot to be able to build on. The left side setback is 5 feet and the right side setback along West Florida Street is 35 feet, resulting in 40 feet of setback on a 50 foot wide lot, leaving 10 feet to build, which is why the variance is being requested. Mr. Masters stated that he can roughly see the old foundation by the vegetation on the property, and that it appears the old house was approximately 15 feet off of West Lexington Avenue. He is proposing to place a house back roughly in the same location with about the same setback of the original house that was there.

Chair Truby asked if there were any questions. Ms. Necas inquired if Florida Street was not a thoroughfare when the Glenwood neighborhood was built. Mr. Masters stated he believed the neighborhood was developed around 1910 and did not think requirements were set at that time. Ms. Necas referred to houses on West Florida Street that appeared to be closer to the road than 35 feet and did think Mr. Masters was asking to be closer than what those dwellings are. Mr. Kirkman responded the provision of the 35 foot setback was part of the Unified Development Ordinance when it was adopted in 1992 as it had to do with subdivision of property and thinks the thoroughfare setback standard was adopted at that point in time well after the house previously there was built and believes the other homes were there before that standard was in place.

Mr. Ramsey asked if Florida Street had been widened since 1910. Mr. Kirkman responded he did not have that information and no one from Transportation was present. Chair Truby asked for any further questions. No further questions. Chair Truby inquired if there was anyone else to speak in favor of the request. No one came forward. Chair Truby inquired if there was anyone who wished to speak in opposition to the request. No one came forward. Chair Truby asked for a motion to close the public hearing.

Mr. Ramsey moved to close the public hearing, seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

BOARD DISCUSSION

Chair Truby stated that if this variance is not granted the lot is unbuildable. Ms. Skenes stated this is an infill lot that was caught up in some development ordinance changes and feels more infill situations are needed and the Board should be flexible in how the Board approaches the guidelines. Chair Truby stated he did not think there was a 35 foot setback when this property was originally platted.

Mr. Ramsey moved that in BOA-19-32, 1413 Lexington Avenue, based on the stated findings of fact, 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 lot, which had historically been residential, will not be able to be built upon or used for any purpose, rendering the lot unusable.
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 lot has always been its current size since 1910. The lot is 50 feet wide but subject to a 5 foot and 35 foot setbacks which render the lot unsaleable and unusable.
3. The hardship is not the result of the applicant's own actions because the lot size has always been this size.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the variance will allow a single family dwelling to be built and support infill in the existing area, thus increasing property values.

Seconded by Ms. Skenes. The Board voted 7-0 to approve the variance request. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

c. BOA-19-33: 400 WAYCROSS DRIVE. Jeff Frye requests a variance to allow a proposed addition to encroach 2 feet into a required 43 foot front setback. **(CONTINUED)**.

Mr. Kelly advised that the owner is not present and Mr. Jobe, who is present, is the contractor. Mr. Kelly stated the Board can entertain a continuance or see if the owner can be contacted and be available now. Mr. Jobe stated that he is the architect and has texted the owner but believes there was a miscommunication between them. Chair Truby stated the owner would need to be present.

Mr. Kelly advised the Board can entertain a motion for a continuance but Mr. Jobe cannot request a continuance.

Chair Truby stated that since the owner did not know to be in attendance, he would request a motion for a continuance.

Mr. Waddell moved that BOA 19-33 be continued until the September Board of Adjustment meeting, seconded by Ms. Brame. The Board voted 7-0 to continue the variance request. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

c. BOA-19-34, 4919 STARMOUNT DRIVE. Sherri Miller requested a variance to allow a proposed addition to encroach 2.2 feet into a required 10 foot side setback. **(APPROVED)**

The applicant was sworn.

Ms. Thiel stated that in BOA-19-34, at 4919 Starmount Drive, Sherri Miller requests a variance to allow a proposed addition to encroach 2.2 feet into a required 10 foot side setback. The addition will be 7.8 feet from the side property line.

Evidence from the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance Reference is Section 30-7-3.2 – Table 7-1. R-3 minimum side setback is 10 feet. Section 30-2-4.1(A)(2), any enlargement of a nonconforming structure must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance.

Background and Site Information: The subject lot is located on the southwest side of Starmount Drive, northwest of Pebble Drive, and is zoned R-3. Tax records indicate the lot contains approximately 14,375 square feet and the house was constructed in 1959. The existing house is considered a nonconforming structure as it encroaches 2.2 feet into a required 10 foot side setback from the southeastern side property line. The applicant proposes to construct an addition along the rear and side of the house that will also encroach 2.2 feet in the same required 10 foot side setback. Per the application, the proposed addition will align with the existing building line and be 7.8 feet from the side property line.

Ms. Thiel provided the land use and zoning for this property and surrounding properties. Ms. Thiel noted the applicable overlays and plans.

Chair Truby requested the applicant to come forward and state their name and address.

Jim Cogdill, Sedgfield Homes, 1 Havershire Court, Jamestown and Sherri Miller, 4919 Starmount Drive.

Mr. Caudill stated Ms. Miller's house was built in 1959 and encroaches into the setback, which was unknown until a survey was received. Ms. Miller purchased the house in and around the 2015 timeframe. The house was flipped and there was no survey when purchased by Ms. Miller. No survey was made until this new addition. Ms. Miller would like to build an addition to have room for a small home office and room for her grandchildren. The hardship is the house was built already and cannot be moved.

Chair Truby asked if an offset could be put in the addition. Mr. Caudill stated it does not work with the floor plan and cannot be moved any further to the left without redoing the bathroom and part of the kitchen. It's approximately a 220 square foot addition.

Chair Truby inquired if there were any further questions. There were none. Chair Truby inquired if there was anyone else in favor or against this request. No one came forward. Chair Truby asked for a motion to close the public hearing.

Mr. Ramsey moved to close the public hearing, seconded by Ms. Skenes. The Board voted 7-0 to close the public hearing. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

BOARD DISCUSSION

Chair Truby felt this was a classic variance request. The house is there and they just want to align the rear wall for the addition. Ms. Skenes stated the Board has approved variances for the exact same reason. The Board was in general consensus for approval.

Ms. Necas moved that in BOA-19-34, at 4919 Starmount Drive, based on the stated findings of fact, 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 addition could not be moved 2.2 feet because plumbing lines and the bathroom would have to be moved.
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 house was built in 1950 and is classified non-conforming.
3. The hardship is not the result of the applicant's own actions because the house is already non-conforming. Built in 1959, the house was already 2.2 feet into a required 10 foot side setback.
4. The variance is harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the addition will be in line with the current building's structure.

Seconded by Ms. Skenes. The Board voted 7-0 to approve the variance request. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Barkdull. Nays: 0.)

OTHER BUSINESS

No other business.

ABSENCES:

Ted Oliver was acknowledged as excused.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 6:26 p.m.

Respectfully submitted,

Chuck Truby, Chair

Greensboro Board of Adjustment

**MEETING MINUTES
OF THE
GREENSBORO BOARD OF ADJUSTMENT
SEPTEMBER 23, 2019**

The meeting of the Greensboro Board of Adjustment was held on Monday, September 23, 2019 at 5:33 p.m. in the Plaza Level Conference Room of the Melvin Municipal Office Building, 300 West Washington Street. Board members present: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Leah Necas, Danielle Brame and Ted Oliver. City staff present was Shayna Thiel, Mike Kirkman (Planning) and Andrew Kelly, Assistant City Attorney.

Chair Truby welcomed everyone to the meeting and advised of the policies and procedures in place for the Board of Adjustment. Chair Truby 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 THE MINUTES (AUGUST 26, 2019)

Ms. Necas made a motion to approve the minutes, seconded by Ms. Brame. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

OLD BUSINESS

1. VARIANCES

a. BOA-19-24: 2907 SPRING GARDEN ROAD. Drewry Wofford requested 3 variances. (1) To allow a proposed bar to be located 0 feet from a residentially zoned property and 89 feet from a public park when 200 feet is required. (2) To allow the main entrance to a proposed bar to not be toward a street zoned predominantly for nonresidential uses. (3) To allow parking areas related to a proposed bar be located closer than 30 feet to the property line of abutting residential uses. The parking areas will be 15 feet from the property line abutting residential uses. **(APPROVED)**

All those wishing to speak on BOA-19-14 were sworn.

Ms. Thiel stated in BOA-19-24 at 2907 Spring Garden Road, Drewry Wofford requests 3 variances. (1) To allow a proposed bar to be located 0 feet from residentially zoned property and 89 feet from a public park when 200 feet is required. (2) To allow the main entrance to a proposed bar to not be toward a street zoned predominantly for nonresidential uses. (3) To allow parking areas related to a proposed bar be located closer than 30 feet to the property line of abutting residential uses. The parking areas will be 15 feet from the property line abutting residential uses.

Evidence from the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance References are Section 30-8-10.4(F)(1)(a): Bars must be located 200 feet from residentially zoned property and public parks; Section 30-8-10.4(F)(2): Main entrances to bars must be toward a street zoned predominantly for nonresidential uses; and Section 30-8-10.4(F)(4): Parking areas related to bars must be located 30 feet from property lines abutting residential uses.

Background and Site Information: The subject lot is located on the south side of Spring Garden Street, west of Park Terrace, and is zoned CD-C-M. Tax records indicate the lot contains approximately 9,614 square feet and the structure was constructed in 1949. The applicant proposes to convert the existing 1,405 square foot structure into a bar. As part of the renovation, the applicant indicated that the building, plantings, and yard will receive a facelift. Bars, nightclubs, and brewpubs are permitted uses in the C-M District provided that additional use standards related to property separation, frontage, screening, and parking are met. The applicant requests a variance to allow the proposed bar to be located zero feet from residentially zoned property and 89 feet from a public park when 200 feet is required. The applicant also requests variances to allow the main entrance of the proposed bar to not be toward a street zoned predominantly for nonresidential uses and to allow the parking areas to be located closer than 30 feet to the property line of abutting residential uses.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted the applicable overlays and plans.

Chair Truby asked the applicant to come to the podium and provide name/address.

Drew Wofford, 1502-B Benjamin Parkway. He advised that the property owner, Jack Bishara, was also present. Mr. Wofford provided background on Chemistry Nightclub and stated that with the success of Chemistry, he would like to open another business in close proximity which will provide a different atmosphere for his customers. Mr. Wofford does not have any issues with the neighborhood and has operated there for 7 years with no complaints of any kind. Security is in place to ensure patrons go to their cars quickly and quietly and try to limit congregating outside, or as a minimum, to keep the noise level down. Mr. Wofford stated this property will not be a dance club or a nightclub and will be a neighborhood bar within a house. The same provisions will be in place as with the nightclub next door. If approved by the Fire Marshall, he will have the front door only as an emergency exit and the rear will be the entrance and exit. He will update the fence in the back and hoped to build a concrete or cinder block wall to buffer sound next to the apartments. Parking will be in the rear of the building. Mr. Wofford stated that he has been working with the Neighborhood Association, which voted in a tie and agreed to be neutral. Mr. Wofford provided to the Board a copy of a signed agreement that was recorded with the Register of Deeds stating he will be the only person who can operate a bar or nightclub there, and if closed, it would go back to meeting current zoning conditions. Mr. Kelly advised the Board that their actions would be tied to the property and not to this applicant and the Neighborhood Association does not have the authority to change the Board's authority. Mr. Kelly stated he cannot legally advise what would need to be done to maintain the non-conforming status. Mr. Kirkman stated the house was grandfathered and one of the tests is whether or not the usage ceases for a period of 12 consecutive months. Once the legal uses are established, you cannot go back and reestablish those uses under the zoning code that the city can enforce.

Mr. Ramsey asked if a grandfathering provision on the bar would be considered. Mr. Kelly responded the Board's action would not be particular to an applicant. It appears to be more of a contract with the owner who is saying he does not intend to let anyone other than Drew Wofford lease this as a bar. The city cannot enforce it.

Dale Hamilton, 2907 Spring Garden Street, stated the spacing variance is for residential right across the street and the apartment complex next door. Mr. Hamilton stated he is awakened more from sirens or trains going down Spring Garden Street than from Chemistry Nightclub which is across the parking lot from the house. Mr. Hamilton stated the park in question is zoned as a park but it is not accessible to walk through and feels it should not be labeled as a park.

Jack Bishara, 1601 Spring Garden Street, stated that the agreement is between the property owner and the Neighborhood Association and that if Mr. Wofford wanted to convert the house to a bar and it is approved, only he could do that. If Mr. Wofford vacates it, it goes back to residential. Ms. Skenes stated that would be a rezoning and would not come into play unless someone applies for it to be rezoned. Mr. Truby stated if the Neighborhood Association wanted to, they could sue the property owner and try to have these changes done and have a court order to make those changes. Mr. Kelly stated it would be on a contractual level between those parties. Nothing will prevent this owner from selling to another owner and any restrictions or variances that the Board grants runs with the property.

Mr. Oliver asked if anything was going to be done to the building to change it into a bar. Mr. Wofford stated the building will be renovated to have handicap accessible bathrooms to meet building code. Mr. Wofford stated the

kitchen would probably be removed to allow the handicapped bathroom. He has not gone through with floorplans but his guess was the kitchen was the easiest place to put the bathroom. The living room will remain the same with an open bar. The two bedroom walls will be removed to have one large space. For the most part, the structure will appear to be a house when entered, the same as small businesses that have moved into houses. Chair Truby inquired if anything was being done with the exterior. Mr. Wofford responded they will be putting a patio on the back. The front will only be cleaned up with paint, new flowers and shrubbery. Chair Truby inquired if there were two different property owners between Chemistry and the house. Mr. Bishara responded yes. The land for Chemistry is owned by a big investment corporation out of New York.

Chair Truby inquired if there were any further questions.

Mr. Ramsey asked if this was a private club, mixed drink bar. Mr. Wofford responded it will be operated the same as Chemistry Nightclub as a private club. Mr. Ramsey asked other than the talks with the Neighborhood Association, are all the surrounding neighbors aware. Mr. Wofford stated the City sent notices. Mr. Hamilton stated there is a misconception with the term bar, and that this will be a casual hangout. The noise level will be background, period. It will be a place to congregate, socialize, and have a few drinks. There will be different local vendors for food. It is a completely different concept than Chemistry.

Chair Truby inquired if Mr. Wofford talked with the owner of the apartments next door. Mr. Wofford stated he tried to reach out to the property owners and they have not responded. Mr. Hamilton stated the tenants are target customers as they are mostly UNCG students.

Stephen Wicker, 3001 Masonic Drive. He stated he has not heard any noise from Chemistry Nightclub. Mr. Wicker believed the way the new bar as described would not have any additional noise impacts. He noted the train and noise from Wendover Avenue are more significant.

Ms. Necas asked if the brick or retaining wall would satisfy the Land Development Ordinance that requests a 6 foot opaque wall between his business and the residential areas. Mr. Wofford stated he wanted to do something to limit noise levels. He is working with an architect to ensure they meet and comply with the ordinance. Mr. Kirkman stated the ordinance standard says a 6 foot opaque fence or wall could be used as a separation. Ms. Necas asked if the trees count as opaque or would they have to put up an opaque fence. Mr. Wofford stated that within the foliage there is a fence. Ms. Necas asked if the 15 foot variance was actually regarding the parking area. Mr. Wofford stated city staff had said the 15 foot variance was needed for where the parking is. Chair Truby stated that it is where the existing gravel is. Mr. Kelly stated the same thing could be said for variance #2, they fully intend to request the main entrance to the bar facing the street. Mr. Wofford stated staff included that for him. Mr. Oliver asked if the property is zoned commercial or residential. Mr. Kirkman responded the property is zoned Commercial-Medium. It is directly adjacent to RM-18. The property lines are abutting each other. Ms. Necas asked if the applicant has these issues because he is on the border of residential and commercial. Mr. Kirkman stated the applicant could do retail, professional services and other commercial activities on the site, but because of the bar use the standards are different. Mr. Wofford stated it is not because of alcohol but because it is a private club/bar that there is an issue with zoning. Ms. Brame asked if they could not have this as a bar would they come back as something else. Mr. Wofford stated he likes the private club and it works well with being an LGBTQ establishment. As a private club, he can turn anyone away for any reason. The private club gives a buffer of safety against reactions.

Chair Truby inquired if there were any further questions for the applicant. There being no further questions, Chair Truby inquired if there was anyone else to speak in favor of this request. No one came forward. Chair Truby inquired if there was anyone to speak in opposition. No one came forward. Chair Truby asked for a motion to close the public hearing.

Mr. Waddell made a motion to close the public hearing, seconded by Mr. Ramsey. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

BOARD DISCUSSION

The consensus of the Board was that the applicant explained the request very well. A concern was expressed with not having the Neighborhood Association present but the lack of presence appears to be an indication of

acceptance. There was no other opposition. The use of the property as bar versus a private club was discussed. Chair Truby stated he supported the request and asked for a motion.

Ms. Skenes moved that in BOA-19-24, at 2907 Spring Garden Street, based on the findings of fact, the zoning enforcement officer be overruled and the three variances granted, based on the following:

1. If the applicant complies with the provisions of the ordinance, unnecessary hardships will result to the property by applying the strict application of the ordinance because current restrictions regarding parking and proximity to residential would prevent the uses proposed by the applicant.
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 property is located in a transition area of Spring Garden Street. The property is currently rented as a house which is itself a nonconforming use. The parking area in question has been in place for a number of years.
3. The hardship is not the result of the applicant's own actions because the proposed operator currently operates the adjoining business, Chemistry Nightclub, and is looking to expand additional entertainment options to the neighborhood. The parking has been in place for a number of years.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the owners have been in conversation with the Lindley Park Neighborhood Association and surrounding neighbors. They have reached a separate site agreement regarding uses. The neighborhood has chosen not to oppose the request and the property will be operated as a private club.

Seconded by Mr. Waddell. The Board voted 7-0 to approve the variance requests. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

b. BOA-19-33: 400 WAYCROSS DRIVE. Jeff Frye requested a variance to allow a proposed addition to encroach 2 feet into a required 43 foot front setback. The addition will be 41 feet from the front property line. **(APPROVED)**

All those wishing to speak on BOA-19-33 were sworn.

Ms. Thiel stated in BOA-19-33 at 400 Waycross Drive, Jeff Frye requests a variance to allow a proposed addition to encroach 2 feet into a required 43 foot street setback. The addition will be 41 feet from the front property line.

Evidence from the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-7-1.4(A)(1)(b): Street setback computations.

Background and Site Information: The subject lot is located on the east side of Waycross Drive, north of Staunton Drive, and is zoned R-3. Tax records indicate the corner lot contains approximately 18,295 square feet and the house was constructed in 1988. The existing house meets all setback requirements. The applicant proposes to construct a garage addition at the front of the house that will encroach 2 feet into the required 43 foot setback. The addition will be 41 feet from the front property line. If the variance is granted, the applicant will apply for a building permit to construct the addition.

Ms. Thiel provided the land use and zoning for this property and noted there are no applicable overlays or plans.

Chair Truby asked the applicant to come to the podium and provide name/address.

Jeff Frye, 400 Waycross Drive and Steven Jobe, Architect, 3314 Watauga Drive. Mr. Jobe stated that the property owner desires to add a third garage bay on the front. The zoning ordinance changed the front setback so it's the average of the houses to the left and right. Mr. Jobe stated 400 Waycross Drive is on the corner and they only count the two houses on the left. One house two doors up was granted a variance about a year ago and sticks out closer to the street than this house would. Mr. Jobe thought the ordinance was to keep houses being built from breaking the rhythm of the street.

Ms. Necas asked if with the new setback they take the average of the house if granted a variance plus the one that is directly next to it or was he saying it was still not quite enough for the garage addition. Mr. Jobe stated

technically it is the two houses to the left and two to the right. On a corner it is just the two on the side and for the average they are going over the two foot. It is 43 feet and they are trying to use 41 feet on the street which is two feet over the average setback. Ms. Necas asked if Mr. Frye purchased his home after the home subject to the previously approved variance was built or prior to them getting a variance. Mr. Frye responded it was after. Ms. Necas asked if he knew what the setback was when the house was purchased. Mr. Frye responded the house was already built and had been granted a variance approximately a year ago. Chair Truby stated he remembered granting that variance.

Chair Truby inquired if there were any further questions for the applicant. Seeing none, Chair Truby inquired if there was anyone to speak in favor. No one came forward. Chair Truby inquired if there was anyone to speak in opposition. No one came forward. Chair Truby requested a motion to close the public hearing.

Mr. Waddell made a motion to close the public hearing, seconded by Ms. Skenes. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

BOARD DISCUSSION

Chair Truby stated he believed the variance of the house they had granted previously was further in the front setback and did not see how this house should not be granted. Ms. Skenes stated that prior to the LDO change, the minimum setback was 25 feet.

Ms. Necas moved that in BOA-19-33, at 400 Waycross Drive, based on the stated findings of fact, the Zoning Enforcement be overruled and the variance granted based on the following.

1. If the applicant complies with the provisions of the ordinance, unnecessary hardships will result to the property by applying the strict application of the ordinance because the addition would not allow for adequate space for matching brick veneer.
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 at the time of construction, the only relevant setback rule was 25 feet. The setback changed with the introduction of the LDO.
3. The hardship is not the result of the applicant's own actions because the setback changed after being built.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because it will be in visual continuity with the rest of the house.

Seconded by Mr. Waddell. The Board voted 7-0 to approve the variance request. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

NEW BUSINESS

1. VARIANCES

a. BOA-19-35: 3750 SAGAMORE DRIVE. Erica and Paul Brown requested a variance to allow a proposed addition to encroach 5.6 feet into a required 10 foot side setback. The addition will be 4.4 feet from the side property line. **(APPROVED)**

The applicant was sworn.

Ms. Thiel stated in BOA-19-35 at 3750 Sagamore Drive, Erica and Paul Brown request a variance to allow a proposed addition to encroach 5.6 feet into a required 10 foot side setback. The addition will be 4.4 feet from the side property line.

Evidence from the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-7-3.2 Table 7-1: R-3 minimum side setback is 10 feet.

Background and Site Information: The subject lot is located on the east side of Sagamore Drive, south of Birchbrook Circle, and is zoned R-3. Tax records indicate the lot contains approximately 21,344 square feet and the house was constructed in 1979. The applicants propose to construct an addition at the side and rear of the existing house that will encroach 5.6 feet into the required 10 foot side setback and be 4.4 feet from the side property line. Per the applicants, the addition will include a garage and an accessory dwelling. The proposed garage will be approximately 781 square feet, and the proposed accessory dwelling will be approximately 615 square feet. As shown on Exhibit B, an existing storage building in the rear yard will be removed.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there are no applicable overlays or plans.

Chair Truby asked the applicant to come to the podium and provide name/address.

Paul Brown, 3750 Sagamore Drive and Leslie Brown, 3698 Davis Cup Drive. Mr. Brown plans to add an addition to the house for his mother moving in. They selected the driveway side of the house because the opposite side has an easement issue where there is a utility access that runs diagonally through the backyard making the right side of the house the only area they would be able to add on to. The 5.6 feet is at the narrowest point because the property line goes back from the street, it angles outward resulting in more property going back and will be within the boundary line for the variance. The addition will include a single story two car garage with a living space added on to the screened in patio, converting that into a sun room and joining the two living areas. Mr. Brown stated he has spoken to a number of the neighbors. His next-door neighbor did not appear to have any issue with it. His only concerns were the big trees between their properties.

Ms. Necas asked if the neighbor was concerned because the trees would be taken down. Mr. Brown responded that he did not like them, but is not sure if they have to come down during construction. Ms. Necas asked about the drainage concerns of the property. Mr. Brown responded the only drainage issue they have had is at the far corner dealing with the crawl space under the house and had to pull moisture out of there. Since that was done, it has not been an issue. The grass tends to retain water in some places more than others.

Ms. Skenes stated according to the survey there was a controlled access easement and on the side a utility easement. Mr. Brown stated it limited where and what could be done.

Chair Truby inquired if there were any questions of the applicant. Seeing none, Chair Truby inquired if there was anyone else in favor or against the request. No one came forward. Chair Truby requested a motion to close the public hearing

Ms. Skenes made a motion to close the public hearing, seconded by Mr. Ramsey. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

BOARD DISCUSSION

The general consensus of the Board was this was the only place on the lot the addition could be placed and only a small variance is requested.

Mr. Waddell moved that in BOA-19-35, at 3750 Sagamore Drive, based on the stated findings of fact, 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 without the variance, it would become a hardship to meet the family's need. The proposed addition will provide ease of access.
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 due to the right of right of way and utility access, there is not another feasible location to construct a garage and accessory dwelling.
3. The hardship is not the result of the applicant's own actions because the right of way access and drainage concerns dictate the location for the addition. The property was originally constructed in 1979.

4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because no harm will come to the public as the proposed building will be attached to the existing structure. The look will be consistent with other properties in the neighborhood.

Seconded by Skenes. The Board voted 7-0 to approve the variance request. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays:0.)

b. BOA-19-36: 1119 Hill Street. Caroline and Enrique Armijo requested a variance for a proposed addition to encroach 9.28 feet into a required 15 foot side street setback. The addition will be 5.72 feet from the side property line along West Northwood Street. **(APPROVED)**

The applicant was sworn.

Ms. Thiel stated in BOA-19-31 at 1119 Hill Street, Caroline and Enrique Armijo request a variance for a proposed addition to encroach 9.28 feet into a required 15 foot side street setback. The addition will be 5.72 feet from the side property line along West Northwood Street.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-7-3.2, Table 7-2: R-5 minimum side setback is 15 feet.

Background and Site Information: The subject lot is located on the west side of Hill Street, south of West Northwood Street and is zoned R-5. Tax records indicate the lot contains approximately 9,148 square feet and the house was constructed in 1927. The existing house is considered a nonconforming structure as it encroaches 5.28 feet into the required 15 foot side street setback along West Northwood Street. The Land Development Ordinance states that any enlargement of a nonconforming structure must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance. The applicants propose to construct an addition at the side of the existing house that will extend 4 more feet from the existing house and encroach 9.2 feet into the required 15 foot side street setback and be 5.72 feet from the side property line along West Northwood Street. Per the applicants, the addition will include a bedroom and handicap-accessible bathroom.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there were no applicable overlay or plans.

Chair Truby asked the applicants to come to the podium and provide name/address.

Enrique Armijo, 1119 Hill Street. Mr. Armijo thanked the Board members for their work as he had been a member of the Chapel Hill Board of Adjustment at one time. Mr. Armijo stated the proposed addition is only 4 feet of new encroachment because the 15 foot setback was apparently put into place after the construction of the current sunroom that they are proposing to build off of. Mr. Armijo stated they have spoken to the neighbors and the rear neighbors were in support except for one who had just purchased the property and wasn't contacted. Mr. Armijo stated the neighbors along Northwood Street who would face the new addition were in support as well.

Ms. Necas inquired if the addition would be where the current chain link fence is in the backyard. Mr. Armijo responded yes, because the back of the property is flat. An entrance at the back would allow his mother to get in and out. Mr. Oliver asked if it would be 5.72 feet from the street, sidewalk or property line. Mr. Armijo responded according to the survey, it's measured from the property line.

Chair Truby inquired if there were any other questions for the applicant. Seeing none, Chair Truby inquired if there was anyone to speak in favor of the request. No one came forward. Chair Truby inquired if there was anyone who wanted to speak opposition to the request. No one came forward. Chair Truby requested a motion to close the public hearing.

Ms. Necas made a motion to close the public hearing, seconded by Mr. Waddell. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Brame and Oliver. Nays: 0.)

BOARD DISCUSSION

Ms. Necas stated there are a lot of people asking about additions relevant to elderly family members. If it was like a business and you have no bathrooms that were accessible to somebody with a walker or wheelchair, you would have to install an ADA accessible bathroom. Ms. Necas stated there is a large population that can't easily access residences. Ms. Necas asked if there was any basis to say that her house is not ADA compliant somehow or that it is a hardship that the house is not ADA compliant somewhere. It would be relevant for everybody else except for a private establishment. Mr. Kelly responded with respect to commercial development or new development, if it is new it has to meet ADA requirements. If they are in an existing building, if they are remodeling to a certain extent in the building, any new addition being put in has to come into compliance with ADA. Mr. Kelly did not believe there was a standard where the home builder has to meet ADA requirements. In the presence of someone with a disability, federal law would say that any application of a local ordinance or a state law, a city or a municipality that is trying to enforce would be up against a reasonable accommodation. If someone were to come to the Board and said they had this issue and are faced with this disability and the application of the ordinance does hinder me, it would be reasonable for the Board to acknowledge that and say as a reasonable accommodation or an acknowledgement applied to the property. Mr. Kelly stated Ms. Necas was right to be cognizant of the issue and how the ordinances apply to a person's property and his/her ability to remodel.

Ms. Necas asked if there was a way to take it out of the personal circumstances because that is not allowed to be the issue. There is law to protect that in public places and she would like it in private spaces. Mr. Ramsey stated this house was built before all the ordinances were adopted and they're attempting to modernize it. But for the strict application of the ordinance, they really could not do much of anything with regard to this house except by staying in the footprint.

Mr. Ramsey stated this property has been granted a variance in the past. Chair Truby stated his understanding is that can be used in the judgement or whether or not to grant the requested variance. Mr. Kelly stated the distinction being shown is from personal circumstance. The departure from personal circumstances to how it is addressed by the Board is in its current configuration, you're saying because it's so old, but this can apply to any modern way of living versus a particular person who has an issue.

Chair Truby inquired if there was any further discussion. There was none, Chair Truby asked if there was a motion.

Mr. Ramsey moved that in BOA-19-36, at 1119 Hill Street, based on the stated findings of fact, 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 to the ordinance because the home was built in 1927 prior to enacting the current ordinance. The property is already grandfathered for a sunroom encroachment. The application of the ordinance will not allow for a senior living on the first floor of the house for 21st century living standards.
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 house was designed in 1927, prior to the enactment of the most recent legislation allowing one bathroom downstairs. The owner requires the variance to provide for a disabled parent. Also, the location of the house on top of the hill creates access issues without a variance.
3. The hardship is not the result of the applicant's own actions because the house was built in 1927 and the location is on top of the hill creating access issues for disabled persons.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the proposed addition will be consistent with the neighborhood and homes which was one of the first built in Latham Park.

Seconded by Skenes. The Board voted 7-0 to approve the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays:0.)

c. BOA-19-37: 1914 Lafayette Avenue. Joel and Elizabeth Mills requested two variances. (1) To allow a proposed addition to encroach 6 feet into a required 30 foot rear setback. The addition will be 24 feet from the rear of the property. (2) To allow an existing house and proposed addition to encroach 0.43 feet into a required 10 foot side setback. The house is 9.57 feet from the side property line. **(APPROVED)**

The applicants were sworn.

Ms. Thiel stated in BOA-19-37, at 1914 Lafayette Avenue, Joel and Elizabeth Mills requested two variances. (1) To allow a proposed addition to encroach 6 feet into a required 30 foot rear setback. The addition will be 24 feet from the rear of the property line. (2) To allow an existing house and proposed addition to encroach 0.43 feet into a required 10 foot side setback. The house is 9.57 feet from the side property line.

Evidence from the applicants included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-7-1, Table 7-2. R-3 minimum rear street setback is 30 feet and minimum side setback is 10 feet.

Background and Site Information: The subject lot is located on the south side of Lafayette Avenue, south of Sunset Drive, and is zoned R-3. Tax records indicate the lot contains approximately 16,988 square feet and the house was constructed in 1956. The applicants propose to construct an addition at the back of the existing house that will encroach 6 feet into the required 30 foot rear setback and be 24 feet from the rear property line. Per the applicants, the addition will include a laundry room, handicap-accessible bathroom and a covered porch. As provided by the applicants as Exhibit B, the site plan for the proposed addition shows the existing house to be a nonconforming structure as it encroaches 0.43 feet into a required 10 foot side setback and is 9.57 feet from the side property line. The proposed addition does not make the existing house any more nonconforming along the side property line, but the applicants seek a variance to address the nonconformity at this time.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted the applicable overlay and plan was the Irving Park National Register Historic District.

Chair Truby requested the applicants to come to the podium and provide name/address.

Joel and Elizabeth Mills, 1914 Lafayette Avenue. Mr. Mills stated staff did a great job of describing what they are trying to do regarding bringing a laundry room from the basement and adding a handicapped accessible bathroom and a covered porch. Mr. Mills stated he is in the home health care business and the Board doing an advocacy campaign for making homes accessible, which was very much appreciated. Mr. Mills stated that they are doing the changes because as they age, they want a house they can live in for the rest of their lives. They have worked with their neighbors. In addition to the emails in the packet presented to the Board, he provided two notarized emails from neighbors on both sides and an email from the Greensboro Country Club stating they don't have any problem with the addition being planned, which will be adjacent to the golf course. Mr. Mills stated during this process they discovered that their house was nonconforming which they did not realize up until this point and is why the second variance request was added.

Chair Truby inquired if there were any questions for the applicant. No further questions. Chair Truby inquired if there was anyone else to speak in favor of the request. No one came forward. Chair Truby inquired if there was anyone wishing to speak opposition to the request. No one came forward. Chair Truby asked for a motion to close the public hearing.

Mr. Ramsey made a motion to close the public hearing, seconded by Ms. Necas. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers. Oliver, and Brame. Nays: 0.)

BOARD DISCUSSION

General consensus was these requests are much like the others considered by the Board earlier in the agenda. Chair Truby did not see how else they could do anything to the house.

Mr. Oliver moved that in BOA-19-37, at 1914 Lafayette Avenue, based on the stated findings of fact, the Zoning Enforcement Officer be overruled and the variances 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 this addition can only be made in this location on the lot. It encroaches about 5 inches into the side setback.
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 home was built for the back of the lot and the only place for the addition is in the backyard.
3. The hardship is not the result of the applicant's own actions because the home was built 63 years ago. This addition will bring it up to current standards with a first floor laundry room.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the addition will not encroach on neighbors as a golf course is in the back of the house. No other residences are near and is still 24 feet from the back lot line.

Seconded by Waddell. The Board voted 7-0 to approve the variances. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays:0.)

c. BOA-19-38: 199 WEST AVONDALE DRIVE. Amy Cummings requested two variances. (1) To allow a proposed accessory dwelling to encroach 6.37 feet into a required 10 foot side setback. The accessory dwelling will be 3.63 from the side property line. (2) To allow the heated floor area of a proposed accessory dwelling to exceed 30% of the floor area of the primary dwelling. The heated floor area of the accessory dwelling will be 495 square feet when no more than 363 square feet is allowed. **(APPROVED).**

The applicant was sworn.

Ms. Thiel stated in BOA-19-38, at 119 West Avondale Drive, Amy Cummings, requests two variances. (1) To allow a proposed accessory dwelling to encroach 6.37 feet into a required 10 foot side setback. The accessory dwelling will be 3.63 from the side property line. (2) To allow the heated floor area of a proposed accessory dwelling to exceed 30% of the floor area of the primary dwelling. The heated floor area of the accessory dwelling will be 495 square feet when no more than 363 square feet is allowed.

Evidence from the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance References are Section 30-8-11.2(D), Section 30-8-11.2 and Section 307.3.2-Table 7-1.

Background and Site Information: The subject lot is located on the west side of West Avondale Street, South of Madison Avenue, and is zoned R-3. Tax records indicate the lot contains approximately 15,246 square feet and the house was built in 1980. The existing 341 square foot garage meets accessory structure setback and separation requirements. The applicant proposes to convert the existing garage into an accessory dwelling by adding an additional 154 square foot of living space and an 18 square foot patio. Per the Land Development Ordinance, accessory dwellings must meet the same setbacks required for the principal dwelling. If converted into an accessory dwelling, the structure will not meet the R-3 minimum 10 foot side setback requirement. It will remain 3.63 feet from the side property line. The Land Development Ordinance also indicates that the heated floor area of an accessory dwelling must be at least 400 square feet, but may not exceed 30% of the floor area of the principal dwelling. By creating additional living space as part of the proposed accessory dwelling, the applicant would satisfy the first part of the requirement. But in doing so, the proposed accessory dwelling would not meet the second part of the requirement as the total heated floor area exceeds 30% of the floor area of the principal dwelling.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there were no applicable overlays or plans.

Chair Truby asked the applicant to come to the podium and provide name/address.

Ms. Thiel provided the land use and zoning for this property and surrounding properties. Ms. Thiel noted there are no applicable overlays and plans.

Chair Truby requested the applicant to come forward and state their name and address.

Amy Cummings, 119 West Avondale Drive. Ms. Cummings stated these variance requests will allow her to build an accessory unit for her aging parent with a living area, handicapped bathroom on slab. The primary dwelling was built in 1940, not 1980. Ms. Cummings stated this is a two story dwelling and she has more than sufficient heated space in her primary residence to support an accessory dwelling of this size but because of her first floor footprint does not meet the 30% requirement. Ms. Cummings stated the variance seems to penalize for a two story dwelling depending on the footprint. The 30% applies to the first floor footprint.

Chair Truby inquired of Mr. Kirkman if that was not the total square footage of the home in the 30% calculation. Mr. Kirkman responded the standard is ground floor area as a relationship of structures. There is a footprint of the primary and the accessory structure.

Ms. Cummings stated given the 400 square feet is the minimum for an accessory dwelling as it is now, she would never be able to have one because the first floor footprint would not support 400 square feet and is the nature of that variance. Ms. Cummings stated they are trying to incorporate the existing structure which is a detached garage that will have minimal disruption on the neighborhood. Ms. Cummings stated her immediate next door neighbors would not see anything different than what is there now except it would be nicer.

Chair Truby inquired if there were any further questions. Mr. Oliver asked if the existing structure is encroaching now. Ms. Cummings stated yes, because of the garage. When a garage is converted to a living use, the setback increases. It is legal as a garage but not if converted to a living area. Ms. Skenes requested to know 30% of what area. Mr. Kirkman referred the Board to their information packet regarding the floor area of a primary dwelling.

Chair Truby inquired if there were any further questions for the applicant. Seeing none, Chair Truby inquired if there was anyone in favor or against this request. No one came forward. Chair Truby asked for a motion to close the public hearing.

Mr. Ramsey made a motion to close the public hearing, seconded by Ms. Skenes. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

BOARD DISCUSSION

The general consensus of the Board was the request was reasonable and they were in favor of the request. The garage was existing and is just being redone. The addition would be on the inside of the lot and should not have any impact on any other property owners.

Chair Truby moved that in BOA-19-38, at 1914 Lafayette Avenue, based on the stated findings of fact, the Zoning Enforcement Officer be overruled and the variances 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 owner would not be able to construct the accessory dwelling.
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 primary residence is relatively small compared to the lot size. The size of the house limits the size of the accessory dwelling.
3. The hardship is not the result of the applicant's own actions because the garage and house were built in 1940 and are existing. The property was purchased in 2008.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because it will improve the existing garage and will improve the value of the property.

Seconded by Waddell. The Board voted 7-0 to approve the variances. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays:0).

c. BOA-19-39, 203 BRUSHWOOD ROAD, A/K/A 7000 WEST FRIENDLY AVENUE. Salvador Mosqueda requested a variance to allow a proposed house to encroach 16.8 feet into a required 30 foot rear setback. The house will be 13.2 from the rear property line. **(APPROVED)**

The applicants were sworn.

Ms. Thiel stated in BOA-19-39, at 203 Brushwood Road, Salvador Mosqueda requests a variance to allow a proposed house to encroach 16.8 feet into a required 30 foot rear setback. The house will be 13.2 feet from the rear property line.

Evidence from the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-7-3.2(D), Table 7-1. R-3 minimum rear setback is 30 feet.

Background and Site Information: The subject lot is located on the west side of Brushwood Road, north of West Friendly Avenue, and is zoned R-3. Tax records indicate the vacant lot contains approximately 23,087 square feet. At one time, Brushwood Road intersected with West Friendly Avenue, and a house on the subject lot faced and was addressed 7000 West Friendly Avenue address. Road widening construction between 2002 and 2007 eliminated the intersection, and the subject lot is no longer a corner lot with frontage on West Friendly Avenue. The address was changed to 203 Brushwood Road to reflect the current roadway access. The applicant submitted building application #201909214 to construct a new house, as shown in Exhibit 4, but was not approved because the proposed house did not meet the required front setback. To comply with the required 42.7 foot front setback, the applicant relocated the proposed house, but it now does not meet the required 30 foot rear setback. The applicant proposes to construct a new home on the lot that will encroach 16.8 feet into the required 30 foot rear setback and be 13.2 feet from the rear property line.

Ms. Thiel provided the land use and zoning for this property and surrounding properties. Ms. Thiel stated the applicable overlays were the Scenic Corridor Overlay District-2 and the West Friendly Avenue Visual Corridor Overlay Zone.

Chair Truby stated when the outer loop was built and widened at Friendly Avenue and the interchange, they reconfigured Brushwood so it would not come out and hit West Friendly, so now the lot is addressed off of Brushwood Road. Chair Truby asked if the front yard is on Friendly Avenue or Brushwood Road. Mr. Kirkman responded Brushwood. Mr. Kirkman stated there has been discussion regarding this. If there is a corner lot, the property owner can designate the front street and side street. Because this property does not actually face the street, it cannot be considered a corner lot and the only access is Brushwood Road.

Chair Truby requested the applicants to come to the podium provide name/address.

Salvador Mosqueda, 115 Hideaway Court, Jorge Pacheco, 5222 Burlington Road (translating). Mr. Pacheco stated that Mr. Mosqueda has been dealing with this as a corner lot and is trying to respect the variances. They had blueprints drawn, created a site plan and submitted it for a building permit. That is when all of this came up. They have tried to adjust for all the variations and at this point, the only one that will work is to move the house back to maintain the average front setback at 42.7 feet and request a variance for rear setback.

Mr. Oliver asked if the new road required that the house that was there be taken down. Mr. Pacheco responded that was correct. Mr. Oliver asked if that house faced Friendly Avenue, and Mr. Pacheco stated it did.

Chair Truby inquired if there were any further questions for the applicant. Seeing none, Chair Truby inquired if there was anyone in favor or against this request. No one came forward. Chair Truby asked for a motion to close the public hearing.

Ms. Necas moved to close the public hearing, seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

BOARD DISCUSSION

Chair Truby stated this is like a textbook and is not the applicant's own actions. It was created by NCDOT. Without the variance it will be hard to do anything with the property.

Ms. Necas moved that in BOA-19-39, at 203 Brushwood Road, based on the stated findings of fact, 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 lot as configured cannot have a house built on it without a variance.
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 lot has changed from a corner lot to a lot on a cul-de-sac and the frontage of the house has changed streets from West Friendly to Brushwood since 2007.
3. The hardship is not the result of the applicant's own actions because the lot is irregular and has changed due to closing off of Brushwood Road in 2007.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare and substantial justice because the house will be built on an otherwise unused lot, up to today's current standards.

Seconded by Waddell. The Board voted 7-0 to approve the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays:0).

OTHER BUSINESS

No other business.

ACKNOWLEDGEMENT OF ABSENCES:

No excused absences.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 7:09 p.m.

Respectfully submitted,

Chuck Truby, Chair

Board of Adjustment

MEETING MINUTES
OF THE
GREENSBORO BOARD OF ADJUSTMENT
OCTOBER 28, 2019

The meeting of the Greensboro Board of Adjustment was held on Monday, October 28, 2019 at 5:30 p.m. in the Council Chamber of the Melvin Municipal Office Building, 300 West Washington Street. Board members present: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Leah Necas, Danielle Brame and Ted Oliver. City staff present was Shayna Thiel, Mike Kirkman, (Planning), and Andrew Kelly, Assistant City Attorney.

Chair Truby welcomed everyone to the meeting and advised of the policies and procedures in place for the Board of Adjustment. Chair Truby 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 THE MINUTES (SEPTEMBER 23, 2019)

Ms. Necas made a motion to approve the minutes, seconded by Mr. Ramsey. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

Ms. Thiel advised that the applicant for case BOA-19-42 at 702 Cardigan Court, was requesting a continuance.

Chair Truby asked the applicant to come forward and state their name and address for the record.

Amanda Hodierne, on behalf of Thomas James, requested a continuance to the January 27th meeting to allow for more time to meet with neighbors to ensure everyone in the surrounding area is comfortable with the proposal.

Chair Truby inquired if there were any questions. Hearing none, Chair Truby asked if there was anyone else to speak in favor of the continuance or in opposition. Seeing none, Chair Truby requested a motion.

Mr. Ramsey moved to grant the continuance to the January 27th meeting, seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

OLD BUSINESS

None.

NEW BUSINESS

1. VARIANCES

The applicants were sworn.

a. BOA-19-40: 5306 West Friendly Avenue. Candida and Shinichiro Yoshikai requested two variances. (1) To allow a proposed accessory structure to encroach 12 feet into a required 68 foot front setback. The accessory structure will be 56 feet from the front property line. (2) To allow an existing house to encroach 25 feet into a required 68 foot front setback. The house is 43 feet from the front property line. **(APPROVED)**

Ms. Thiel stated in BOA-19-40, 5306 West Friendly Avenue, Candida and Shinichiro Yoshikai request two variances. (1) To allow a proposed accessory structure to encroach 12 feet into a required 68 foot front setback.

The accessory structure will be 56 feet from the front property line. (2) To allow an existing house to encroach 25 feet into a required 68 foot front setback. The house is 43 feet from the front property line.

Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance references are Section 30-8-11.4(B)(1): accessory structures must be located behind the front building line of the principal structure, and are not allowed in a required street setback and Section 30-7-1.4: street setback computations

Background and Site Information: The subject lot is located on the north side of West Friendly Avenue, east of Foxwood Drive, and is zoned R-3. Tax records indicate the lot contains approximately 40,522 square feet and the house was constructed in 1912. The applicants propose to construct an accessory structure behind the front building line and to the east of the existing house. It will encroach 12 feet into a required 68 foot front setback and be 56 feet from the front property line. The applicants indicated that a 3-4 foot drop off in the land and existing vegetation and fencing limit where a proposed accessory structure can be located. The site plan provided by the applicants showed the existing house to be a nonconforming structure as it encroached 25 feet into a required 68 foot front setback and was 43 feet from the front property line. The existing house can remain a nonconforming structure since no additions are planned that would make it any more nonconforming. However, the applicants seek a variance at this time to bring the house into conformance as well.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted the applicable overlay as West Friendly Avenue Visual Corridor Overlay Zone.

Chair Truby asked the applicants to come to the podium and provide their name and address.

Candida and Shinichiro Yoshikai, 5306 West Friendly Avenue. Ms. Yoshikai stated they would like to put a storage building on level ground next to and shared by the existing home. Under the current ordinance they would need to place the building in the back of the property where there is a 3 to 4 foot sudden drop off and where established topography would need to be disturbed.

Chair Truby asked for a description of the slope. Ms. Yoshikai stated that going down it is steep and could develop into an accessibility issue for anyone handicapped. The flat area would maintain accessibility, be closer to utilities and not require a foundation wall to be built where the hill is.

Chair Truby inquired if there were any other questions for the applicant. Ms. Skenes asked if these issues were because of the average front setback. Ms. Yoshikai responded she believed it was a result of the ordinance change that sought to line up the houses.

Chair Truby inquired if there was anyone else to speak in favor of or in opposition of the request. Seeing none, Chair Truby requested a motion to close the public hearing.

Ms. Skenes made a motion to close the public hearing, seconded by Mr. Waddell. The Board voted 7-0 to close the public hearing. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

BOARD DISCUSSION

Overall, the Board was in favor of the request as the house is on a hill that is hard to see and the addition should not be an issue.

Mr. Waddell moved that in BOA-19-40, at 5306 West Friendly Avenue, based on the stated findings of fact the Zoning Enforcement Officer be overruled and the variances 1 and 2 be 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 project would require extensive excavation and foundational buildup.
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 due to the topography of the land, it would require an extensive amount of construction on the north side of the property.

3. The hardship is not the result of the applicant's own actions because the home was constructed prior to other homes within the area and sits a substantial distance up on a hill.

4. The variance is in harmony with the general purpose and intent of this ordinance and preserves the spirit and assures public safety, welfare, and substantial justice because granting a variance will allow the building to line up with the existing home on level ground.

Seconded by Ms. Skenes. The Board voted 7-0 to approve the variance requests. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

b. BOA-19-41: 615 Woodland Drive. Marc Isaacson, on behalf of A. Macauley Aron Jr. and Catherine R. Aron requested a variance to allow a proposed house to encroach 4.92 feet into a required 60.2 foot front setback. The house will be 55.28 feet from the front property line. **(DENIED)**

The applicants were sworn.

Ms. Thiel stated in case BOA-19-41 at 615 Woodland Drive, Marc Isaacson, on behalf of A. Macauley Aron Jr. and Catherine R. Aron request a variance to allow a proposed house to encroach 4.92 feet into a required 60.2 foot front setback. The house will be 55.28 feet from the front property line.

Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference Section 30-7-1.4: Street setback computations.

Background and Site Information: The subject lot is located on the south side of Woodland Drive, east of Cleburne Street, and is zoned R-3 (Residential Single-Family). Tax records indicate the currently vacant lot contains approximately 13,947 square feet. The applicants propose to construct a new house, as shown on the submitted site plan, which will encroach 4.92 feet into a required 60.2 foot front setback and be 55.28 feet from the front property line. A sanitary sewer line is located in the rear of the property. The City's Water Resources Department advised in an email, Exhibit D, that any proposed construction must be at least 3.5 feet off the sanitary sewer line.

Ms. Thiel provided the land use and zoning for this property and noted there were no applicable overlays or plans.

Chair Truby requested the applicants to come to the podium and provide their name and address.

Marc Isaacson, 804 Green Valley Road, distributed materials to the Board and stated he is representing the property owners. The owners were present, along with their architect, Stephen Jobe. Mr. Isaacson stated this lot is vacant due to a home and garage being destroyed by a tree that fell during a storm several years ago. There is a sanitary sewer line at the back of the lot that was not publicly recorded on the plat in 1933. The applicants have worked with Department of Water Resources to come to a resolution to that issue with the City allowing the proposed garage to be built near the sanitary sewer. The city will maintain the sewer line and needs access to the area. Mr. Isaacson pointed out the encroaching area on the site plan is just under 5 feet out of approximately 60 feet of a setback. If it were not for the sanitary sewer line the variance request probably would not have been needed. Mr. Isaacson referred to the survey within the packet referencing the surveyor who had measured the other properties and determined the average setback on the homes on either side to acquire the dimensions on the request. Mr. Isaacson referred to a photograph indicating homes on the block with some type of structure in the back of the lots depicting how close everyone was to the sewer line. Mr. Isaacson felt this was a unique hardship as the applicant was unaware and did not install the sewer line which pushes the structure in the front. Under the new average setback, the ordinance created friction and Mr. Isaacson felt the Board needed to be aware of the other homes having the same issue. Mr. Isaacson referenced the email resolution agreed upon by the city and the applicant. Letters were sent to the neighbors and there have been several discussions among the owners and the neighbors. A sketch was shown indicating the alignment of the other homes on the same side of the street. Mr. Isaacson believed the applicants were close in alignment with the other homes. The applicants have a setback distance of approximately 60 feet with an encroachment request of just under 5 feet and achieved the intent of the ordinance. Mr. Isaacson stated this Board has traditionally found a way to accommodate a smaller minimum request such as this.

Chair Truby asked if the reason the house cannot be pushed back further towards the garage was because it would result in not enough room for the turning radius. Chair Isaacson responded that was correct and stated they were abiding by every other setback and ordinance requirement. They are trying to preserve as much vegetation and landscape as possible,

Chair Truby inquired if there were any further questions for the applicants. Seeing none, Chair Truby inquired if there was anyone else to speak in favor. No one came forward. Chair Truby stated anyone speaking in opposition to the request would need to be sworn for testimony.

Speakers were sworn.

Speakers in Opposition:

David Barger, 618 Woodland Drive, stated his comments were compiled with opposing neighbors and he was representing them as well. Mr. Barger presented materials to the Board that had been discussed at previous meetings with the applicants. The neighborhood overall did not feel the request met the requirements to grant the variance and are opposed. While the technical 5 foot variance sounds small, the front wall of the applicants' home would protrude 10 feet over the natural house line. Mr. Barger stated the applicants filed a site plan in September with a 20 foot variance from the back lot line and that was their basis for the additional 5 feet. The applicants were granted relief from the 20 foot setback resulting in a new site plan with the back lot line setback of 10 or 12 feet. Mr. Barger felt the applicants had already acquired a significant amount of relief granted by the city by receiving a City grant resulting in an 8 to 10 foot setback reduction that more than offsets the 5 feet requested. Mr. Barger stated it is not 5 feet. The neighborhood felt the possible inconveniences to the applicants are self created due to the pipe they claim they didn't know about and to which the City applied significant setbacks. The City has consistently and is required to assure better maintenance access to these utilities when new construction is proposed. There is no new setback requirement, as it has been consistently applied. The absence of a mortgage company imposed survey requirement did not limit the opportunity or obligation to perform the due diligence. If the inside perimeter had been walked around, a manhole cover would have been discovered. Mr. Barger referred the Board to an exhibit which indicated the previous owner's survey indicating the pipe. To the neighborhood, there are pre-existing common conditions and restrictions that should have been discovered before purchase and designing construction placement plans which should not be considered practical difficulties, unnecessary hardships, or imposed ordinance variances. The preferences exceed the available building space by designing a 3700 square foot home with a detached 3 car garage and basically overbuilding on a small lot. The plans could be downsized in a number of ways which would be a preference, not a hardship. Mr. Barger referred the Board to exhibits E21 – E26 that were distributed to them referencing the materials that demonstrated mathematically the 5 foot requirement within the ordinance, plus the applicant's 5 feet resulting in a 10 foot setback. The impact is real even if in compliance as it is 5 feet on an already granted intrusion of 5 feet.

Ms. Necas asked regarding E21, if BWA was the company that did the survey for the neighbors and had come up with two different values because of the Land Development Ordinance. Mr. Barger stated that was correct. Ms. Necas asked if using the BWA surveys, was that is because the porches are included in one and not in the other. Mr. Barger responded that was correct. Chair Truby requested Mr. Kirkman to explain how the setback was measured.

Mr. Kirkman stated the ordinance says the street setback is measured by computing the distance from the street right of way line to the nearest part of the applicable building. It does not say to the building wall, it states to the nearest part of the building. That's where the discussion came from of the porch versus the building wall. The porch is the nearest portion of the building to the front setback line based on the verbiage in the ordinance. Ms. Necas stated that is the inconsistency that Mr. Barger was pointing out. Mr. Kirkman stated that is what Mr. Barger is saying for the consideration of the Board that is some variation because of porches. Ms. Necas asked if building a porch, you would be 10 feet from the front of the house. Mr. Kirkman stated the ordinance language allows for an open air covered porch to encroach up to 10 feet into the front setback, no closer than 15 feet to the street. That provision was adopted last year when there were previous encroachments allowed for smaller stoops and other things before that.

Mr. Barger stated the neighbors are not saying that this was done incorrectly or that the interpretation of the application is wrong based on way the ordinance reads regarding the nearest structure, notwithstanding the fact the LDO says open air or covered porches are allowed intrusions. They are caught in the conflict of calculated

setbacks to the front of porches when determining the setback but is not applied to the front porch of 615 Woodland Drive, it is applied to the wall. Mr. Barger asked for understanding of what the ordinance states and why the neighbors say it is 10 feet above the natural house line. The site plan that was filed reflects a 20 foot setback due to the pipe. The same plan displays the 5 foot variance being requested, but there was an agreement where the city granted a reduced setback from the back property line from 20 feet to approximately 10 or 12 feet. A new plan was introduced indicating the reduced setback and the applicants still asked for a 5 foot variance. They were relieved of 8 or 10 feet but did not offset the variance request needed.

Mr. Oliver asked if the home was moved back 5 feet, would they be happy. Mr. Barger responded yes, because the other things are not things that should be public if they stay within the lines. The neighbors do not like what the applicants are proposing to do and the only option for the neighborhood was to come and oppose the variance. Mr. Oliver asked if Mr. Barger was objecting to the house itself or where it sits on the lot. Mr. Barger responded they would work hard to try to become good friends and neighbors with people that they disagreed with. The applicants know the things that he is referring to because they have been talked about in meetings. The neighbors are not happy but respect that is not under the purview of the Board. Mr. Barger referred to Section 3 those things if moved forward 10 feet in front of the house line would be more obtrusive than what they might be now. For this purpose, the neighborhood is opposing the 5 foot variance.

Chair Truby stated the Board needs to hear facts related to the variance request. Mr. Barger apologized and stated the short answer is the neighborhood is here to try to get the variance resolved and can only press for the 5 feet. His point is there are many other reasons why the 5 feet is compounding plenty of space for the applicants to build a nice property on a limited building space that they knew or should have known about. They are wanting to build more house and garage than is typical on a small lot. They can have a very nice house in a very nice area.

Mr. Ramsey stated the Board is a quasi-judicial body and as long as the applicants are within the lines and doing everything according to the variance ordinances, the Board's purview is the 5 feet being requested. Mr. Ramsey read the four standards needed to be complied with. Mr. Ramsey asking what was Mr. Barger's nutshell argument that the applicants failed the stated tests. Mr. Barger responded the conditions are not peculiar to that lot. They are common, known or knowable, and exist in every lot down on that side of the street and common in that area, especially older area. The fact that there is a pipe back there, everybody lives by their setback requirements if they're grandfathered. If not and they want to have new construction, the rules have to be abided. The applicants can build on that property and referred to people in the past of the people living in a smaller house on the property with the same limitations and the garage didn't sit on top of the pipe. Mr. Barger stated the applicants created the problem by not discovering the pipe and creating the problem by insisting that their preferences do not fit in the building area. It does not have to be 3700 square feet and there does not need to be a 3 car garage with all of the turnaround space. The neighborhood appreciates their preferences but does not want the front wall setting to be 10 feet in front of the natural house line. It will be 5 but the extra 5 is the neighborhood's opposition point.

Chair Truby inquired if there were any other questions. Ms. Skenes stated in the packet provided by Mr. Barger, there was a survey of 613 Woodland Drive that did not indicate a utility drainage easement on that survey and there is a garage that is 6 feet off the back line where technically he has built over the easement. Mr. Barger responded it was probably grand-fathered. Mr. Bowers stated the garage was there. Ms. Skenes stated 617 Woodland does not show the easement on the back of the lot. Ms. Skenes stated she was confused about the easement when neighbors on either side, the surveys do not show it. Mr. Barger responded he could not speak to that. That particular survey on that particular property in 2012 showed it clearly because the surveyor found it. Most of the garages were there. Mr. Soles built his carport closer to the back of his house because he had the setback for the pipe, different if he had a grandfathered garage. This applicant's garage was torn down because of a tree and was grandfathered. Mr. Barger stated it is not unique to this property and was known. The applicant's plans are the conflict, not the unique lot.

Chair Truby inquired of any other questions for the applicant. Nothing further. Chair Truby inquired if there were anyone else to speak in opposition to the request. Chair Truby requested them to provide their name and address for the record.

David Bowers, 613 Woodland Drive, stated he was vehemently opposed to the variance. Mr. Bowers wanted to underscore the lack of evidence in terms of hardship. The Arons' disregarded a basic tenant of purchasing

property as they did not walk the property. The manhole was in the back of their lot and a quick walk would have discovered it easily. Mr. Bowers stated he and his wife moved into the neighborhood 25 years ago at great personal sacrifice and have treasured the abundance of beauty and balance in every direction. This variance would disrupt that for them literally feet from their front door and side porch of their home. They would not be looking up the street, they would be looking at an expansive of brick wall. There was no question in his mind this variance would inhibit the use and enjoyment of his property and felt it would have a negative effect on the value of his property. Mr. Bowers referred to a letter that is also in the packet from the Booths at 617 Woodland Drive, located immediately adjacent to the Aron's lot to the west. Mr. Bowers referred to some excerpts of the letter so the Board would hear from neighbors on both sides of the Arons' property.

Chair Truby stated the letter in their packet is not notarized and asked if it was testimony the Board could hear. Mr. Kelly advised it would be hearsay and would not be appropriate for the Board to consider in any decision that ultimately results. Chair Truby advised Mr. Bowers to proceed. Mr. Kelly stated the Board can hear it if they want to but the Board should not be considered or swayed by it. Mr. Kelly stated he was not saying the Board cannot hear it, but it cannot be used to make a decision on it. Mr. Kelly inquired if it was worth the Board to hear it. Chair Truby stated Mr. Bowers is his dentist and asked if that put him in conflict. The letter in the package is from his dentist. Mr. Kelly stated he did not feel there was any direct or indirect conflict, but the Board has the duty to be an impartial decision maker and if he could continue to make a decision as an impartial decision maker, he would be okay to do that. Chair Truby inquired of the Board if they wanted to hear the letter. The consensus of the Board was it was in the packet presented to them.

Mr. Bowers stated he would not read the letter. Mr. Bowers believes the variance is the gateway to an overbuild and was very strongly against the variance. Mr. Bowers stated as future neighbors immediately adjacent to the Arons, the Roths, and the Bowers have placed their trust in the Board to guard against the overzealous reach of the Arons.

Chair Truby stated there will be a house built there whether or not the variance is granted. Chair Truby sensed more concern about the size, look, and everything else associated with the house and felt the neighborhood was using the variance as a way to stop the house from being built. He asked if the neighborhood understood that if the variance is not granted, most likely there will still be a house built there. Mr. Bowers responded for himself, he would be satisfied if the variance was disallowed and the house can be built. He is not at the meeting to have the Arons change the house or prevent a house from being built. He would be satisfied if there was no variance.

Chair Truby inquired if there was anyone else to speak in opposition to the request.

Clarence McDonald, 620 Woodland Drive, stated he understood there will be a house built on the lot and they want a house on the lot. He worries about homes creeping closer and closer to the property line in an older neighborhood and messing up the site lines. He opposed the 5 foot variance for the reasons outlined by others, but clearly recognized the need for a house there.

Chair Truby inquired if there was anyone else to speak in opposition. No one came forward. Chair Truby responded there will be 5 minutes for rebuttal

Rebuttal:

Marc Isaacson, 804 Green Valley Road, stated they appreciated the feelings, opinions, and thoughts of the neighbors and respected them. Mr. Isaacson stated it is important the Board stay focused on the factors that are supposed to be considered under the law. Whether the sewer line was discovered years ago or days ago, it is there. The other houses are grandfathered in. This house because it is new construction had to comply with a city requirement imposed by the City Water Resources Department that no other house on that side had to comply with. It is a hardship, a unique factor that applies to this lot only and that none of the other lots had to comply with. Mr. Isaacson felt that is an important distinction for the Board to draw on. The measurement of the setback was achieved by a professional surveyor which was submitted and accepted to staff. It was a commonly used methodology for measuring the setbacks. If the policy of how those things are measured is questioned, there will be a review of many variances already granted and would need a very detailed work session regarding how to do measurements now as everyone is adjusting to the fairly new ordinance.

Mr. Isaacson stated it was a fair measurement and the Board sits in judgment of every variance that comes before them and have the opportunity to determine if there is merit, unique hardships, and other factors at play in

this case. Each case rises and falls on its own merits and he believed this is a conventional variance request. There is a sewer line at the back that has a city requirement pushing the structures forward. There is a curvature in Woodland Drive that has to be acknowledged and an oddly configured lot. Those three factors contribute to the hardship and submitted they are not of the applicant's own making and falls within the parameters of many other variances that have been before the Board and approved.

Steven Jobe, 3314 Watauga Drive, referred to Exhibit 6 to look at the average setback and the front of all of the homes. Mr. Jobe stated given the hardship at the back they tried to keep the line consistent, the front walls of the houses, porches, extend out. The house to the right has an open air porch and this house would have an open air porch. The house to the left, the front corner of the applicant's house will be behind the required setback and there should be no issue with that house for a view down the street. The only protrusion being requested for the variance is on the right side and felt they were in keeping with that and that all four of the hardship issues had been addressed.

Mr. Ramsey clarified if the Board was being asked to grant a variance on the back sewer easement. Mr. Jobe responded no. Mr. Ramsey stated the only variance for the Board is the front variance. Mr. Jobe responded that was correct. Mr. Kirkman stated to be clear, there are setbacks for the principal building from the rear property line and then there is a distance that Water Resources requested any structures be from the sewer line. That is not a building setback. The principal building was meeting the 30 foot rear setback and the proposed garage would meet the required 3 foot rear setback as it is less than 15 feet tall. It is the distance from the actual sewer pipe, as he understood it that is being talked about. It is not a building setback. It is the distance that Water Resources negotiated with the property owner to ensure the pipe can be maintained. Mr. Ramsey stated to be very clear, the front setback is the only thing being discussed. Mr. Kirkman responded that was correct. Chair Truby stated the applicants had to push the garage away from the sewer line which compacted the house and garage for the maneuverability space between the two. Mr. Isaacson is arguing if the garage could have been pushed further back, the house could have been pushed back with it and would not be there requesting a variance.

Chair Truby inquired if there were any further questions. Mr. Oliver asked if it was possible to move the house back 5 feet. Mr. Jobe responded the maneuverability in and out of the garage, regardless whether it is a 2 or 3 car garage, getting in and out, backing out without backing down a long narrow driveway that is narrow, they would be backing right next to the house. The clearance is needed to be able to turn around to head out. It is very tight as it is, his normal clearance for turning around would be 25 feet and this space is about 22 feet.

Ms. Necas stated in the email, Exhibit D, stated the property is a unique property. Jason Geary used the term unique and asked if that was relevant in what was being discussed. Mr. Kirkman responded he thought Mr. Geary was responding to the sewer line. He is not referencing the lot itself. Chair Truby stated normally sewer lines have a sewer easement over the top of them and are recorded with the plat so surveyors know there is an easement there. There is a manhole there that should have been picked up but the bottom line is you can look at old plats and make a determination of whether or not there was a sewer line there based on where the easements are. This particular one was recorded so long ago no one knew the sewer line was there because in looking at the aerials you can see garages and other things built over the top of the existing sewer line. People have built over the top of it but because this is new construction, the city stepped in and said you are not going to build anything new on top of the sewer line.

Chair Truby inquired if there were any other questions. Ms. Skenes asked staff regarding Exhibit C, if she was interpreting the house at 617 Woodland Drive based on the survey of 55.5 feet from the front and the variance request at 615 Woodland Drive is to be 55.2 feet. Mr. Kirkman responded 55.28 feet would be the resulting setback if the variance is granted. Ms. Skenes stated if the house would then be set back less than the house at 617 Woodland Drive. Mr. Kirkman stated that was correct by a very small amount. Ms. Skenes asked if it would be equal to or less than the house at 617 Woodland Drive. Mr. Kirkman responded 617 Drive is setback at 55.5 feet and 615 would be at 55.28 and effectively would be about the same. Ms. Skenes stated what is throwing this off is 613 and 611 Woodland Drive are set further back because of the curve of the street and when averaging was the 60 feet. Mr. Kirkman responded that was correct.

Mr. Waddell stated in Mr. Isaacson's presentation, Section 2, a diagram of the projected property indicating where the setback is measured from is the side of the structure, the 55 feet, 5 1/2 inches. Based on the way staff would

survey a property, would that setback be counted from where it is on his drawing or would it be counted from where the porch actually is on the structure. Mr. Kirkman stated because this is new construction it would be measured from the house. The porch is allowed to encroach from there. Mr. Kirkman believed that was the point Mr. Barger had attempted to get to regarding the variation in discussion to the Board. Mr. Kirkman stated this house does not exist currently. The new construction will be built based on the plan and they are then allowed the encroachment from there for their open air porch. The existing houses are there with whatever points are closest to the street which is what the average measurement is based on. Mr. Waddell asked if the house is constructed and up, from where the porch would be would that change the setbacks for all of the existing properties. Mr. Kirkman responded once it is there and set, yes. It would be the similar standard of measuring the closest part related to the house to the front of the street. If there was a future addition to 617 Woodland, that would come into play.

Chair Truby stated opposition has five minutes for Rebuttal.

Opposition Rebuttal:

David Barger, 618 Woodland Drive, referred the Board to Exhibit E 21, front setback determinations schedules prepared by him from previous surveys of BWA and the four surveys from the properties required to be considered in determining the setback. Mr. Barger stated BWA did two surveys for the Booth property at 615 Woodland drive measured to the front porch which measured 55.5 feet, not for purposes of determining someone else's setback and was measured to the wall. Mr. Barger stated in response to Mr. Waddell's question, if this was done 10 times, scope creep would occur. Mr. Barger stated he was trying to clarify the difference between wall to porch or wall to wall in the Booth example with a 7.8 feet difference doing a wall to wall comparison. The curve could be eliminated and in doing the math on the 5 foot difference between the Bowers property and the Booths property and eliminating the one around the curve, it is the same answer. Mr. Barger stated they are not trying to take that away from the Arons but by the grace of the inconsistency they have already 5 feet and want another 5. The neighborhood would like the Board to consider the encroachment as 10 feet, not 5 that the extra variance would produce. Mr. Barger reiterated the Arons and their architect had a plan that had the house sitting 5 feet over the line in the front, with a 20 foot setback in the back. They had a plan that would work and submitted that to the Board for consideration. The pipe protection is 1 yard. The 8 or 10 foot relief should have covered the variance needed. They kept what was granted to them by the City and expanded their property. The previous plan submitted would fit without a variance with the new relief received by the City.

Chair Truby inquired if there were questions for staff or anyone in the audience. Seeing none, Chair Truby requested a motion to close the public hearing.

Mr. Ramsey made a motion to close the public hearing, seconded by Mr. Waddell. The Board voted 7-0 to close the public hearing. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

Mr. Kelly stated with respect to the easement being known it was his understanding from discussion with the Water Resources Department, it was acknowledged that this had not been recorded. This is a line in the ground that from the City's standpoint would have a prescriptive easement to maintain and as a city there is a responsibility to maintain it the water line there whether they have a right to do it or not. Mr. Kelly stated the Board had pointed out there were several neighboring properties with accessory structures literally on top of this and for whatever reason those were built before a time when the city was enforcing setbacks that it could get to the line. These applicants are coming in at a time when the city is saying just because we've not done what should have been done previously, they are attempting to maintain space in order to do their job and maintain city water and sewer lines. Mr. Kelly pointed out the purchase of the property, knowing it may be eligible for a variance, does not mean that it is self-created. When it was said they should have known, they could have known this was there but does not mean they created the easement being the water line in the back of the property and felt that was an important distinction.

BOARD DISCUSSION

Chair Truby stated this is a tough one. The Board has been doing this for a long time and a lot of these front setback variances have been granted. The fact that a tree fell on the house and the house had to be removed is a hardship and the sewer line is a hardship. Chair Truby inquired of Mr. Kirkman what would the rear setback be for an accessory structure if the sewer was not there. Mr. Kirkman responded because the structure is less than 15

feet in height, it would be 3 feet from the side or rear property lines. That is the minimum. Chair Truby inquired if they knew how far the new garage is off the rear line. Mr. Kirkman responded there is not a dimension on the plan and he would not be able to respond to that question. Chair Truby was attempting to determine if the applicants could go 3 feet and the garage is shown as 10 feet, they have lost 7 feet of usable land. Mr. Kelly stated in the opposition's Exhibit 3.1, there is a 10 foot setback and measured from a 10.4 setback from the sewer pipe. It appeared to him it is approximately 10 feet off the line according to documents that were produced.

Mr. Ramsey stated he goes back to the four things looked at that this is not a result of their own actions. The lot was purchased, the house designed, and now needs a 5 foot variance. In applying the four rules of the ordinance with a lot purchased and a house placed on the lot that is 5 feet over, how would that not be of their own making. He is aware of the back easement but it appeared to him this was a voluntary act in making this happen.

Ms. Skenes stated her hang up was the R-3 zoning. Prior to 2014 and the adoption of the new LDO, it could have been built up to 25 feet from the front line. The average setback is why the Board has had so many requests for variances because the rest of the neighborhoods were built to different standards. This neighborhood happens to have large lots and the houses were set back further. Ms. Skenes stated she did not disagree that it is a dilemma but the Board has approved them for more on the average front setbacks.

Ms. Necas stated it is a proposed house and questioned if it could be made to fit within the restrictions. Ms. Skenes stated the ones approved previously were proposed additions. Ms. Necas stated usually there was a preexisting structure and were limited by the actual structure. There is no structure on this property. The sewer line is not their fault, it has been there and now must to deal with that.

Mr. Oliver inquired if the garage could be moved back. Chair Truby stated the City has told the applicants they have to keep the garage where it was shown to stay off the sewer line in order for the sewer line to be maintained in the future by the city if need be. There is no extra room which is the problem. If the sewer line was not present, the garage could be moved back and the house moved back. Mr. Oliver asked about the other plan that was referenced to if that allowed for it to be further back. Mr. Kelly stated the opposition documents put forward a prior plan that had the garage further away from the rear property line and the encroachment to the front setback would have been more based on what he saw on the documents. The applicants have worked with the City Water Resources Department to move it as close as allowable for them to maintain responsibility. Mr. Oliver stated the house cannot fit on the space they have. Chair Truby responded not with this house, but the house could be changed.

Chair Truby asked for a motion to be made and vote on it. Ms. Necas inquired if legally a motion should be made for approval and if the Board goes against it, it would mean it was denied and if it goes forward, it is for. By default an approval should be made. Mr. Kelly responded it is good to have a motion in the affirmative meaning it is a motion for approval or is a motion for denial and have that motion carry. Either one, Mr. Kelly would advise the Board to make whatever motion. If a motion for approval failed, a motion to deny would be appreciated.

Ms. Necas moved that in BOA-19-41, at 615 Woodland Drive, based on the stated findings of fact, 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 it would necessitate changing the house plans at one corner of the house creating an architectural anomaly.
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 rear of the property is limited by a City of Greensboro sewer easement of 10 feet and the layout of the property includes a shorter side that constrains placement of the house on the property.
3. The hardship is not the result of the applicant's own actions because the sewer easement is a limitation of the city and absent that easement, a variance would not be required.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the variance would allow for the property to be in harmony with the houses along the street and comply with the city's sewer easement requirements.

Seconded by Ms. Brame. The Board voted 5-2 to approve the variance request. (Ayes: Truby, Skenes, Necas, Brame and Oliver. Nays: Ramsey and Waddell.) Chair Truby advised the variance was denied since the motion had to be approved with a super majority of 6 and advised of the right to appeal to Superior Court.

Mr. Kelly requested to have an affirmative motion denying the variance either from Mr. Ramsey or Mr. Waddell as they dissented from the approval. Chair Truby stated the motions are hard to write up. Mr. Kelly, if it does not carry, it will not carry. Ms. Skenes stated the vote would not change. Mr. Ramsey stated this was 2 in favor of denial and 5 in support of the request. Chair Truby inquired if that was good. Mr. Kelly indicated by a nod it was.

Chair Truby advised the applicants the variance was denied and advised of the right to appeal to Superior Court.

d. BOA-19-43: 449-451 Guilford College Road. Marc Isaacson, on behalf of Charles Wallington and Abram and Clara Green Family Trust, requested a variance to allow a proposed multifamily building to encroach 20 feet into a required 35 foot thoroughfare setback. The multifamily building will be 15 feet from the property line along Guilford College Road. **(APPROVED)**

The applicant was sworn.

Ms. Thiel stated in BOA-19-43 at 449-451 Guilford College Road, Marc Isaacson on behalf of Charles Wallington and Abram and Clara Green Family Trust, request a variance to allow a proposed multifamily building to encroach 20 feet into a required 35 foot thoroughfare setback. The multifamily building will be 15 feet from the property line along Guilford College Road.

Evidence provided by the applicant included Exhibits A and C. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance Reference was Section 30-7-3.2, Table 7-7: RM-18 minimum thoroughfare setback is 35 feet.

Background and Site Information: The subject lots are located on the east side of Guilford College Road, north of Bridford Parkway, and are zoned CD-RM-18 (Conditional District-Residential Multifamily). Tax records indicate the currently vacant lots contains approximately 3.48 acres. Per the applicants, the location of NCDOT right-of-way along Guilford College Road and floodplain associated with South Buffalo Creek affect site development and building placement. The applicant proposes to construct a multi-family building that will encroach 20 feet into a required 35 foot thoroughfare setback along Guilford College Road. The entire multifamily development project must meet approved zoning conditions and be reviewed and approved by the Technical Review Committee.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there was no applicable overlay or plans.

Chair Truby requested the applicants to come forward and provide their name and address for the record. Additional applicants were sworn as they had not been sworn previously.

Marc Isaacson, 804 Green Valley Road, stated he is representing Wynnefield Properties, a local developer of primarily senior citizen multi-family projects and properties. This variance concerns a new multi-family project intended to provide reasonable affordable housing for senior citizens in a growing area of the city. Wynnefield is under contract to acquire these two parcels from the current owners which is why they are listed as the official applicants. Wynnefield obtained rezoning approval of the property with the participation of the current owners earlier this year. During the due diligence process which is still underway, it was determined one corner of the proposed building would encroach into a street setback of 35 feet from a major thoroughfare which is Guilford College Road. Mr. Isaacson provided the Board materials for reference. Tab 1 was the proposed site plan with the pink line indicating the line of the curb and gutter established for Guilford College Road. The yellow lines depicted the actual property boundary lines. Several years ago, NCDOT acquired the right of way of the area between the pink and yellow lines which is a large amount of the property acquired. The property line shifts back over toward Guilford College Road and travels further north. It is somewhat of a zig zag along Guilford College Road due to the acquisition of the fee simple of the right of way of the property acquired by NCDOT. Mr. Isaacson referenced the large southern part of the property which is the flood plain area of South Buffalo Creek. Wynnefield typically in a project like this goes through the approval entitlement process before making application to various agencies for financing and funding and is tightly regulated. The NC Housing Finance Agency is located in Raleigh and Wynnefield is not allowed to make application to that agency until all approvals have been obtained. This is part of

the process of obtaining those approvals to make application which sometimes take over a year to work through the process from here to Raleigh. Wynnefield is in the middle of the process currently. Mr. Isaacson indicated on the exhibit a controlled access by NCDOT which required the driveway cut for this project be located where the pink line curves toward the east, which then affected the location of the parking lot for the access and the location of the building toward the northern part of the property. The property is required to have biocells, shown between the parking lot and Buffalo Creek. There are a number of factors encumbering and restricting the development of this property. The main concern or issue was the extensive area of right of way that NCDOT acquired and shrunk the developable area along with the creek, the biocells, and pushed everything toward the north. Mr. Isaacson referred to a document depicting a 35 foot required setback and the proposed 15 foot setback of the building at the corner. Yellow indicated the property line jutting toward Guilford County Road and travels to the northwest corner. Mr. Isaacson stated it is self-evident there is essentially an NCDOT right of way encumbering the property.

Mr. Oliver asked if the NCDOT brought the right of way to expand the road at some point. Mr. Isaacson stated they brought it because it is vacant land and they could and were able to obtain a lower cost than they would otherwise. They are apparently reserving it to expand Guilford College Road if they choose to do so, but they would also have to deal with the flood plain area. Mr. Isaacson displayed photographs of the configuration of the parcel and the project to the north of the property depicting how far toward Guilford College Road the buildings and the entrance signage and other improvements are located to note the consistency attempting to be achieved with the property. Two photographs were shown depicting the driveway into the existing property and traveling further north the signage from the apartment complex located north depicting how it all fits and aligns.

Mr. Isaacson stated if the variance is granted, the building would encroach into the required street setback for a major thoroughfare but would not be any closer than the building and other improvements to the north. It would be consistently aligned with what is on the ground. The applicant would be subject to unnecessary hardships if the variance was not granted. In a senior citizen project such as this, there are certain minimums for ADA access for common dining, elevators and other site features. Things that may not apply to market rate multi-family projects. There have not been any concerns expressed from neighbors. Mr. Isaacson stated their engineer was present for any questions.

Chair Truby inquired if there were any other questions for the applicant. Seeing none, Chair Truby inquired if there was anyone else to speak in favor of the request. No one came forward. Chair Truby inquired if there was anyone who wanted to speak in opposition to the request. No one came forward. Chair Truby asked for a motion to close the public portion of the hearing.

Mr. Waddell made a motion to close the public hearing, seconded by Ms. Skenes. The Board voted 7-0 to close the public hearing. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

BOARD DISCUSSION

Chair Truby stated he has dealt with this type of issue before. There is a big slope there and in the past, there were slope easements but DOT is now acquiring all the land. The problem with that is if it was an easement, the setback would be measured closer to Guilford College Road because there would be a fee simple title attached. Since it has been acquired, a notch was created but in reality when looking at where the building is being placed, it is meeting the 35 foot setback requirement as measured from the curb line. Chair Truby stated he would be supporting this request.

Chair Truby inquired if there were any further comments. Hearing none, Chair Truby inquired if there was a motion.

Mr. Oliver moved that in BOA-19-43, at 449-451 Guilford College Road, based on the stated findings of fact, 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 applicant would not be able to build the multi-family improvements as permitted under the ordinance. Placement of the building is limited.
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 City of Greensboro has a 35

foot setback requirement and the NCDOT Right of Way is shaped irregularly and the flood plain also comes into play.

3. The hardship is not the result of the applicant's own actions because the NCDOT Right of Way juts in toward the property and puts limits on the buildable area.

4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the variance allows this property to be utilized as permitted under the zoning ordinance.

Seconded by Mr. Waddell. The Board voted 7-0 to approve the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays:0.)

e. BOA-19-44, 700 County Club Drive. David and Elizabeth Johnson request a variance to allow an accessory structure to use a separate meter, when branching utility service from the principal dwelling is required. **(APPROVED)**

Chair Truby requested the applicants to approach and be sworn. The applicants were sworn.

Ms. Thiel stated in case BOA-19-44, at 700 Country Club Drive, the applicants, David and Elizabeth Johnson requested a variance to allow an accessory structure to use a separate meter when branching utility service from the principal dwelling is required.

Evidence provided by the applicants included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance Reference is Section 30-8-11, (G)(1): accessory structures to single-family, twin homes, duplexes, and traditional houses must take utility service such as water, sewer, and electrical by branching service from the principal dwelling.

Background and Site Information: The subject lot is located on the north side of Country Club Drive, east of Cleburne Street, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 2.45 acres and the house was constructed in 1918. The applicant indicated that the existing electrical panel is at capacity. Per the applicant, Duke Energy conducted an energy study and determined the existing existing electrical panel is not sufficient to provide additional power and recommended a separate meter. The applicants propose to install a separate electrical meter to accommodate a proposed outdoor spa.

Ms. Thiel provided the land use and zoning for this property and surrounding properties. Ms. Thiel stated the applicable overlay and plan was the Irving Park National Register Historic District.

Chair Truby requested the applicants to come forward.

Elizabeth Johnson, 700 Country Club Drive and Khan Eakin, employee of the Johnson Family, 300 North Greene Street.

Chair Truby stated it was obvious the request was for a separate meter and why. Chair Truby asked the Board members if they wanted to hear from the applicant or had any questions. With no questions, Chair Truby asked for a motion to close the public portion of the hearing.

Mr. Ramsey made a motion to close the public hearing, seconded by Ms. Necas. The Board voted 7-0 to close the public hearing. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Bowers. Oliver, and Brame. Nays: 0.)

Ms. Skenes moved that in BOA-19-44, at 700 Country Club Drive, based on the stated findings of fact 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 without the variance power cannot be supplied to the addition because the current meter box cannot be expanded, per Duke Power.
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 the subject property main house is very large and has consumed all available usage from the current meter, per Duke Power.

3. The hardship is not the result of the applicant's own actions because the house was built in 1918 and has expanded the current meter box to capacity per Duke Power.

4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because adding the additional meter will allow additions to the house and exterior which will enhance the subject property and surrounding area.

Seconded by Mr. Waddell. The Board voted 7-0 to approve the variance. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Brame and Oliver. Nays: 0.)

OTHER BUSINESS

No other business.

ACKNOWLEDGEMENT OF ABSENCES:

There were no excused absences.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 7:28 p.m.

Respectfully submitted,

Chuck Truby, Chair

Board of Adjustment

**MEETING MINUTES
OF THE
GREENSBORO BOARD OF ADJUSTMENT
December 16, 2019**

The meeting of the Greensboro Board of Adjustment was held on Monday, December 16, 2019 at 5:30 p.m. in the Plaza Conference Room of the Melvin Municipal Office Building, 300 West Washington Street. Board members present: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Leah Necas, Ted Oliver, and Stephen Barkdull. City staff present was Shayna Thiel, Steve Galanti, and Andrew Kelly, Assistant City Attorney.

Chair Truby welcomed everyone to the meeting and advised of the policies and procedures in place for the Board of Adjustment. Chair Truby 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 THE MINUTES (October 25, 2019)

Ms. Necas made a motion to approve the minutes, seconded by Mr. Waddell. The board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Oliver, and Barkdull. Nays: 0.)

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

NEW BUSINESS

1. VARIANCES

a. BOA-19-45: 3606 TEMPLE STREET (APPROVED)

The applicant was sworn.

Ms. Thiel stated in case BOA-19-45, 3606 Temple Street, Ridge Moss and Vivian Gainey request 3 variances. (1) To allow an existing and expanded accessory structure to exceed 50% of the building coverage of the principal structure on the lot or 600 square feet, whichever is greater. The accessory structure will be 1,360 square feet when no more than 600 square feet is allowed. (2) To allow an existing and expanded accessory structure to encroach 3 feet into a required 10 foot rear setback. The accessory structure will be 7 feet from the rear property line. (3) To allow an existing and expanded accessory structure to encroach 9 feet into a required 10 foot side setback. The accessory structure will be 1 foot from the side property line.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references are Section 30-8-11.1(A)(3): 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; Section 30-8-11.1(C) (2): Accessory structures over 15 feet tall must be set back at least 10 feet from side and rear lot lines.

Background and Site Information: The subject lot is located on the west side of Temple Street, south of Old Jones Road, and is zoned R-5. Tax records indicate the lot contains approximately 7,405 square feet and the house was built in 1953. Per the Land Development Ordinance, 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. The building coverage of the principal structure is only 964 square feet, so the maximum building coverage allowed for all accessory structures on the lot is 600 square feet. Based on information provided by the applicants, the existing accessory structure is 1,020 square feet, which is considered nonconforming as it exceeds the maximum 600 square feet requirement. The existing structure accessory

structure also encroaches into the required 10 foot rear setback. The existing accessory structure can remain as-is, but because the applicants are also adding a 340 square foot lean-to addition, this increases the degree of nonconformity and a variance is required. If the variances are approved, the applicants will apply for a building permit. However, the Building Inspector has advised that he would be unable to approve the permit if the lean-to addition, as proposed, is less than 3 feet from the side property line.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted there are no applicable overlays and plans.

Chair Truby requested the applicant to come forward to provide his name and address for the record.

Ridge Moss, 3606 Temple Street, stated he was requesting a variance to provide more space in his lean-to for storage and would like to clean up his property.

Chair Truby asked if he knew that he could not be closer than what the Building Inspector stated. Mr. Moss responded when he spoke to someone, they advised he could place densglass or some type of sheeting on the edge of the property that could allow him to go closer to the property line. Mr. Moss advised he does have signatures from the neighbors who are not opposed.

Ms. Necas inquired if the Building Inspector looked at the lean-to. Mr. Moss responded he did. Ms. Necas stated it appears it was already built when the Building Inspector came to look at it. Mr. Moss responded that was correct. He did not realize he needed a permit to build a lean-to because there were no walls to it. He stopped the work and started the process to come before this Board. Ms. Necas asked what was said regarding the amendment to the lean-to. Mr. Moss responded he thought the Building Inspector was saying that he if made some type of fireproof sheeting with densglass and sheetrock that had at least a 1-hour rating, the lean-to may be allowed. Mr. Moss stated he was told he had to go through the variance process first, which could allow him to finish the building with a UL listed design. Ms. Skenes stated the Building Inspector was giving Mr. Moss an option to make the lean-to fire proof.

Mr. Oliver asked if the lean-to was for a business or his residence. Mr. Moss responded it was for his residence and there is no business being operated out of his residence. Mr. Ramsey asked if the property line was where the fence is. Mr. Moss responded it goes to an angle and is about 2 feet from the back and going closer it becomes narrower and probably about a little over a foot at that point which was why the Building Inspector said to place densglass or some type of durock sheetrock to withstand a 1-hour rating for fire. Mr. Moss stated all of his paperwork was notarized and attached to the application.

Ms. Skenes asked if the garage was full. Mr. Moss responded there are two cars and other storage items. There is a small boat he would like to put inside the garage. Ms. Skenes asked if the need is only for additional storage. Mr. Moss responded that was part of it and to have organization. There are cars on the street he is trying to dispose of. Mr. Oliver asked what the tires were for and were they his personal possession. Mr. Moss responded they were his personal items. He does do some towing and has some cars that he is in the process of fixing. It is not a business, only side work done infrequently.

Chair Truby asked how it was discovered that he had no permit. Mr. Moss responded someone may have turned him in as he has some cars on the street that he needs to dispose of, or perhaps one of the neighbors, or a person associated with the City. Mr. Moss stated he does have a signed, notarized letter from the neighbors who acknowledged he could build up to the property line. Mr. Moss indicated a concrete pad in an exhibit photograph depicts where the lean-to will be placed and provide more shelter.

Ms. Necas asked if he was building this himself and was going to follow through on the project. Mr. Moss responded yes to both. Ms. Necas asked if he was planning on doing something with the garage. Mr. Moss responded he is in the process of repairing it as some siding has fallen off, but is waiting until the lean-to is built to replace the siding. Mr. Waddell asked how power was provided to the garage. Mr. Moss responded there is no power in the garage. He uses extension cords currently but does plan to have Duke Power run a line.

Chair Truby inquired if there were any other questions for the applicant. Seeing none, Chair Truby inquired if there was anyone else to speak in favor of the request. Seeing none, Chair Truby inquired if there was anyone present to speak in opposition to the request. Chair Truby requested them to come forward to be sworn and provide their name and address for the record.

The witness was sworn

Nathan Duhan, 3906 Waynoka Drive, stated this is near one of his properties on Temple Street. Mr. Duhan stated his tenants have lodged complaints because there is a towing business being run from this property. A tow truck is on the street and 5 cars are on the street in various states of repair. There are tags, but all are expired

with some as far back as 2014. There is also a rollback truck. Mr. Duhan stated his tenants have expressed to him that a tow truck business is operating out of this location. There are cars in the yard in addition to those on the street. None of the cars are operable and is an eyesore for the neighbors. Mr. Duhan stated his tenants are threatening to move due to this issue. Mr. Duhan stated that Mr. Moss getting close to the lot line was not a problem for him. It was the cars and running a business out of the home. Mr. Duhan stated this is not personal.

Chair Truby inquired if Code of Enforcement had been contacted. Mr. Duhan responded his tenants have and have also contacted him several times. Chair Truby inquired of staff if they were aware of any complaints. Ms. Thiel responded she was not aware of any complaints in the system. Ms. Skenes stated expired tags on the street over 7 days are not allowed. Mr. Duhan responded the cars have been there over several months. They are not in front of Mr. Moss's home, they are in front of the neighbor's homes on the street going up to the corner.

Chair Truby encouraged Mr. Duhan to call Code Enforcement as this does not have anything to do with the variance requests. Mr. Duhan responded that Mr. Moss is running a business out of the home and should not be encouraged in his opinion.

Mr. Barkdull asked if the cars were off the street, would he be okay with the variance requests as heard. Mr. Duhan responded he came in late and did not hear all of what was said, but there are quite a few cars in the yard and at least 3 or 4 water tanks. Mr. Duhan stated he was not at the meeting to cause Mr. Moss trouble, but needed to address the issues as presented to him by his tenants. Ms. Skenes stated cars in the yard are also not allowed. Mr. Duhan stated they are also located in the backyard. Ms. Skenes stated she appreciated Mr. Duhan's concerns but they are for Code Enforcement with totally different issues than what the Board of Adjustment is for.

Chair Truby inquired if there was anyone else to speak in opposition to the request. Seeing none, Chair Truby asked if the applicant would like rebuttal time.

Rebuttal by Applicant:

Mr. Moss stated he is not running a business. He is in the process of fixing and removing the cars that are on the street and fully understands the concerns. There is no business currently but he would like to have a towing license to work for another company who has their own storage. The cars are ones he paid for and is in the process of repairing. Eventually he will have a business but it will not be located at the residence.

Mr. Waddell asked if the variance request was an attempt to remove some of the vehicles off the street. Mr. Moss responded it was to keep them off the street and off the yard. There is a concrete foundation which can be used to organize vehicle parts and things of that nature. He can only do so much financially but does understand the concern of Mr. Duhan and the neighbors.

Chair Truby inquired if there were any further questions for the applicant. Chair Truby inquired if Mr. Duhan would like to rebut.

Rebuttal by Opposition:

Mr. Duhan stated the applicant just advised he was not running a towing business but is repairing cars and selling them. To him, that was a business. Mr. Duhan stated the lean-to is only 7 feet wide and would not accommodate a car and a boat.

Chair Truby requested a motion to close the public hearing.

Mr. Ramsey made a motion to close the public hearing, seconded by Mr. Waddell. The Board voted 7-0 to close the public hearing. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Oliver, and Barkdull. Nays: 0.)

BOARD DISCUSSION

The overall consensus of the Board was in favor of the request. Concerns were expressed regarding running a business, which cannot be considered to influence the Board's decision for a variance request. The building code, based on the type of rating on the wall, will dictate how far it must be off the property line. Firewall ratings, neighborhood approval and hardships were discussed. Chair Truby was okay with the existing structure and square footage but expressed concern over the closeness to the neighbor.

Chair Truby asked if there was a motion.

Ms. Necas moved that in BOA-19-45, at 3606 Temple Street, based on the stated findings of fact the Zoning Enforcement Officer be overruled and the variances 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 applicant would have insufficient covered parking and storage space.
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 property was built in 1953 and the accessory structure was already present when purchased.
3. The hardship is not the result of the applicant's own actions because the house and accessory structure were already present when purchased by the homeowner. Houses from that period did not include covered garages nor outdoor storage.
4. The variance is in harmony with the general purpose and intent of this ordinance and preserves the spirit and assures public safety, welfare, and substantial justice because no harm will come to the public. The nearest owner has given their approval and the existing accessory structure is behind the residence and will be used exclusively by the owner.

Seconded by Mr. Waddell. Ms. Skenes asked if the motion was for all three of the requested variances. Ms. Necas responded it was. The Board voted 7-0 to approve the variance requests. (Ayes: Truby, Skenes, Waddell, Ramsey, Necas, Oliver, and Barkdull. Nays: 0.)

b. BOA-19-46: 1200 NORTH ELM STREET and 1001 NORTH CHURCH STREET (APPROVED)

Chair Truby made a motion to recuse Mr. Waddell. The Board voted 6-0 to recuse Mr. Waddell. (Ayes: Truby, Skenes, Ramsey, Necas, Oliver, and Barkdull. Nays: 0.)

The applicant and speakers were sworn.

Ms. Thiel stated in BOA-19-46, 1200 NORTH ELM STREET and 1001 NORTH CHURCH STREET. Stephen Klee, on behalf of Moses Cone Hospital, request variances for proposed signs along Tankersley Drive, North Church Street, East Northwood Street, and North Elm Street.

1. INSTRUCTIONAL SIGNS

- a. To allow four instructional signs to be up to 43 square feet, exceeding the maximum 6 square feet requirement by 37 square feet.
- b. To allow four instructional signs to be up to 9 feet in height, exceeding the maximum 8 foot requirement by 1 foot.

2. DIRECTIONAL SIGNS

- a. To allow one directional sign to be up to 43 square feet, exceeding the maximum 6 square feet requirement by 37 square feet.
- b. To allow one directional sign to be up to 9 feet in height, exceeding the maximum 8 foot requirement by 1 foot.

3. FREESTANDING SIGNS – NORTH CHURCH STREET

- a. To allow five freestanding signs along North Church Street, when only one is allowed.
- b. To allow five freestanding signs along North Church Street to be up to 15 feet in height, exceeding the maximum 8 foot requirement by 7 feet.
- c. To allow the pole coverings of five freestanding signs along North Church Street to be covered in materials.

4. FREESTANDING SIGNS – EAST NORTHWOOD STREET

- a. To allow three freestanding signs along East Northwood Street, when only one is allowed.
- b. To allow three freestanding signs along East Northwood Street to be up to 16 feet in height, exceeding the maximum 8 foot requirement by 8 feet.

c. To allow the pole coverings of three freestanding signs along East Northwood Street to be covered in materials non-comparable to those fused on the principal buildings and to be less than 25% of the width of the sign faces.

5. FREESTANDING SIGNS – NORTH ELM STREET

- a. To allow two freestanding signs along North Elm Street, when only one is allowed.
- b. To allow two freestanding signs along North Elm Street to be up to 14 feet in height, exceeding the maximum 8 foot requirement by 6 feet.
- c. To allow the pole coverings of two freestanding signs along North Elm Street to be covered in materials non-comparable to those fused on the principal buildings and to be less than 25% of the width of the sign faces.

Evidence provided by the applicants included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance references are Section 30-14-6.2: Directional and instructions signs may not exceed 6 square feet or 8 feet in height. Section 30-14-7.3(B)(5)(b): Pole coverings for freestanding signs must be covered in materials comparable to those fused on the principal buildings and be at least 25% of the width of the sign face. Section 30-14-7.3 – Table 14-2: One freestanding sign allowed per lot frontage and 8 foot maximum height.

Background and Site Information: The subject lots are located on the east side of North Elm Street, north and south of East Northwood Street, and are zoned PI. Tax records indicate the lots contain approximately 65.17 acres. Based on the submitted table and site plan, the applicant proposes to install a total of 15 signs, including 4 instructional signs, 1 directional sign and 10 freestanding signs along the perimeter of Moses Cone Hospital campus. Per the Land Development Ordinance, the maximum area of instructional signs is 6 square feet and the maximum height is 8 feet. The applicant proposes 4 instructional signs (3 along Tankersley Drive and 1 along North Elm Street) that are up to 43 square feet in area and up to 9 feet in height. The Land Development Ordinance also states the maximum area of directional signs is 6 square feet and the maximum height is 8 feet. The applicant proposes 1 directional sign along North Church Street that is up to 43 square feet in area and up to 9 feet in height. In the PI District, freestanding signs are limited to 1 per road frontage and cannot exceed 8 feet in height. Additionally, pole coverings must be covered in materials comparable to those fused on the principal buildings and be less than 25% of the width of the sign faces. The applicant proposes 5 freestanding signs along North Elm Street. 3 along East Northwood Street and 3 along North Elm Street. These signs require variances related to the number of signs allowed, the maximum height requirement and the pole coverings material and percentage. Based on information provided by the applicant, limitations contained in the Land Development Ordinance create concerns for public safety and sign visibility. The Board of Adjustment approved variance BOA-13-03 on January 28, 2013 to allow three freestanding signs to be 12 feet tall, which exceeded the maximum 6 foot height requirement by 6 feet. If the variance requests are approved, the applicant will apply for the necessary sign and building permits, as applicable.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted the applicable overlays as Central Business Overlay and the North Elm Street Visual Corridor Overlay Zone.

Chair Truby requested the applicants to come forward to provide their names and addresses for the record.

Steve Klee, 300 N. Greene Street, stated the application is focused on public safety. Three speakers in favor speaking were: Dr. James Wyatt, Dr. Carolyn Harraway-Smith and Mark Levine.

Mr. Ramsey stated he believed he had a conflict and requested to be recused. Mr. Kelly advised 5 members would be sufficient as 4 out of 5 are needed for a motion to pass. Ms. Skenes made a motion to recuse Mr. Ramsey, seconded by Mr. Barkdull. The Board voted 5-0 to recuse Mr. Ramsey. (Ayes: Truby, Skenes, Necas, Oliver, and Barkdull. Nays: 0.)

Dr. James Wyatt, Chief of Trauma Services, Cone Health, 1200 N. Elm Street, stated he has been the Director of Trauma at Moses Cone for over 19 years. In that period of time, he has determined the signage change is long overdue. The management of trauma patients is time sensitive and every minute counts. If someone is not able to get to where they can have optimal trauma care, a life could be lost. Changes are needed even more so now that the Women's Hospital and Children's Hospital are being brought into the campus of Moses Cone. Dr. Wyatt stated he could provide many stories of people being lost and have come close to having significant problems secondary to that.

Ms. Necas asked if Dr. Wyatt felt the new signage was a vast improvement from the old signs. Dr. Wyatt stated he has reviewed them but not seen them directly. He knows where they will be placed and believes the size of the signs will be a vast improvement and would probably eliminate more than 50% of the current problems.

Chair Truby asked if there were any other questions. Seeing none, he requested the next speaker to come forward and provide their name and address for the record.

Dr. Carolyn Harraway-Smith, Obstetrics and Gynecology, Cone Health/Chief of Service for OB/GYN Medical Staff, 801 Green Valley Road. Dr. Harraway-Smith stated one of the reasons the Women's Hospital campus moved to the Moses Cone campus was for the availability of resources that will be needed. One of the reasons for the signage is it will be easier for patients to navigate Moses Cone in getting to the Women's Hospital for patients both during the day and night. People get lost when coming to Moses Cone. Dr. Harraway-Smith experienced being lost in the middle of night in responding to a trauma. It is very frustrating for patients to navigate the campus.

Ms. Necas asked Dr. Harraway-Smith if she had reviewed the signs. Dr. Harraway-Smith stated she agreed with Dr. Wyatt. Looking at them on a grid is different than seeing them in real life. Signs that were in place were small and hard to read. Seconds matter. There will be a maternity unit on the other side of the campus from the emergency room. Labor & Delivery will not be the emergency room and if that is not perfectly clear to patients who are in labor and go to the emergency room instead of the maternity unit, it could have disastrous results. Patients would have to be routed internally and seconds do matter. Dr. Harraway-Smith does feel the signage is a vast improvement from what they have had.

Chair Truby asked if there were any other questions. Seeing none, he requested the next speaker to come forward and provide their name and address for the record.

Mark Levine, Principal/Owner, Forcade Associates, 1626 Payne Avenue, Evanston, IL, stated when first arriving at Cone to perform a site review, one of the things very relevant was the size of the signs on the campus compared to the amount of information needed to be spread across the campus. There is an inconsistent approach to illumination of signs during twilight, dusk, and night time making it extremely difficult to see. As the campuses grow, it becomes more complex and they needed to have a positive guidance system in place so people know where they are going now that the Women's Hospital and the Children's Hospital will be on campus. Mr. Levine stated that signs are one part of a wayfinding system and are very important to people in acute situations. When there is a traumatic event and people have to get to a location immediately, signs are relied on to get them where they need to go. The current signs are too small and a lot of the information is blocked by service automobiles, trucks, trees and shrubs. There are some areas where the sign size needs to be increased to highlight and build a hierarchy regarding the information being spread across the campus. The size of the text on the current signs is very small. If applying the rule that 1 inch is visible from 100 feet for a person with 20/20, you have to assume most people do not have 20/20 vision and based on what the signage is currently, it is 100 feet to a second. The size of the signs are being increased to be able to see the text on them from further away. Mr. Levine stated that was the basis of the proposed approach which will also link exterior signs to the interior for a better wayfinding system.

Ms. Necas asked if there were any signs that just say Hospital. Mr. Levine responded there are existing signs that are not being taken down that do say Hospital. There are some very large Emergency signs. Chair Truby asked how strict are Greensboro's signage rules compared to other municipalities and if his company has to constantly request variances in other municipalities. Mr. Levine stated they absolutely do. Mr. Levine stated his company designs what is required, what is needed to get the information to someone in an acute situation and to get them where they need to go. It is based on life and death and is about as serious as it gets. Mr. Levine feels there are a lot of ordinances written across many municipalities that involve a lot of time. Being able to spread information across 65.1 acres of campus so that someone can get to where they need and if they get lost while trying to get there, they are able to get back to the beginning point. As a reference, Mr. Levine stated a regulation, traffic controlled stop sign is 10 feet tall. The idea is to make the signs apparent in the environment.

Chair Truby asked if there were any further questions. Hearing none, he requested the next person to come forward and state their name and address for the record.

The speaker was sworn.

Anne Macner, Vice President, Reinventing Care, Cone Health, 1200 North Elm Street. Ms. Macner stated there is a large sign on the north tower of the Moses Cone campus. There will be a sign placed on the Women's and Children's Center when it is completed. That sign does not require a variance because of the type of sign that will be placed there. They are looking at signage along the campus and other development centers as there are plans for a Heart and Vascular center to be included.

Mr. Klee asked if the Board had any questions regarding the application. Ms. Necas stated in the original application, they were asking for poles that were not covered in comparable material fused on the principal buildings and then in the actual application it states "in the spirit of the ordinance, we have allowed for the maximum amount of pole coverage of 23%" rather than the 25% which is what the ordinance said the maximum was. "Per the ordinance, poles are to be covered with comparable materials." Ms. Necas asked if that was incorrect in the initial application. Mr. Klee stated that is an interesting question because there had been an internal discussion about whether you say a lot of the buildings are brick or not, but there are a lot of design features on the building that are stainless. Mr. Klee felt the writers were thinking the buildings are mostly brick but the sign post is not brick and so was not comparable. Mr. Levine may be able to speak to it since they have worked on the design and can explain the design features.

Ms. Necas stated the other question was "the hardship is not the result of the applicant's own actions" and noted the statement in the application was practically the same statement as in the 2013 application. Ms. Necas asked if the hardship was not the result of the applicant's own actions because there is not an exception for hospitals and you want to make a clear statement that the City ordinance is the problem.

Mr. Klee stated that they did carry forward some of the provisions from the prior application. There was not a great discussion about that particular line. Mr. Klee stated Mr. Levine knows sign ordinances from around the country and it sounds as if this is not an unusual situation. This particular property is big with long stream frontages. There was not any message intended one way or the other.

Ms. Skenes stated that she worked on sign ordinance and knows that it is generic. The PI district also involves some churches. They dealt with some church signs being way too big and the ordinance was fine tuned into what would work for most situations. Little did they know there would soon to be only two hospitals to deal with. They are a separate entity, but a choice was made to not label a separate part of the sign ordinance.

Chair Truby asked if there were any further questions for the applicants. Seeing none, he asked if there was anyone wishing to speak. No one came forward. Chair Truby inquired if there was anyone to speak in opposition. No one came forward. Chair Truby requested a motion to close the public hearing.

Ms. Necas moved to close the public hearing. Seconded by Mr. Oliver. The Board voted 5-0 to close the public hearing. (Ayes: Truby, Skenes, Necas, Oliver and Barkdull. Nays: 0.)

BOARD DISCUSSION:

Chair Truby stated the life safety part of this is a no brainer. He stated that the campus has so much frontage and multiple drives on four different roads, but only one sign per street frontage is allowed. The way the ordinance is written does not work with hospitals and definitely does not work with hospitals that have large campuses. Board members agreed with Chair Truby.

Chair Truby asked if there was a motion and clarified that one motion would cover all of the variance requests.

Mr. Oliver moved that in BOA-19-46, at 1200 North Elm Street and 1001 North Church Street, based on the stated findings of fact, 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 appropriately located freestanding signage, in excess of one sign per lot frontage, is required to provide the general public with easily visible directions to appropriate entrances.
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 six foot maximum height is not practical or useful for a hospital in a heavily traveled area.

3. The hardship is not the result of the applicant's own actions because the hardship is the result of the limitations in the City's ordinance related to signs.

4. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because the purpose of the ordinance is public safety. People visit the hospital, often in times of stress. Allowing these signs will enhance public safety and make it easier to use the hospital.

Seconded by Ms. Skenes. The Board voted 5-0 to approve the variance requests. (Ayes: Truby, Skenes, Necas, Oliver and Barkdull. Nays: 0.)

Mr. Ramsey and Mr. Waddell rejoined the meeting.

OTHER BUSINESS

No other business.

ACKNOWLEDGEMENT OF ABSENCES

The absence of Ms. Brame was acknowledged as an excused absence.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 6:53 p.m.

Respectfully submitted,

Chuck Truby, Chair
Board of Adjustment