

**MEETING MINUTES
OF THE
GREENSBORO BOARD OF ADJUSTMENT
January 27, 2020**

The meeting of the Greensboro Board of Adjustment was held on Monday, January 27, 2020 at 5:30 p.m. in the Plaza Conference Room of the Melvin Municipal Office Building, 300 West Washington Street. Board members present were: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Ted Oliver, Leah Necas, and Deborah Bowers. 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 (December 16, 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, 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 case.

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

OLD BUSINESS

There was no old business.

NEW BUSINESS

1. SPECIAL EXCEPTION

The speakers were sworn.

a. BOA-20-01: 206 SOUTH TATE STREET. (APPROVED)

Ms. Thiel stated in case BOA-20-01, Nancy Wilson requests a special exception at 206 South Tate Street, to allow a proposed accessory garage to encroach 8.5 feet into a required 10 foot side setback and 8.5 feet into a required 10 foot rear setback. The accessory garage will be 1.5 feet from the side and rear property lines.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 8. 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 property lines.

Background and Site Information: The subject lot is located on the west side of South Tate Street, north of Carr Street and zoned R-7. Tax records indicate the lot contains approximately 7,405 square feet and the house was constructed in 1918. The applicant proposes to construct a new garage in the same location as the existing garage that was damaged by a tree. The proposed garage will be over 15 feet tall and located 1.5 feet from the side and rear property lines, encroaching 8.5 feet into the respective setbacks. On December 11, 2019, the Historic Preservation Commission approved a Certificate of Appropriateness for the construction of a garage and recommended in favor of a special exception for setback encroachments.

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 their name and address for the record.

Mack Dee Wilson, Jr., 206 South Tate Street, stated a tree fell and damaged the garage in 2019. The garage cannot be repaired and needs to be torn down and rebuilt. It will not meet the required 10 foot setback from the property lines, so they are here requesting permission.

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

Ms. Bowers asked if the new garage will be closer to the property line or if it was in the same footprint. Mr. Wilson responded it would be a little larger. The existing garage has an outside staircase that will now be inside the garage and will move the garage closer to the house. The architect has it drawn the new garage about 1.5 feet from the side and 1.5 feet from the back. The garage itself will be about the same size.

Ms. Bowers asked if the original garage was 1.5 feet from the back property line and the same from the side property line. Mr. Wilson responded it was right on the property lines and was being moved slightly away from the property lines.

Mr. Ramsey asked if this was only a garage or if it had an apartment on top. Mr. Wilson responded it is a very large garage. It did not have living quarters, water, a bathroom or anything like that.

Chair Truby inquired if there were any further questions. Seeing none, Chair Truby asked if there was anyone else wishing to speak in favor of the request.

Mike Cowhig, Planning Department, Administrator of Historic Preservation Commission, stated the Historic Preservation Commission recommended in favor of this project because the design of the garage was very close to the historic garage. Many of the historic garages have been demolished over the years and the Commission was very pleased to see a structure being built that would almost match what was there previously. Mr. Cowhig referred to the small lot sizes on Tate Street and stated space is at a premium. Being able to site this where the historic garage was is very important.

Chair Truby inquired if there were any further questions. Seeing none, Chair Truby inquired if there was anyone wishing to speak in opposition to the request. Seeing none, Chair Truby requested 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 in favor to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

BOARD DISCUSSION

Chair Truby inquired if there were any comments. Having none, Chair Truby requested a motion be made.

Ms. Necas moved that in BOA-20-01, at 206 South Tate Street, based on the stated findings of fact 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 it is replacing an existing damaged garage on the property.
2. The granting of the special exception assures the public safety and welfare and does substantial justice because the lot is very narrow and makes it difficult to comply with zoning requirements. The new garage will comply with the historic district guidelines.

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

ACKNOWLEDGEMENT OF ABSENCES

Ms. Thiel advised Ms. Brame resigned from the Board.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 5: 42 p.m.

Respectfully submitted,

Chuck Truby, Chair
Greensboro Board of Adjustment

DRAFT
MEETING MINUTES
OF THE
GREENSBORO BOARD OF ADJUSTMENT
FEBRUARY 24, 2020

The meeting of the Greensboro Board of Adjustment was held on Monday, February 24, 2020 at 5:33 p.m. in the Council Chamber of the Melvin Municipal Office Building, 300 West Washington Street. Board members present were: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Ted Oliver, Leah Necas, and Deborah Bowers. City staff present was Tonya Rumley, Shayna Thiel, Mike Kirkman, (Planning), Darryl Stultz, (Fire) with the City of Greensboro, Andrew Kelly, Assistant City Attorney 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 (January 27, 2020)

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: 0.)

SWEARING IN OF STAFF

Shayna Thiel, Mike Kirkman, and other City staff were sworn in for their testimony in the following cases.

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

NEW BUSINESS

1. VARIANCE

a. BOA-20-02: 4511 Highberry Road. (Approved)

The applicants were sworn.

Ms. Thiel stated in case BOA-20-02, Robert and Pamela Gaynor requested three variances. (1) To allow a proposed dwelling to encroach 0.23 feet into a required 10 foot side setback. The accessory dwelling will be 9.77 feet from the side property line. (2) To allow a proposed accessory dwelling to encroach 15.98 feet into a required 30 foot rear setback. The accessory dwelling would be 14.02 feet from the rear property line. (3) To allow the owner of the property to not occupy either the primary or the accessory building.

Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance Reference Section is Section 30-8-11.2(D): Accessory dwellings must meet the location and dimensional requirements of the principal structure; Section 30-8-11.2 (B): the owner of the property must occupy either the primary or the accessory dwelling; Section 30-7-3.2 – Table 7-1: R-3 minimum side setback is 10 feet and minimum rear setback is 30 feet.

Background and Site Information: The subject lot is located on the south side of Highberry Road, west of Double Oaks Road, and is zoned R-3. Tax records indicated the lot contains approximately 14,375 square feet and the house was constructed in 1975. The applicants proposed to convert an existing 491 square foot garage into an accessory dwelling. Per the Land Development Ordinance, accessory dwellings must meet the same required setbacks as the principal dwelling. If converted into an accessory dwelling, the structure would not meet the minimum required 10 foot side setback or 30 foot rear setback requirements. It would remain 9.77 feet from the side property line and 14.02 feet from the rear property line. On March 12, 1987, a deed releasing a 2.5 by 56 foot portion of an easement was recorded with the Guilford County Register of Deeds. Since the property owners do not live at the property, they were also seeking a variance from the Land Development Ordinance requirement that owners of the property must occupy either the primary or accessory dwelling.

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 and provide their name and address for the record.

Summer Gaynor O'Dell, 4511 Highberry Road, stated her father is the person who owns the property but she has been living there. She would like to change the garage and add square footage in order for the property to be changed to her name.

Robert Gaynor, 2035 Waterford Point, Lexington, stated that he and his wife own the property on Highberry Road.

Chair Truby clarified there is an existing garage and the request is to make renovations to make it a dwelling unit. Ms. O'Dell responded that was correct. When the property was purchased, it was enclosed with heating and air, lighting, flooring, and she would now like to finish the job to make it a dwelling space.

Chair Truby clarified she does not own the home but is living in it. Ms. O'Dell responded they are attempting to have the house put in her name but the loan cannot be finished because the work is not finished. Once the work is completed, the house can be placed in her name.

Ms. Necas asked if she could not obtain the loan because the work is not completed. Ms. Necas stated if the variance was granted, it would mean for this property, anyone could own it and not live there and asked if there could be a contingency on the Board's motion. Mr. Kelly responded a contingent could not be placed on the variance request.

Mr. Ramsey asked if they were planning to rent out the garage. Ms. O'Dell responded it is only to add square footage for more livable space to accommodate guests. Instead of guests having to stay somewhere else, they would be able to stay at their home. The principal dwelling is about 1600 square feet. Both work from home and space is used for office space.

Mr. Waddell clarified that the footprint would not be increased. Ms. O'Dell responded there is nothing happening on the outside, everything is within the existing structure.

Ms. Necas inquired if the neighbors were in agreement. Ms. O'Dell responded the neighbors were not upset. Nothing will be changed. The house will look the same.

Chair Truby inquired if there were any further questions. 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 to speak in opposition to the request. Seeing none, Chair Truby requested 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 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

BOARD DISCUSSION

The general consensus was the request was unique and unusual. It was noted the structure appeared to be designed to be with the house. Chair Truby requested a motion.

Mr. Ramsey moved that in BOA-20-02, at 4511 Highberry Road, based on the stated findings of fact the Zoning Enforcement Officer be overruled and all three variances be granted based on the following: If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the applicant will not be able to fully utilize their property by having additional living space in a pre-existing footprint that predated the original setback 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 garage was encroaching prior to the realty by the applicant. The hardship is not the result of the applicant's own actions because the property was encroaching prior to the purchase of the property by the applicant. 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 footprint of the existing garage will not change. The variance will increase the value of the property and the variance is in harmony with the existing neighborhood.

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

b. BOA-20-03: 901 SPRING GARDEN STREET (Approved)

The speakers were sworn.

Ms. Thiel stated in BOA-20-03, 901 Spring Garden Street, Amanda Hodierne, on behalf of Fenno and Rebecca VanderVeen requested two variances. (1) To allow the owner or operator of a proposed tourist home to not reside on site. (2) To allow a proposed tourist home in a building not originally constructed as a dwelling.

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 30-8-10.4(Q)(3): The owner or operator of the tourist home must reside on site; Section 30-8-10.4(Q)(4): Tourist homes are allowed only in buildings originally constructed as dwellings.

Background and Site Information: The subject lot is located on the south side of Spring Garden Street, west of South Mendenhall Street, and is zoned CD-O. Tax records indicate the lot contains approximately 29,185 square feet and the building was constructed in 1958. On December 16, 2019, the subject property was rezoned from C-N to CD-O to allow a residential dwelling on the property. Permitted uses on the property are limited to Office, Personal and Professional Services, Household Living, and Overnight Accommodations. The applicants propose to operate a tourist home in the building, along with an existing commercial photography studio.

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

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

Amanda Hodierne, 804 Green Valley Road, on behalf of the property owners Fenno Bert and Rebecca VanderVeen. Ms. Hodierne distributed materials to the Board members. Ms. Hodierne advised the two variances relate to the additional development standards required of a tourist home/bed and breakfast use under the ordinance. The first requirement is the owner or operator reside on-site with that use. The

second requirement is that a structure housing the use had been originally constructed as a dwelling. This use is a short term rental which would be the same as Air B&B or VRBO. The LDO in Greensboro does not specifically include short term rental with its own considerations and permissions. The hardship of the owner being required to reside on site was shown via a floor plan and photographs. There is no available space when an owner or operator could reside and household living is not allowed in the office space. Unnecessary hardship is created by rendering it impossible for a commercial property with one dwelling unit to be used as a short term rental or tourist home/bed and breakfast. The property is located in close proximity to areas of interest and is located in an historic community so it is ideal for a short term rental. An unnecessary hardship was created by the ordinance prohibiting any commercial or mixed-use building operating from being able to be used as a tourist home or bed and breakfast. The historic community wants to keep this building as it currently situated and the mix of two uses would allow that to occur.

Ms. Hodierna stated the use of the tourist home/bed and breakfast ordinance to regulate the difference of a short term rental creates these hardships and spoke to interpretations of a tourist home/bed and breakfast. These circumstances are not the making of the property owners. The apartment unit was already existing at that time. There were improvements and inspections were completed, and the unit was given its own address to become a livable space. The actual footprint of the building has not changed. Both requests maintain the spirit, purpose, and intent of the ordinance because the main goals in the bed and breakfast language include ensuring the proper placement and treatment of dwelling unit space being used as a commercial enterprise. The property owners handle everything associated with the building and have a vested interest in the safety, maintenance, and successful use of the property. Ms. Hodierna provided statistics of other bed and breakfasts in the Greensboro area. She stated granting the variances will allow the property to function as a legal, short term rental in the City of Greensboro. These requests would facilitate the highest and best use of this property, add to the value of the property and ensure that the property will thrive and contribute to the College Hill Neighborhood as it has done for almost 60 years.

Mr. Oliver inquired if the Historic District was involved in the decision. Ms. Hodierna responded it was her understanding variances do not go through the Historic Preservation Commission for review. Mr. Kirkman advised the Historic Commission did weigh in on the rezoning request. Chuck Truby noted this property was recently rezoned in December. Ms. Hodierna stated the Historic Commission did vote unanimously in favor of that rezoning.

David Arneke, Vice President of College Hill Neighborhood Association, 922 Carr Street, stated the Board of Directors of the Association reviewed the request from the VanderVeens and voted unanimously in support. The Association does not believe there will be any negative effect. The apartment has been there for years and has not caused any problems. The VanderVeens use the facility for their business of a daily basis which the Association adequately fulfills the need represented in the ordinance for an owner live in the property. The VanderVeens have proven to be good neighbors.

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

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

BOARD DISCUSSION:

The overall consensus of the Board was there is a very strong need for a modification to the ordinance addressing tourist homes/bed and breakfasts.

Ms. Skenes moved that in BOA-20-03, 901 Spring Garden Street, based on the stated findings of fact the Zoning Enforcement Officer be overruled and all 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 ordinance does not have provisions for the use the applicant intends. The closest type is a tourist home which is not exactly the use the applicants are intending and without the variance, the applicant would not be able to utilize the property for the intended use. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the building was purchased in 2018 with a small attached apartment. The building was constructed prior to the current ordinance which required the owners to live on site. The hardship is not the result of the applicant's own actions since the applicant purchased the property with the apartment already in existence. 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 applicant has had the apartment inspected ensuring a safe and habitable environment. The owners are on site during the work week and sometimes on the weekend. The location being close to Greensboro College and UNCG creates a situation conducive for short term rentals for meetings, conferences, parents' weekend, etc. The applicant also has had the property rezoned to allow a residential dwelling.

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

c. BOA-20-04: 209 FRIENDWAY ROAD (Approved)

The speakers were sworn.

Ms. Thiel stated in BOA-20-04, 209 Friendway Road, Ramon Mosqueda Juarez and Zenaida Cortes Hernandez requested a variance to allow a proposed carport addition to encroach 5 feet into a required 10 foot side setback. The carport addition will be 5 feet from the side property line.

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

Background and Site Information: The subject lot is located on the west side of Friendway Road, north of West Market Street, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 15,246 square feet and the building was constructed in 1952. On January 10, 2020, a stop work order was issued for an attached carport being built without permits. When the applicants requested a building permit, they were advised the carport did not meet setback requirements. The applicants propose to attach a carport to the house that will encroach 5 feet into a required side setback. If the variance is granted, the applicants will apply for a building permit to address the work that has already been started and allow for completion.

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 requested the speakers to come forward and provide their names and address for the record.

Zenaida Cortes Hernandez, 209 Friendway Road. Ms. Hernandez stated her husband constructed the carport. Her husband did not apply for a permit because no power, water, or anything was going to be added. It is only the carport for the truck. There is not enough space for cars.

Chair Truby asked if the carport was built to code. Mr. Kirkman stated it would have to be addressed as part of a building permit. Chair Truby stated it would be an after the fact inspection that the Building Inspector would have to certify. Ms. Hernandez stated they were willing to do that if that was the case.

Mr. Oliver asked if the driveway was permitted. Mr. Kirkman responded driveways for single family homes do not have permits and can encroach into the building setbacks because they are at grade improvements.

Ms. Bowers asked if the Board would be approving the variance from the side setback requirement of the carport, not the as-built structure. Mr. Kirkman stated that was correct and would be allowing the applicant to pursue a building permit and meet the requirements for the carport.

Ms. Skenes asked if the structure was not attached to the house, it could be within a foot or two of the property line and asked if the structure being attached to the house was the current problem. Mr. Kirkman responded if there is a detached accessory structure, it can be closer to property lines. If attached, it would go the principal building setback which is what the Board is being asked to address.

Mr. Ramsey asked if there are neighbors who have objected.

Abdoul Paraiso Vincent, 211 Friendway Road stated he was assisting with the language barriers. Mr. Ramsey asked if anyone has complained about this structure. Ms. Hernandez advised there is no one living next to them and the home is vacant.

Ms. Necas asked if they knew who made the complaint as it appears a telephone call was made and then a field inspection was completed. Ms. Hernandez responded they did not.

Chair Truby inquired if there were any further questions for the applicant. Seeing none, Chair Truby inquired if there was anyone else wishing to speak in favor of the request. Seeing none, Chair Truby inquired if there was anyone in opposition to the request. Seeing none, Chair Truby requested a motion to close the public hearing.

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

BOARD DISCUSSION:

The overall consensus was the Board was only being asked to grant the variance. There will be an inspection of the actual structure so that is not an issue.

Mr. Oliver moved that in BOA-20-04, at 209 Friendway Road, based on the stated findings of fact the Zoning Enforcement Officer be overruled and a 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 they would not be able to have a carport without a variance. The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the house was built in the middle of the lot and there is no way to build the carport without a variance. The hardship is not the result of the applicant's own actions because the way the home sits on the lot does not allow a better place for a carport. 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 would result from the carport being added. It is at the end of the driveway.

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

Mr. Ramsey recused himself from the next case.

Ms. Necas made a motion to recuse Mr. Ramsey from Case BOA-20-05. Seconded by Mr. Oliver. The Board voted 6-0 to approve the recusal. (Ayes: Truby, Skenes, Waddell, Oliver, Necas, and Bowers.

Mr. Andrews advised the vote to approve a variance request would now be 5 out of 6.

d. BOA-20-05: 335 BATTLEGROUNDA AVENUE (Approved)

The speakers were sworn.

Ms. Thiel stated in BOA-20-05, 335 Battleground Avenue, Laura Krantz, on behalf of SL Peterson, LLC requested a variance to allow a sign to extend vertically up to 2.5 feet above the highest portion of the roof of the structure to which the sign is attached.

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 is Section 30-14-4.8: Signs that extend vertically above the highest portion of the roof of the structure to which the sign is attached are prohibited.

Background and Site Information: The subject lot is located on the west side of Battleground Avenue, north of Bellemeade Street, and zoned CB (Central Business). Tax records indicate the lot contains approximately 9,148 square feet and the building was constructed in 1955. The applicant proposes to erect a sign on the existing building that would extend up to 2.5 feet above the highest portion of the roof. Per the Land Development Ordinance, roof signs are prohibited.

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

Chair Truby requested the speakers to come forward and provide their names and address for the record.

Nathan Duggins, 100 N. Greene Street, provided background information regarding the request. The request is a product of the success of downtown. A photograph was depicted indicating the Carroll Apartments that now shield this property from the west entrance are and noted how the visibility has changed for the subject building. With the exception of the sign, all other facade changes have already been made to the facility. The hardship is the activity around the site resulting in a need for additional signage. The Z will be 30 inches tall and the other letters are approximately 15 inches tall. In terms of height, it is not significant. Mr. Duggins advised there was a letter from Mr. Carroll in the file supporting the change.

Sue Peterson, 335 Battleground Avenue. Ms. Peterson advised she is a native of Greensboro. This facility has been at this location for over 30 years. It was unexpected for a 5-story 300 apartment complex behind them which has created somewhat of a hardship as it has dwarfed their 14 foot building. The sign on the top of the building will make this property stand out for foot traffic as they feel the Zeto Wine Shop is a unique shopping experience and it is important to maintain local independent businesses. Ms. Peterson stated the neighbors who surround Zeto are not in opposition to the sign as it will make the store stand out and be more visible. Zeto is a Greek word, meaning live, long live. Ms. Peterson provided background history of the building and family ties to Greensboro.

Mr. Duggins stated the request is consistent with the spirit and purpose of the intent of the LDO. It is unique to this property and the criteria meet the requirements and requested the variance be approved.

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

Ms. Bowers made a motion to close the public hearing, seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Oliver, Necas, and Bowers. Nays: 0.)

BOARD DISCUSSION:

The consensus of the Board was this was a very cool sign and the applicant had met the requirements to have a variance granted.

Ms. Necas moved that in BOA-20-05, at 335 Battleground Avenue, based on the stated findings of fact the Zoning Enforcement Officer be overruled and the variances be granted based on the following: If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because the surrounding buildings heights are dwarfing the subject property and would overwhelm any sign constructed in accordance with the ordinance. The hardship of which the applicant complains results from conditions that are peculiar to the property because the development around the property and the closing of Lindsey Street have occurred in the past 5 years and the property has been in the same location for over 20 years. The hardship is not the result of the applicant's own actions because it had been easier to see before the closing of Lindsey Street and the construction of the hotels and apartments. 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 owned the property for over 20 years in the same location and need the variance due to the aforementioned circumstances beyond their control.

Seconded by Ms. Skenes. The Board voted 6-0 to approve the variance request. (Ayes: Truby, Skenes, Waddell, Oliver, Necas, and Bowers. Nays: 0.)

Mr. Ramsey resumed his seat at the dais.

2. APPEAL OF ZONING NOTICE OF VIOLATION (Upheld)

Chair Truby stated in a typical appeal, the appealing party presents evidence first. However, for Board of Adjustment appeals the order is reversed such that the City presents evidence first and the appellant goes second. This allows the City to provide its staff report with maps, photos, and other exhibits. Despite the reversed order, the appealing party has the burden of proof. The two parties are the City, represented by Attorney Terri Jones and the Appellant, Bulent Bediz. The order of appearance is City will present evidence, a staff report by Ms. Thiel, witnesses by Ms. Jones, cross examination of any witnesses by Appellant. Opportunity for redirect of said witnesses by City. Appellant will present evidence, cross examination of any witnesses by City, opportunity for redirect of said witnesses by Appellant. Public Comment: Speakers from the floor are required to be sworn in. Allow 3 minutes per speaker. Closing argument for the City and then the Appellant, Public hearing will be closed and the Board of Adjustment members may ask questions throughout the presentation but it is recommended that members hold questions of those testifying until attorneys have finished their direct or cross examination. The Board may decide to uphold the notice of violation or overturn it by a simple majority.

Ms. Bowers asked if the burden was a preponderance of evidence. Mr. Kelly advised that was correct.

Ms. Jones advised the City witnesses have been sworn

Chair Truby swore in the Appellant, Bulent Bediz.

Ms. Thiel stated in BOA-20-06, 800-802 Lexington Avenue, Bulent Bediz is appealing a zoning Notice of Violation that states: Use in Violation; To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land, in violation or contravention of this ordinance or any other regulation made under the authority conferred by this ordinance. In the UMU zoning district, no more than 20 vehicles may be stored on the premises at any time. A 6-foot tall opaque fence or wall must be provided around the vehicle storage area.

Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance references are Section 30-5-1.4 (Use in Violation): To erect, construct, reconstruct, alter, repair, convert, maintain, or use any building or structure or to use any land, in violation or contravention of this ordinance or any other regulation made under the authority conferred by this ordinance. Section 30-8-19.4(C)(2): In UMU districts, no more than 2 vehicles may be stored on the premises at any one time. Section 30-8-10.4 (C)(4): a 6 foot tall opaque fence or wall must be provided around the vehicle storage area.

Background and Site Information: The subject lot is located on the west side of Lexington Avenue, south of West Gate City Boulevard, and is zoned UMU (University-Mixed-Use). Tax records indicate the lot contains approximately 15,682 square feet. As recommended by the High Point Road/West Lee Street Corridor Plan, the property was rezoned from LI (Light-Industrial) to UMU (University-Mixed-Use) on April 1, 2014 as part of the larger zoning change along the corridor. Per the Land Development Ordinance, auto towing and storage is a permitted use in both the LI and UMU districts. However, the associated use conditions are different between those districts. The LI district allows no more than 100 vehicles to be stored on the premises at any one time, while the UMU district allows no more than 20 vehicles to be stored on the premises at any one time. Additionally, Auto Towing and Storage uses located in both zoning districts require that a 6 foot tall opaque fence or wall be provided around the vehicle storage area. On October 3, 2019, a Notice of Violation was issued to the property owner for having more than 20 vehicles stored on the premises, for not having a 6 foot tall opaque fence or wall surrounding a vehicle storage area, and for using the property without appropriate permissions. The applicant appealed this Notice of Violation within the required timeframe.

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

Chair Truby requested Ms. Jones to proceed.

Ms. Jones: Thank you, Chair Truby and member of the Board of adjustment. Terri Jones, Deputy City Attorney on behalf of the Zoning Enforcement Officer Tonya Rumley, the Zoning Administrator, Mike Kirkman. Additionally, Fireman Darryl Stultz from the Fire Marshall's Office is present to testify. I'm willing to waive opening statement at this point and proceed with the witnesses.

Chair Truby: Okay.

Ms. Jones: The City first calls Tonya Rumley.

DIRECT EXAMINATION

BY MS. JONES.

Q Ms. Rumley, could you please state your name and occupation for the record.

A Tonya – Tonya Rumley, Zoning Enforcement Officer for the City of Greensboro.

Q How long have you been employed by the City of Greensboro?

A Eleven months.

Q Could you briefly describe your job duties for the Board?

- A I am one of 3 full time officers that work under the direction of the Zoning Administrator, Mike Kirkman. I have a case load. I have a specific territory for the City of Greensboro. I investigate zoning violation complaints. In doing so, I do investigations and inspections to determine if a violation exists. I also issue notices of violation and issue civil penalties if we get to that point. I also work jointly with the Fire Department, Neighborhood Development and other offices within the City to address compliance issues.
- Q Prior to coming to the City of Greensboro, did you also work in the Zoning Enforcement field?
- A Yes, I worked for 10 years in a locality in Virginia.
- Q Are you a City employee charged with enforcement of the City of Greensboro's Land Development Ordinance?
- A Yes, I am.
- Q Approximately how many zoning investigations have you completed for the City of Greensboro?
- A I'm just guessing here. Probably about 300, and that includes also sign violations as well.
- Q And approximately how many of those result in a Notice of Violation being issued?
- A I'd say about half of those.
- Q Approximately how many of those investigations involved use standards such as fencing or screening?
- A Probably about a quarter of those.
- Q Are you familiar with the property known as 800 or 802 Lexington Avenue?
- A Yes, I am.
- Q Did you investigate a complaint concerning 800/802 Lexington Avenue?
- A Yes, I did.
- Q Who owns the property known as 800/802 Lexington Avenue?
- A Mr. Bulent Bediz.
- Q When was your first time investigating the property?
- A The actual first time was May 2, 2019 and then there was a subsequent trip in October of that same year.
- Q Turning your attention to the first time you were on the property, what did you observe at that time?
- A At that time there were 19 vehicles on the property.
- Q Could you describe the property to the Board. Is it an approved property with a building?
- A It is. It's a building with vehicles stored around the building and then it's enclosed by a chain link fence.
- Q So the first time you were at the property, how did you document your observations?
- A I noted those in my case file and as well, took pictures.
- Q And you said there came a time when you were subsequently at the property, what did you observe at that time?
- A There were over 20 vehicles on the property. I've been back a couple of times. I've counted 23, 25 or more several times.
- Q Would you please describe the fencing that is located on the property?

A It's a chain link fence that borders the front of the property and then partially down the sides of the property.

Q Do the photos of the property that are included in the staff report –and those at Exhibit 8, do they accurately and fairly depict what you observed on the property?

A Yes, they do.

Q And for the Board's reference, when were those photographs taken?

A I want to say January or February. I'm not a 100%.

Q Of this year, 2020?

A Yes, 2020.

Q And do they fairly and accurately depict what you observed on the property when a Notice of Violation was issued?

A That is correct.

Q Are there any differences that you'd like to note for the Board?

A There was a subsequent inspection prior to this hearing.

Q When did that inspection occur?

A That was last Thursday.

Q And what did you observe at that time?

A There were 20 vehicles on the exterior of the property and 7 vehicles on the interior of the property.

Chair Truby: Excuse me, Ms. Jones. We don't -- in our booklets -- I think you're referring to these pictures right here but they're not labeled. So just for clarification sake, is this what you're referring to as Exhibit 8?

Ms. Jones: Yes. I believe those are the only photographs, other than aerial photographs, that were included in the staff report.

Chair Truby: Okay. You're talking about the photos taken from the front. Okay, so every -- Board members this is Exhibit 8 or A?

Ms. Thiel: 8.

Ms. Jones: In the staff report it's listed as field photographs taken January 8, 2020.

Chair Truby: Okay. Go ahead. Sorry to interrupt. Go ahead.

Ms. Jones: That's fine.

BY MS. JONES:

Q And did you subsequently take photographs?

A That is correct.

Ms. Jones: Ms. Thiel, are those photographs available to be documented on the screen?

BY MS. JONES

Q Ms. Rumley, are these photographs that you took on the property?

A That is correct.

Q Could you just describe for the Board what you see in these photographs?

A Um, the first picture shows the front of the building and several vehicles that are lined up inside the fence on the front of the property. The second picture is just looking, um, also at the front of

the property. Just some – I think that’s the front of the vehicles. It’s hard for me to see it from here. No, that’s looking back towards the – um, the rear of the property. I’m sorry.

Q And what do these photographs represent?

A Just some general photographs going back to where they entered the building on the left hand side. This is the interior of the property, the picture on the right, it’s 7 vehicles stored inside of the structure.

Mr. Bediz: I have an objection. I have a question. May I interrupt?

Chair Truby: You are going to have a chance to cross examine the witness when – when Ms. Jones is done.

Mr. Bediz: All right.

Chair Truby: So, if you could just hold your questions until --

Mr. Kelly: What’s your objection? Is it a question or objection?

Mr. Kirkman: And could you turn your microphone on just to --

Mr. Bediz: It’s an objection. I think my appeal is on two issues, number of cars and the fence. You know, if you look at the emails it’s officially identified there what the issues are. So, the interior of the building, condition of the building, is not part of this hearing. I would like to have those excluded.

Mr. Kelly: Mr. Bediz, are you saying that you’re not disputing the number of cars?

Mr. Bediz: No, I had 20 cars on the exterior of the building.

Mr. Kelly: Okay.

Mr. Bediz: That’s what we are concerned with.

Mr. Kelly: So, these photos are depicting cars on the property as will, so –

Mr. Bediz: I’m not objecting to that.

Mr. Kelly: Okay, so then to the extent –

Mr. Bediz: I’m only trying to limit the discretion to the exterior of the building.

Mr. Kelly: Well, okay. Cars inside the building I think are –

Mr. Bediz: They’re not –

Mr. Kelly: You’re saying they’re not relevant?

Mr. Bediz: Yes.

Mr. Kelly: Okay.

Ms. Jones: If I may respond, you’ll hear testimony later that deals with the total number of vehicles on the car and the Zoning Administrator’s interpretation of that limit.

Mr. Bediz: I’m sorry?

Ms. Jones: So, I would say it -- where the vehicles are located is relevant to the determination. It will be tied in later with Mr. Kirkman’s testimony.

Mr. Kelly: Mr. Chairman, we’ll just note his objection and, you know, you guys will allow Ms. Jones for the City and you’ll have the ability to determine whether the pictures are relevant until your ultimate determination, okay? Okay.

Ms. Skenes: Again, clarification. The issue is number of cars on the property. There is no differentiation as to where they are. It’s just on the property. If that was a correct interpretation?

Ms. Jones: Yes, Ms. Skenes. That’s the City’s interpretation of the Land Development Ordinance.

Ms. Skenes: It doesn't matter if they're inside, outside, or on the roof. It's the total property.

Ms. Jones: Yes, and --

Ms. Skenes: Number of cars on the property. Okay.

Mr. Bediz: I object to that. In the emails you will notice a definite reference to that. The interior of the building, the cars inside the building is not part of this discussion. It is a different matter and its going to be litigated and I did want to include that in this hearing.

Mr. Kell: Your -- the Board members interpretation of the ordinance is important to this case. So, Ms. Skenes, you heard the City's going to have an interpretation and Mr. Bediz is going to have an interpretation and it is -- maybe step one for the Board to decide how it interprets the ordinance. So here you're on target there.

Ms. Bowers: Is the ordinance on Exhibit 3, 30-8-10.4?

Mr. Kelly: I'll let the City argue that. I'm --

Ms. Bowers: I'm just asking the question. Is it?

Ms. Jones: It's Exhibit 3. There's the District Use Requirements, 30-8-10.4 and then as well, Article 5. And it specifically, 30-5-1.4.

Ms. Bowers: Thank you.

Chair Truby: All right. I think everybody sees C added. All right; let's move on. It says on premises. Okay., go ahead.

BY MS. JONES:

Q Again, Ms. Rumley, can you identify what is depicted in these photographs?

A That is 7 vehicles that are on the interior of the building.

Q And again in these photographs?

A That's just some general photos. That may be some that the Fire Department submitted or Building but they could have been mine as well

Q Do they fairly and accurately depict what you observed on the property last Thursday?

A Yes, ma'am.

Q And again, can you describe for the Board?

A This is on the interior of the property, the vehicles. And one piece of equipment that Mr. Bediz was using.

Q Are you able to identify that photograph?

A That is also on the interior of the building.

Q Did there come a time when you issued a Notice of Violation regarding this property?

A Yes ma'am.

Q What did you issue the Notice of Violation for?

A The Notice of Violation was use in violation, the number of vehicles on the property, and the fact that the fence was not opaque.

Q Would you please describe for the Board what you mean by use in violation?

A There was not a change of use, there was not permission to turn this property into auto towing and storage.

Q Do you happen to know what the previous use of the property was?

- A I do not.
- Q Did you consult with the Zoning Administrator, Mike Kirkman, before issuing the Notice of Violation?
- A Yes, ma'am.
- Q Would you describe any conversations that you had with the property owner, Mr. Bediz regarding the Notice of Violation that you issued.
- A I've had two conversations with him. One was prior to the issuance of a Notice of Violation in May when I was sent out to take pictures of the property. He asked me why I was there and I told him I had been sent out based on the complaint to observe how many vehicles was on the property. The second conversation I had with him was just last Thursday when I went to the property to do an inspection prior to this hearing. And it was just a conversation to let him know who I was and what I was there to do. That's the only conversation we've had.
- Q Thank you. What would the property owner need to do to bring this property into compliance with the Land Development Ordinance?
- A He would need to apply for the Change of Use and be approved for that. He would need to keep the number of vehicles – get the number of vehicles to under 20 on the interior and exterior of the property and to keep it at 20 or under. And also, he would need to install a 6 foot tall opaque fence or wall to surround that auto vehicle storage use.
- Q So, I believe in the photographs that were included in the staff report, it shows a chain link fence?
- A That is correct.
- Q And could that fence be modified to meet the standard of an opaque fence?
- A It could. You could insert those little slats into it so it's obscure.
- Ms. Jones: Thank You. I have no further questions for Ms. Rumley.
- Chair Truby: Okay, Mr. Bediz you have the opportunity to cross examine that witness.

CROSS EXAMINATION

BY MR. BEDIZ

- Mr. Bediz: I question and then I make my statement?
- Chair Truby: No, I think you're going to make your statements at the end. Right now, you're just doing the cross examination.
- Mr. Kelly: Do you have questions for Ms. Rumley?
- Mr. Bediz: Yeah.
- Mr. Kelly: Okay.
- BY MR. BEDIZ:
- Q Ms. Rumley, what dates did I first meet with you? Do you remember?
- A Meet with me?
- Q I mean when I first saw you?
- A May 2, 2019, I believe is the day that I was taking pictures and you came down the road on your --
- Q February 19 is like 365 days, right. Does April 17, 2019 sound right to you?
- A May, may have have been when I issued the violation. I don't --
- Q Okay. Do you have a copy of these documents?

Chair Truby: Are you talking about the emails.

Mr. Bediz: I would like –

Chair Truby: Are you talking about the email documents?

Mr. Bediz: yes.

Chair Truby: Yes, we have those.

Mr. Bediz: I would like you to please look at the email I had sent to Mr. Kirkman on the 17th of April and if you would please –

Chair Truby: Is this relating to cross examining the witness?

Mr. Bediz: Yes.

Chair Truby: Okay.

Mr. Bediz: I want to do that so you can follow what I'm asking.

Chair Truby: Okay, go ahead.

BY MR. BEDIZ:

Q: Okay, Ms. Rumley, do you recall that conversation that I had with you at that time?

A Fairly well.

Q This email I'm referring to, does that describe that conversation accurately?

Chair Truby: Can you give us a date? What's the date of that email?

Mr. Bediz: April 17.

Chair Truby: Which one?

Mr. Bediz: That is an email written from me to Mr. Kirkman.

Chair Trudy: Okay.

Mr. Kirkman: We're going to try to pull it up on the screen and make it a little easier to see too.

Ms. Jones: For the Board's information, it looks like it's located on page 7—

Chair Truby: Gotcha

Ms. Jones: In Exhibit C.

Chair Truby: Okay, go ahead.

BY MR. BEDIZ:

Q Okay

A: Except for the comment where you've got in parentheses that I said "oh, well, it has changed now". That is inaccurate description.

Q I'm sorry?

A Except for the last sentence in the first paragraph where you say that I replied, "oh, well, it has changed now." That is inaccurate description of the conversation that you and I --

Q Inaccurate or an accurate?

Mr. Kirkman: In.

A With the exception of the last comment that says she replied, "oh, well, that has changed now." That is an accurate statement of our conversation.

Q I'm sorry. I hate to trouble you with this but I don't understand. Are you saying inaccurate or an accurate statement?

Mr. Ramsey: She says that it's accurate except that she did not say oh, well, it has changed now. accurate except –

Mr. Bediz: She did not say it?

Mr. Ramsey: Yes.

Mr. Bediz: I am contesting that because I -- why would I have put that in there if she hadn't said that. I wouldn't have thought of that out of the blue. Anyway.

Q Look at the email, you can see, Ms. Rumley, that at that time I was very surprised that you were there taking pictures of the cars, right?

A That is correct.

Q Yes?

A Mm-hm.

Q What else do you remember from that conversation? Do you remember me telling you that I had talked to Mr. Kirkman on site previously?

A I do recall you mentioning a gentleman by the name of Russ Clegg. At the time I did not know who that gentleman was and I reported back to Mr. Kirkman what you had said to me.

Q So you don't recall that I had mentioned Russ Clegg and also –

A I do. I do remember you –

Q Also Mike Kirkman also being there onsite?

A I do not remember you mentioning Mike Kirkman. I do remember the conversation that you said that Russ Clegg had given you permission.

Q That's – okay. Now, the other question that I have is did you author the first Notice of Violation?

A That is correct.

Q What was the date of that?

A The very first one? I believe it was May 2nd.

Q Could it be August?

A There was one Notice of Violation that was issued and we discussed it. Mr. Kirkman asked me to issue a second violation because there was two violations.

Q I'm asking about the first one.

A August 23rd.

Q August 23rd. If you look at the August 23rd Notice of Violations, the only violation there is the number of cars, no more?

A That is correct.

Q And then, I have emails exchanges back and forth, Mike Kirkman and I. And then I get a second violation. And that date of that one is?

A October 3rd, 2019.

Q How is that violation changed from the first one?

A The first violation -- Notice of Violation that I issued, I left off two violations that you were –

Q You left off or the second violations you added?

A No. That was my error.

Q Well, that's a significant error, isn't it?

A You're still in violation.

Q Have you reviewed the emails? The email exchange I had with Mike Kirkman?

A I have not.

Q May I just refer you to one email. Actually, this is an email between me and Russ Clegg and that goes back many years ago.

Mr. Waddell: Question. Is there a cross examination in reference to incorrect dates? Because your questions thus far, they are not lining up with the questions that were just stated by the witness. So I'm struggling here to make a connection of are you questioning dates or are you questioning the testimony of the witness?

Mr. Bediz: The testimony. I was just using the dates to refer to the nature of the testimony.

BY MR. BEDIZ

Q So the dates we have mentioned so far are April 17, August 22, October 3, correct?

A Uh-huh.

Q Those are the dates. What has transpired from those dates is what I'm questioning her on.

Mr. Waddell: Okay. That's the part I'm waiting on, what transpired on those dates.

BY MR. BEDIZ:

Q Okay. The next thing I'm trying to establish is in an email I received from Russ Clegg. That what's I'm trying to find what date that was.

Chair Truby: Mr. Bediz, I'm not sure what the Russ Clegg email has to do with this witness.

By MR. BELIZ:

Q Okay. Let me just mention that and then you can answer me. This change from Light Industrial to UMU, if there is an existing fence in the old zoning, is that grandfathered in?

A If you change the use, then you'll have to go for a Change of Use approval.

Q Well, when was the Change of Use done?

A I believe that was prior to my arrival with the City of Greensboro.

Q So there was never a recorded Change of Use, correct?

A You did not apply for a Change of Use.

Q No, because I don't have it. Lastly, when you were there, the first time you counted 19 cars, right?

A That is correct.

Q And then the last time you were there, it was 20 cars.

A Twenty vehicles on the exterior –

Q We're talking about the first time.

A -- 7 vehicles on the interior.

Q We are just talking about the outside. Outside, how many cars?

A There were 20 vehicles on the outside.

Q So with 20 cars on the outside, I was code compliant, right?

A That is incorrect.

Q Well, that is a point of contention because all along I was told something else and I didn't see it in any of the rules where there's interior and exterior. They should be in concert together. It was just mentioned to me as the lot.

Chair Truby: Okay, you need to be questioning the witness, not lobbying this Board. Right now, you're cross examining the witness.

Mr. Bediz: I'm sorry.

Mr. Ramsey, you'll get your chance shortly.

Chair Truby: Yep.

Mr. Bediz: I'm trying to do the best I can. I am not an attorney. But I'm just trying to establish the truth.

Chair Truby: Okay.

Mr. Bediz: That's all.

Chair Truby: All right. Ms. Jones, you can redirect.

Ms. Jones: Yes, briefly.

REDIRECT EXAMINATION

BY MS. JONES

Q When was the first time you were able to enter the building?

A Last Thursday.

Q And if I recall correctly, were there times when you observed more than 20 vehicles on the exterior of the property?

A That is correct. The day that I issued the Notice of Violation there was 23 to 25 that I could see from the street. That I could visibly count without accessing the – the inside the gate of the property. There could have been more.

Ms. Jones. Thank you. I have no further questions.

Chair Truby: Mr. Bediz, you can – any more questions for the witness?

CROSS EXAMINATION

BY MR. BEDIZ

Q When you came the last time, you were accompanied by the Fire Department and Building Inspections and Code Enforcement. How does that relate to what we are hearing today?

A I was accompanied by the Fire Department and Building Inspections. There was no Code Compliance Officers with me. It was only Zoning.

Q Okay, but I'm questioning why were they there and why were there pictures taken of the inside of the building and I'm questioning that.

A I was directed to come to the site and take pictures of the vehicle's interior and exterior.

Q Who directed you?

A A City Attorney.

Q Was it City Attorney Terri Jones?

A That is correct.

Mr. Bediz: I thought so. That is all.

Chair Truby: Okay and now if there's any Board members have questions for the witness.

Ms. Skenes: In reading through the documentation, it appears that there's contention regarding Change of Use. Whether or not the auto storage and repair had been in continuous use or if there had been a break in that use which would eliminate the grandfathering argument. Can--

Ms. Jones: Mr. Kirkman would be addressing those issues for the Board. If you want him to answer now, he can certainly but I don't believe that's --

Chair Truby: is Mr. Kirkman --

Ms. Jones -- Ms. Rumley is not here to determine that.

Chair Truby: Is Mr. Kirkman going to be a witness?

Ms. Jones: Yes, he will be the next witness.

Chair Truby: That would be the time to answer that question Okay. All right. Any other questions for this witness. Okay, no. Okay, Ms. Jones, your next witness.

Ms. Jones: The City now calls Mike Kirkman.

DIRECT EXAMINATION

BY MS. JONES.

Q Would you please state your name and occupation for the record.

A Yes, my name is Mike Kirkman and I am the Zoning Administrator for the City of Greensboro, as well as the Code Manager of Current Planning.

Q How long have you been employed by the City of Greensboro?

A Approximately 13 and a half years.

Q Would you briefly describe your job duties for the Board?

A So my primary responsibilities are the Administration, Interpretation and the Enforcement of the Land Development Ordinance which is the rules that govern use of property here in the City of Greensboro.

Q And as Zoning Administrator, are you familiar with the Notice of Violation issued regarding the property located at 800/802 Lexington Avenue?

A Yes.

Q What is the current zoning for the property?

A The property is currently zoned UMU, which is University Mixed Use.

Q And what is the current use of the property?

A We have concluded that auto towing and storage is the current use of the property.

Q Do you know when that use was established on the property?

A I do not have an exact date. That's part of the conversation that we have had with our analysis. There is not a clear point in which we can say definitively where it was established.

Q Could you please explain what additional standards -- Well, sorry. You had stated before that automobile towing and storage is allowed in the UMU District?

A Yes, with development standards.

Q Would you describe those development standards for the Board, please?

A Yes, give me one second here. I'll pull it up.

Q And they're located in the staff report, is that correct?

A They are located there, yes.

Q And that would be Exhibit 3 of the staff report?

A Right. So, Section 30-8-10.4 © sets the development standards for automobile towing and storage uses. Specific to this property, number 2 states that in the CM AO UMU and NS zoning districts,

no more than 20 vehicles may be stored on the premises at any one time. Additionally, standard 4, a 6 foot tall opaque fence or wall must be provided around the vehicle storage area. And standard 5, Outdoor disassembly and salvage are all prohibited. Are all applicable to this property.

Q And what was the zoning of the property prior to the UMU zoning designation being placed on the property?

A Light-Industrial

Q Is automobile storage allowed in the Light Industrial District?

A It is, also subject to development standards.

Q When was the current Land Development Ordinance adopted?

A It was adopted July 1st of 2010.

Q Were there additional standards for automobile storage under the prior Unified Development Ordinance?

A There were not standards for this use or general outdoor storage standards under the Unified Development Ordinance. These provisions were included with the Land Development Ordinance.

Q One of the violations is for a use not allowed in the district. Could you please describe why that was included in the Notice of Violation?

A The previous use of the property, based on information that we had from Building Inspections and Fire was that this was a factory, possibly a warehouse use. If you're going to establish a new use, you would also have to comply with the development standards that go with that use. So, while the outdoor storage use is generally allowed in either Light-Industrial or University Mixed-Use, you would have to meet those additional development standards to be considered to legally establish that use.

Q Earlier you stated that you didn't know specifically when the automobile storage use was established on the property. But I think just now you referenced having information from the Fire Department, is that correct?

A That's more updated information from recent inspections.

Q Okay. What was the prior use of the property?

A Under the Building Code, it was designated as a factory use.

Q Can I turn your attention to page – Well, there's – In Exhibit 5, there's an email from Mr. Bediz to you dated April 18, 2019.

A Yes.

Q Does he indicate in that email that it subsequently became an auto part sales and service facility and then operated as a tool and die shop until his purchase?

A I believe so. I'm just trying to find the reference. It's in the first paragraph. He's noting it as auto repair and service, subsequently became auto parts sales and service and then a tool and die shop. This is all according to Mr. Bediz prior to his purchase.

Q Would you say a tool and die shop is a different use than automobile towing and storage?

A I would.

Q Is that part of the determination you made in consulting with Ms. Rumley on the Notice of Violation?

A As far as the use determination?

Q Yes.

A Yes.

Q Okay; have you communicated with the property owner, Mr. Bediz?

A I have spoken to Mr. Bediz on a variety of topics over the years.

Q And are some of – and have you communicated by email with him?

A We've communicated primarily by email. I have had some individual one on one conversations as well.

Q Are some of the email communications included in the staff report?

A Yes.

Q In fact, did Mr. Bediz ask you to review certain emails when the Notice of Violation was first – Well, I'm going to say when the October 3rd, Notice of Violation was issued?

A Yes.

Q Or was that prior when the August Notice of Violation was issued?

A Just looking for those emails. All right, so yes. He provided documents, it looks like in September of 2019, so that would have been after the initial August Violation – or, Sorry, August Notice of Violation was issued and pending the October 3rd violation being issued.

Q And you've heard that the Appellant asserts that there's a difference between the number of vehicles stored inside and outside of the property. Could you explain the development standard with respect to the number of vehicles stored on the property?

A Yes. It specifically says maximum vehicles stored on the premises at any one time. I made the determination that that means outside of structures and inside the structures, because in our determination that would be on the premises.

Q In his appeal, the Appellant also asserts that the City has changed its' position over time. How do respond to that assertion?

A I do not agree with that assertion. I think it was very clear when the Land Development Ordinance was being amended back in 2014 to introduce the new University Mixed-Use District. Those communications that came primarily from Mr. Clegg but I think also I had referenced on one of them that there were other standards that go with that. And that was in the text amendment itself referencing a specific ordinance section that then put you to this 30-8-10.4, Site C section. So, it would have been -- should have been clear that yes, the use was allowed but there were standards that go with that use.

Q Sir, have you reviewed the emails between Russ Clegg and Mr. Bediz?

A I did.

Q And who is Russ Clegg?

A Russ Clegg is the Manager of the Long Range and Strategic Planning Division. Mr. Clegg was, at that point in time in 2014, working with the Central Gateway Corridor Partnership which was the citizen group that was helping to implement the High Point Road and Wesley Street Corridor Plan. And he was actively involved in the development of the new zoning districts and all the different regulations that went with them.

Q At any time did Mr. Clegg hold the position of Zoning Administrator?

A He did not.

Q Okay. Is there anything in Mr. Clegg's emails that are included in the staff report that is incorrect?

A I don't believe so. I've gone back through a couple of times looking through and I don't see anything that would seem to assert that there were rights established that Mr. Bediz asserts.

Q Would you explain for the Board who is Beth Benton?

A Beth Benton was the Co-Compliance Administrator. At one point in time the Zoning Enforcement function was part of a larger local ordinance code compliance division and so Beth was over that division.

Q Did you review an excerpt of testimony that she gave related to a zoning enforcement appeal by Mr. Bediz?

A Yes.

Q And that excerpt is included in the staff report?

A It is. It's part of Exhibit 5.

Q Could you explain if there's anything incorrect in that testimony that she provided?

A I don't think it's incorrect to the point. It just left out details. She was asked generally about the ability to store vehicles on residential lots which is what she was responding to in the court testimony. And mentioned that there was some other non-residential properties that he may be able to move vehicles to but did not expound up on that.

Q Did that particular zoning enforcement appeal involve the storage of automobiles on residentially zoned properties?

A That was the substance of that particular case, yes.

Q I'm going to draw your attention again to the email of April 18th, 2019, which I believe is --

MR. BEDIZ: What date?

BY MS. JONES:

Q April 18th.

A April 18th.

Q I think it's in two different places in the staff report. One is in Exhibit 5 on an unnumbered page. I think it's --

A Page 7, under Exhibit C as well.

Q So, in that particular email did you respond and explain the District Use Standards to Mr. Bediz?

A Yes.

Q When did you provide that response?

A This email is dated April 18th at 9:03 a.m.

Q Okay, and I think there's been a question also regarding Non-Conforming Status. So, when this property was rezoned to UMU, what types of non-conforming status would it have?

A Without definitive use established at that point in time, I wouldn't have had any non-conforming use rights granted to it.

Q At any time did Mr. Bediz correspond with you to establish a non-conforming use?

A I don't see any --

Q Or documenting a non-conforming use?

A I don't see anything in the record. He asserts that we told him, I guess verbally or in side conversations. I don't see anything in the documents that speak to the uses being established as they are configured today.

- Q There's been some testimony from Ms. Rumley regarding the Notice of Violation that was issued on August 23rd, 2019?
- A Mm-mm.
- Q Can you explain why a new Notice of Violation was issued subsequent to that on October 3rd?
- A Right. So, I think as Ms. Rumley said, she's newer to the City in the zoning enforcement aspect and had a question about that when she had issued the violation. And we were going through the standards related to the auto towing and storage use and I confirmed with her that there were other issues there based on the evidence that she had gathered, which is the opaque fence issue. And then also, no Change of Use had been established and no permissions had been granted.
- Q Did you consult with the Building Permits Division to determine whether a Change of Use Building Permit has been applied for?
- A Yes.
- Q What was the result of that inquiry?
- A I talked to Mr. Sheffield who is the Chief Building Inspector and he confirmed that no Change of Use Permit had been applied for.
- Q What would the property owner need to do to bring the property into compliance with the Land Development Ordinance?
- A He would need to go through the Change of Use Property to change it from that factory warehouse use to the auto towing and storage use. He would need to limit the number of vehicles to no more than 20 on premise. That would be both inside the building and outside on the property and then need to upgrade the fence.

MR. BEDIZ: I object to that because this is a separate matter.

The Witness: Okay, Well, that's my determination, so that's fair. And then he would need to address the fence, as I was saying, to make it opaque around the storage area.

BY MS. JONES:

- Q Has the property owner had sufficient time to abate these violations?
- A I would say yes or at least to move forward in trying to do those things.
- MS. JONES: Thank you. I have no further questions for this witness.

Chair Truby, we ask our questions after their done. Mr. Bediz, you can now question Mr. Kirkman.

CROSS EXAMINATION

BY MR. BEDIZ

- Q Mr. Kirkman.
- A Yes, sir.
- Q How long have I owned that property? Are you knowledgeable of that?
- A I don't know the exact. One of your emails mentioned that you had the property since 2004. So, I'm assuming you're asserting that's when you purchased the property.
- Q That's right. When was it changed to University Mixed-Use?
- A The University Mixed-Use District was officially added to the Ordinance in January of 2014 and then your particular property was rezoned as part of a larger rezoning along the corridor in April of 2014.
- Q Right. I have owned that property continuously, correct?

- A I don't know but that's what you're asserting.
- Q You should know because you've been doing all this.
- A I wouldn't have evaluated it year to year, but based on your testimony –
- Q That's your understanding?
- A Yeah, go with that.
- Q This map that you presented.
- A You're referring to this one?
- Q This one here, can you see that?
- A Yeah, let's put that up on the screen, if we can. Ms. Thiel's going to put it up so I can see it.
- Mr. Bediz: Should I come over there?
- MS. JONES: Is that Exhibit 2?
- MR. BEDIZ: This map and this map together. These two. E
- Ms. Thiel: There's the aerial.
- MR. BEDIZ: Exhibit C, page 3 and Exhibit 2.
- A You okay to speak to each one individually?
- Q: I'm Sorry:
- A We can't get that up at the same time. Is that okay to speak individually at each map?
- BY MR. BEDIZ: Okay.
- Q The property is identified there – right there, like that, right? So – just so we have a sense of where we are. Prior to 2014 those buildings on the left and on the bottom did not exist there, right?
- A Yes, those are more recent construction.
- Q Those are recent. So, when I purchased that building in 2004, as I said to you in my emails, that it was a machine shop that was used previously and then before that it was an automobiles repair and service place and then became an auto parts store. And then when I brought it, I used it –
- A Just to be clear, those are before you purchased the property? Is that – those are before you purchased the property?
- Q Yes.
- A Okay.
- Q So I'm just asking you, are you familiar with the history of the building? When I brought it, what did I use it for?
- A I don't think you had any specific use at the time. You were talking about storing some of your items there from your house renovations and other things.
- Q Okay.
- A I don't recall us getting a definitive determination at that point in time.
- Q At that time when I purchased that building, I had 17 mostly contiguous properties surrounding that, is that correct?
- A You had – you're talking about just further south on Lexington or the ones to the north?
- Q Lexington Avenue, Union Street –
- A Right. You had a number of residents –residential properties. Uh-huh.

- Q Gregory, UNCG. I had almost a whole expansion area of UNCG under my name, correct?
- A Yes, or other names.
- Q What was I using that building for which was in relation to what I was doing. You don't remember, do you?
- A I don't.
- Q Okay.
- A There has been no official determination. I know what you have talked about but I don't know that you ever established those.
- Q What was I doing there? Do you remember that?
- A You had said –
- Q Because I started around the property.
- A -- you were storing equipment there. That's the most information that I have on that.
- Q Okay and with ownership of the properties, what was I doing?
- A I think your intention was to – you're talking about the properties that UNCG ultimately purchased? Is that the ones you're talking about?
- Q Yeah.
- A Because I know you had said originally your idea was to create some type of a mixed-use development with new commercial, retail, and residential and then preserve the other residences on Lexington as – that was your overall goal stated to us.
- Q That was part of it, that was the area where that empty space is, right? And I don't know if you remember but back in 2006, I met with you and then the head of the Planning Department, Richard Hales.
- A Dick Hales, uh-huh.
- Q And then I gave you my plans for the mixed-use development for that area. Do you remember that?
- A I remember conversations on that in general, I don't remember specific plans.
- Q Okay. And then along Lexington Avenue and Hayward Street, what was my intentions there?
- A I believe it was to preserve the existing residences and renovate them.
- Q It was -- I was trying to preserve the neighborhood character there, right?
- A Correct, yes.
- Q So, basically, I had two visions. I just want to make sure that we're on the same page.
- A Yes, but my memory is not that --
- Q I wanted this development along Lee Street, down to Hayward on the east side of Lexington Avenue because the properties were too dilapidated there. Nothing else would be done. And then on Lexington Avenue and Hayward, I wanted to preserve the neighborhood together with the land. That was my two objectives, correct?
- A Right, and just to clarify for the Board, just so you know where my position was within the department. I was in the Long Range Comprehensive Planning Division at the time and worked on the High Point Road, Wesley Street Corridor plan. I didn't become Zoning Administrator until December of 2010.
- Q Right. Okay. Then one last question here, just so we have a proper background. At the corner of McCormick on west Lee Street, I own commercial properties, do you remember that?

A I believe so. I'd have to orient that map there for that.

Q Which is right across the street of Gregory, I mean McCormick Street from the Rec Center, the Wellness Center, right?

A Right.

Q Okay. So that commercial building we are talking about, 800/802 was damaged. That's the reason I got it at a good price. What was the damage to the building?

A I don't know.

Q Okay. There was structural damage. There was -- the wall on the south side was buckling in and water was coming in. The Building Inspections, I talked to them and we had an agreement that I could not use the building for any --

MS. JONES: I'm going to object at this point to the hearsay. This doesn't relate to conversations.

Chair Truby: Mr. Bediz what does this have to do with this -- with Mr. Kirkman's questioning and what does it have to do with this? We're just focused on three things here.

MR. BEDIZ: Right.

Chair Truby, okay? The fence, too many cars, and change of use. So, let's -- if we could just focus on that. Okay.

MR. BEDIZ: That's what I'm trying to establish, the change of use because at the bottom, I brought the building in 2004 and I started it using for storing building materials, appliances, my own personal belongings in conjunction with my development project. That has been the use that this building has been put to from the get go. There was never a change. I was never asked to change the building use. So, I just want to establish that.

Chair Truby: See Mr. Bediz, this is what's complicated about -- you are right now acting as more an attorney asking questions. You can say all this in your closing statement --

MR. BEDIZ: I see.

Chair Truby, but we've got a lot more stuff to go through and this is going to take forever if we don't focus on right now just questioning Mr. Kirkman.

MR. BEDIZ: I understand. I'm sorry. I understand.

BY MR. BEDIZ:

Q All I'm trying to establish, Mr. Kirkman, is that I used that building for 15 years storing my own belongings, not for any commercial purpose. I haven't made a dime doing commerce in that building. Yes or no?

A I can only speak to the storage of vehicles on the property and that use being established. I can't speak --

Q They're my vehicles, right? I'm not using --

A Well, I don't know but --

Q I'm not running a towing and storage facility there. Those are my properties.

A The vehicles are being stored there and they -- most of them are not operational as I understand. I think some of them are but --

Q It doesn't matter whether they're operational or not. They are my personal belongings, it's not a business, right?

A That is your assertion, yes.

Q Okay. So, in the way you interpret these ordinances, does it say anything about a business or personal use?

A The ordinance doesn't make –

Q Because the way I read that –

A -- distinctions based on personal properties.

Q The way I read that in your emails, you are saying that I am running a business there.

A Saying that you're bringing vehicles to the site and storing them there.

Q What?

A You are bringing vehicles to the site and you are storing them there. That was the use determination.

Q Yeah, I'm storing –

A Right. You disagree with that, but that's my --

Q I'm storing my personal belongings on my personal property, right? But that's not running a business.

A We are basing it on the use of the property and the property right now is being used to store vehicles. Whether they're yours or not, they're being used for storage.

Q You say you got the exact information from the Fire Department, okay. There were annual inspections done every year, for 15 years. The Fire Department came and put it in the system. And I was in compliance all these years. So why in 2019, I'm out of compliance?

A We became aware of the use of the property for the storage of the vehicles and yet –

Q It took 15 years to become aware of that?

A Well, that's what -- we work with what we have most recently. That's when it came through. I can't speak to what Fire and Building did previous years. I can only speak to what we did as the zoning interpretation.

Q Okay. Now, looking at this map, we established where the property is, right? And this red or orange area defined is the proposed UMU designation area, correct?

A That's actually dealing with land -- like future land use, but yes. The University Mixed-Use tied in to the Mixed-Use Residential classification.

Q Okay.

BY MR. BEDIZ

Q And eventually some more properties were added to that orange area. So, what I had there, my building, was included in that area like it was the University's property. It was never the University's property. So, when that was happening, I called you and I talked to you and to Russ Clegg, right? Because I was concerned how the University can apply for a zoning change when they don't own the property. How is that possible?

A The zoning change was actually initiated by the City. We had provisions to allow effectively a third party zoning change for the entire corridor in conformance with recommendations of the Adopted Plan. University Mixed-Use does not mean the property needs to be owned by the University. It means that those are uses that are generally supportive of and compatible with University operations or University activities. But it does not have to be owned by the University.

Q Okay, so it was a City initiated program?

A Correct.

- Q Can you do that without consulting me if it's my property?
- A There is a process in place that the City can initiate zoning on property in the City. When we adopted --
- Q What's the process?
- A Right. So, like for instance when we adopted the Land Development Ordinance, that established new zoning districts city wide. That was effectively a rezoning for properties city wide. So, we -- in this case, we notified property owners that the change was coming, that there was going to be public hearings held and in this case before the Zoning Commission and the City Council. And we made ourselves available. We collectively, staff, to answer questions and clarifications.
- Q That's the reason that I talked to you and to Russ Clegg to understand how that zoning change would affect my property, right?
- A Correct.
- Q So these emails dating from that time, 2013, reflect that discussion, correct?
- A Some of it, yes.
- Q 2013 and 2014 emails.
- A Right. There was definitely conversation between yourself and Mr. Clegg and then also Ms. Cockburn who was, at that point in time, over the Long Range Planning Division.
- Q So I was very curious how I was going to be affected by that, right?
- A You asked some questions, yes.
- Q Okay and then the specific questions that I asked were, you know, could I store my belongings there. What about the fence, because the proposal I read said that no fence could be allowed between the building and the street? And then I got an email from Russ Clegg and he clarifies that question, right? About the fence? What does it say? Can you read that?
- A Which one are you referring to, which email?
- Q It's on page -- let's see, I had it right here. It is on page -- Exhibit 5, on the top of the page but I don't know what page that is. It is --
- A Is that the one dated March 31?
- Q No. April 1, 2014.
- A Gotcha.
- Q Can you read that?
- A Chain link fences are prohibited between the building and the street. I am not familiar with your site enough to know where yours is. Existing fences can stay and be repaired unless damaged beyond 50% of replacement value. Other fences are allowed between the building and the road, just not chain link.
- Q Okay, So, subsequently, I talked to him on the phone because -- the following emails refer to that -- and even in this very brief email he says that if my chain link fence is there, it can be grandfathered in if it is not more than 50% damaged, correct?
- A Right, but he was not referencing an auto towing and storage use. He was talking about the general University -- I want to be clear on what he was responding to. That's why I asked you. I'm listening.
- Q Auto storage use comes in much later.
- A I understand.

- Q It comes only last year.
- A But that's why I'm making that comment. He's responding in general to the University Mixed-Use which was trying not to have certain physical barriers to the street and to the public accessing sites. And that's what that email is referencing.
- Q All I'm trying to establish here is that if I own a piece of property and it's going to be changed, I want to know how it's going to affect me.
- A Right, that's fair.
- Q Okay. I would not have agreed to that change, all right? If I had been told otherwise. But I was assured that that was going to be grandfathered in. Now at that time, I was being very cooperative with the University and the City. You know, I was going out of my way to be cooperative to get this project going. So I didn't question any of those things. I trusted you and now you are saying, oh, it's UMU, you cannot do what you are doing there. That is my concern. How do you react to that?
- A What I just said actually. Mr. Clegg was responding to a broader standard related to that zoning district.
- Q Okay.
- A But I am addressing through my recent interpretations and the Notice of Violation have to do with auto towing and storage use, which has been established on this property and does not meet those development standards.
- Q Okay. In 2016 there were a number of attempts by the City to basically make it difficult for me to do what I was doing there. And the cars that I owned became a big issue. And that is the reason we went to court and that's the reason that transcript that is on this record with Beth Benton is there. You know, this is just a brief reference but there were extensive discussions about what the Judge's order said, where I could keep my cars, etcetera.
- MS. JONES: Objection.
- Q You came personally over there, if you remember when this --
- MS. JONES: This is irrelevant to this particular --
- Q -- when we're talking about --
- MS. JONES -- property.
- Q -- Lexington Avenue and 1011 Union Street and I had that meeting, telephone recorded, and you said that I was perfectly compliant with having my cars there in that building. Do you remember that?
- A I don't agree that that's what I said. I understand you have a recording, but I went back and looked at my records to try to see if I had something in writing because I was --
- Q I have a telephone recording.
- A We addressed the property at 1011 Union Street which also is effectively being used.
- Q I wasn't really worried about that. That's something else.
- A That is what I assert is what you're talking about is a different property than 800/802 Lexington Avenue.
- Q So then the transcript also shows that my keeping the cars there on that property were completely compliant. I don't want to belabor the point here. There is a lot of miscommunication, misrepresentation, misinterpretation, at my expense and it's not right. That's all.

Chair Truby: Okay

Mr. Ramsey: Can I ask a question? Are we talking about this transcript that's at the very end here? There's just one page?

Mr. Bediz: Yes, sir.

Mr. Ramsey: Okay, thank you.

Mr. Oliver: Where is that from specifically? Is that from the court case?

Mr. Bediz: Yes, it's a transcript from –

Chair Truby: And what's the address? For what property is that? What address?

Mr. Bediz: This property that we are talking about, 800/802 Lexington Avenue.

Ms. Jones: That appeal – and I don't think any of you were on the Board of Adjustment at that time – but that had to do with the storage of vehicles on residentially zoned properties owned by Mr. Bediz or his related entities, Nellie J. Jones, LLC, in the Glenwood area. That case had nothing to do with this particular property.

Chair Truby: That's what I thought. It was for the residentially zoned properties that he owns, not this piece? That's what I thought, okay.

Ms. Jones: But just – this is included in the record because this is something that Mr. Bediz asked Mr. Kirkman to review in looking at the Notice of Violation.

Chair Truby: Got it, okay.

Mr. Bediz: I just wanted to make reference to that because the cars could be kept there in that building because it was code compliant at that time. And that's 2016.

Mr. Ramsey: Who is the Q and who is the A person in this transcript? Who's asking the questions and who's answering the questions?

Mr. Bediz: Beth Benton was the Code Enforcement Officer.

Mr. Ramsey: So, he's the answering person then?

Mr. Bediz: I think the court – let me just review that, I don't want to misrepresent. Maybe Ms. Jones can help there because – No. Ms. Terri Jones is asking the questions and Beth Benton is answering them.

Mr. Ramsey: Okay, and is the reference in the transcript that the corner of Lexington into the New Gate City Boulevard is a commercial property?

Mr. Bediz: Yes.

Mr. Ramsey: Is that the property that we're talking about now –

Mr. Bediz: Yes.

Mr. Ramsey: -- or is that a different property?

Mr. Bediz: That's that property we are talking about.

Chair Truby: But it says they're allowed to store vehicles there, which they are, but there's a limit to the number of vehicles. They're not trying to tell them they can't store vehicles there. He's trying to tell him there's a limit to the number of vehicles. All right, Ms. Jones, go ahead and if you could -- you're going to cross examine Mr. Kirkman?

Ms. Jones: Was Mr. Bediz completed with his?

Chair Truby: Yes, he said he was complete.

REDIRECT EXAMINATION

BY MS. JONES

Q Briefly in redirect. With the use automobile storage, does it matter who owns the vehicles?

A No.

Q Does it matter whether they're being stored for someone's personal use or they're being – let me put it this way. Is there a difference between automobile storage and automobile sales under the Land Development Ordinance?

A Storage refers to the storage of vehicles on the property. Sales would have persons coming to the property to purchase a vehicle. So storage would not generally be accessible to the public whereas a sales use would be generally accessible to the public.

Q So just to verify. These are two different distinct uses under the Land Development Ordinance?

A Yes.

Q And changing from one to the other would require a Change in Use?

A Yes, it would require to come into compliance with the applicable development standards.

Q Thank you. I have no further questions.

RECROSS EXAMINATION

BY MR. BEDIZ:

Q Mr. Kirkman, I would like to push on that point because I'm a lay person. Use, type of building, use, zoning, all these things I had never heard of until this past year. I was told that what I was doing was perfectly fine. Now, I said I did not run a business there. I have not made a single penny selling anything from that property. I never had any workers working there. When you read the Ordinance and it says "automobile storage and towing" I cannot help but think of this as a business. That's what it means. I cannot interpret it any other way. So, the reason I --

Chair Truby: Mr. Bediz, you need to ask a question. Mr. Bediz, you've got to ask a question.

Mr. Bediz: Right.

Chair Truby: Okay.

Mr. Ramsey: You get to finish and say all you want to say when it's your turn.

BY MR. BEDIZ:

Q The reason I'm asking you this is, can you tell me is that your understanding or not? How do you interpret that language?

A I've interpreted the use as towing and storage on this property. I'm not making any distinction about the ownership of the vehicles.

Q You're not answering my question --

A I am answering your question.

Q is it the reason or not?

A This is an auto towing and storage use. The Board can make a determination from there as to whether that's correct.

Q I'm sorry. I don't want to belabor the point but I think you can understand my confusion.

BOARD QUESTIONS

Chair Truby: Ms. Jones, do you have another witness? No, we can ask questions of Mr. Kirkman. The Board can ask questions.

Ms. Bowers: What happened to the August Notice of Violation?

Mr. Kirkman: We effectively rescinded that because we didn't feel that it accurately reflected the violation. That's why a new notice of violation was issued in October and then that new violation also started the clock line appeal.

Ms. Bowers: Okay. So, this is an appeal of the October violation?

Mr. Kirkman: Correct.

Ms. Bowers: Am I correct in understanding that chain link fences are not allowed, period. Under the Ordinance.

Mr. Kirkman: The standard for auto towing and storage says you must have opaque screening. A chain link fence does not meet that standard.

Ms. Bowers: Right, okay. Thanks.

Mr. Ramsey: Would that matter if it was Light-Industrial instead of University Mixed or would it stay the same?

Mr. Kirkman: The particular standard which came into effect when the Land Development Ordinance was adopted in 2010. Regardless of whether it's University Mixed-Use or Light-Industrial. It talks about that opaque screening. It was a priority when the ordinance was adopted that these outdoor storage areas would be screened from view – from the street. Does that answer your question?

Ms. Skenes: Okay. This court case which we've established still refers to the same property, right?

Mr. Kirkman: The reference –

Ms. Skenes: The transcript that's in our packet.

Mr. Kirkman: Right.

Ms. Skenes: That's dated October of 2016, is --

Ms. Jones: If I may clarify. That property is referenced in that testimony but the court case did not have anything to do with a violation on that particular property.

Ms. Skenes: Okay, so we have this transcript for?

Ms. Jones: You have an excerpt of that transcript.

Ms. Skenes: For purposes of?

Ms. Jones: Because Mr. Bediz asked Mr. Kirkman to review that excerpt between the time of the August Notice of Violation and the October violation, which he did. So, to have a full record, because it was referenced by Mr. Bediz, we included it as part of the staff report.4Mr. Bediz: I was only –

Ms. Skenes: Next question of Mr. Kirkman. There is references through here that the property on Lexington was condemned in 2009 for occupancy. How long was that condemnation in place?

Mr. Kirkman: I can't speak to that. That would have been a building process as far as condemning the building.

Ms. Jones: The next witness can give you some information regarding that.

Ms. Skenes: Well, I'm trying to establish a timeline and if in fact he was not using for storage of vehicles for over 12 months, then he's got to apply for a new use. So, it was important for me to know if that condemnation went on for more than 12 months because that establishes that the use

he is saying is grandfathered is no longer grandfathered because it was not being utilized for auto storage, it was just personal storage is what I'm gathering. So, we don't know how long it was condemned?

Mr. Kirkman: I can't answer that question. I'm sorry.

Mr. Waddell: So current state, speaking today, is that building as of right now fit for occupancy?

Mr. Kirkman: I will let the Fire Inspector speak to that.

Mr. Waddell: Okay.

Chair Truby: I have one other question. So really all that the change from Light-Industrial to UMU did to Mr. Bediz was change the number of cars from a 100 to 20. All the fence standards and everything else are pretty much the same?

Mr. Kirkman: That is correct.

Chair Truby: So, the only difference is from a 100 to 20?

Mr. Kirkman: Correct.

Chair Truby: Okay.

Ms. Skenes: So, he was in violation on the fence from the get go?

Mr. Kirkman: Whenever that storing in the storage use was established. And again, don't have an exact date on that. They would have had to meet those standards if it was any time after July 1, 2010.

Chair Truby: Okay. All right, Ms. Jones, any other witnesses?

Ms. Jones: Yes, the City would now call Darryl Stultz.

DIRECT EXAMINATION

BY MS. JONES

Q Would you please state your name and occupation for the record.

A Darryl Stultz. I'm a Senior Fire Inspector with the City of Greensboro.

Q How long have you been employed by the City of Greensboro?

A Twelve years,

Q Would you briefly describe your job duties for the Board?

A For three and a half years, I've been sworn in as a Code Enforcement Official for the North Carolina Firemen's Association for the fire code. We do conduct inspections for all commercial buildings in accordance with Section 106 of the North Carolina Fire Code. Maintain all required department certifications. We respond to unsafe structure issues, including water damage, collapsed vehicle. We create and provide accurate reports, documentation in a fire house module in which we use for documentation and – that's it. That's a brief.

Q Are you familiar with the property known as 800/802 Lexington Avenue?

A Yes, ma'am.

Q When did you become familiar with that property?

A I started on that property of August of 2017. Is the first time that I stepped foot on the property. At that time it was vacant, unsecure. I then came back on September 28 of 2019 for the first fire inspection that was conducted on the property.

- Q In 2017 when you say it was vacant and unsecured, could you tell what the property was being used for at that time?
- A At that time it appeared to me – I mean you have storage of cars on there. So without being able to gain access interior to the property it was – not being used for -- we had it listed as a factory and not a storage use.
- Q And when you say you had it listed, did you review the fire department records for what the prior use of the property was?
- A Yes.
- Q What was the use of the property before you personally observed it?
- A A factory.
- Q What do you mean by a factory? Would a tool and die be a factory?
- A Yes. In the records what we found with the Secretary of State, in 2000 – No, excuse me, 10/29 of 1998 it was Hope Manufacturing and Machine shop.
- Q I'm sorry, what was the date of that again?
- A 1998.
- Q So that was prior to when the Appellant in this case owned the property?
- A Yes.
- Q And for how long in the records does it show that it was listed as that facility or that type of use?
- A That's my knowledge. I looked at some of the archives and it was in the 80s as a machine and die shop.
- Q Okay, and then how far forward did that go in time?
- A We've got records all the way up to 2019. But we didn't have anything exactly that pinpointed when it changed from the tool and die – it's always been Hope Manufacturer in my records that I have.
- Q So when Mr. Bediz early stated in his questions that there were annual fire inspections, were they inspecting for a factory use at that time?
- A That would be correct.
- Q When did you first observe automobiles being stored on the property?
- A The first inspection I conducted on the property was September of 2017.
- Q Were those automobiles stored inside or outside of the building, or both?
- A That was the date that I meant with Bediz on the property and they were stored inside and outside.
- Q Earlier, were you here for Ms. Rumley's testimony?
- A Yes.
- Q And the photographs that were displayed, did you actually take those photographs?
- A Yes.
- Q She testified that you were present with her last Thursday on that inspection, is that correct?
- A That's correct.
- Q Did those photographs fairly and accurately depict what you observed on the property that day?
- A On that day, yes.
- Q Between last Thursday and 2017, have you been on the property any other times?

A Yes. I have pictures from the 2017 inspection, the first time I was on the property.

Q Have you done any other inspections in the interim period?

A Yes.

Q When were those?

A Those were – the most recent ones that we had – We have plenty of meetings with Mr. Bediz. In 2018, 12 of 18. There're multiple times that we've had meetings onsite with Mr. Bediz. I've got it all right here written down but there's a ton. There's a lot of times that we've had meetings about this. The first inspection that I had with Mr. Bediz, all the violations are in there and I have the certified letter mail that he signed stating that he got that inspection report about the vehicles being stored inside the property and needed to be removed.

Q Would you please explain to the Board why the Fire Department is concerned with the change of use of property from factory to automobile storage?

A Because of the different regulations for a factory, there's different fire code things for factory and there's different fire code safety for storage. And it would have required a Change of Use from a factory to a storage.

Q Is the building currently condemned as unsafe for occupancy?

A Our records show back to 2009, it was condemned.

Q And has it been continuously condemned as far as you know?

A That is correct.

Q Can you tell the Board what it would take to make the property safe for occupancy?

A At the time as you saw in the pictures, there was work being done with no permits. The structures that are holding up the walls in there is not permitted. So, there is an extensive amount of work to the property to bring it up.

Q Were you involved with conversations with Mr. Bediz with respect to the need for a Change of Use Building permit?

A Yes.

Q Could you describe those conversations to the Board, please?

Mr. Bediz: I would like to object to this. This has no relevance to the appeal. As I said, all that is being discussed is going to be in litigation different. I mean, I have documentation this thick. To go into that, I don't think you want to spend your time going into that.

Chair Truby: I think what they're trying to do though is show a timeline for the use because that's a big part of this case.

Mr. Bediz: Okay.

Chair Truby: Unless I'm missing something but I think they're trying – we have nothing to do with the condemned building or any of that.

Mr. Bediz: Right.

Chair Truby: All we're doing is really on these three things, these three violations, okay?

Mr. Bediz: I just want to just point this out. The first time he went to the building is 2017. That building has been condemned since 2009 and from 2004 to this time, I've used it as my personal warehouse. Nothing more. I mean, that's fact. So why are we wasting time going back all this other business. It's altogether irrelevant in my opinion.

Chair Truby: Go ahead.

BY MS. JONES:

Q Mr. Stultz, are you aware from review of the Fire Department records were automobiles stored in the property back to 2009 or -- at what time did the Fire Department become aware or document this?

A I documented it on the first inspection that I did in 2017.

Q So is it possible that Mr. Bediz was storing other kinds of items in the building that were not automobiles?

A At the time, I saw automobiles. For what we could get into and get the pictures of was automobiles.

Q Thank you. I have no further questions.

Chair Truby: Do you have questions?

Mr. Bediz: Yes.

Chair Truby: Okay. Go fire away.

CROSS EXAMINATION

BY MR. BEDIZ

Q We saw the pictures that you took, I understand. You just said that there were only automobiles stored there. What about all the doors and filing cabinets and other things there? That's not called storage?

A Those were outside the structure. I was worried about inside.

Q They inside also because if you look in the back of the building they're inside also. So, the question is, it's not just automobiles, right? So, it's a warehouse. I have my personal belongings there, okay. Now, you said that I was working there without a permit. What did I do without a permit that is against the rules?

A Clearly the wall being taken out and structure integrity of that building. To keep it safe, we require permits to be obtained to do any type of construction, demolition, on that building.

Q Okay. Are you familiar with the rules about when you get a construction permit and what requires a permit?

A I'm pertaining to the fire code but I know it does say that I can refer it to the Trades which would be a building for the permit to be obtained.

Q If I told you that what was done there was to ascertain what needed to be done, so it was like surgical investigation. But then before that wall coming down, you saw the pictures that you took. You know, there were cribs that were built there. What were they doing there? Were they there the first time you went there?

A No, sir, they were not.

Q No. So why are they now there?

A That is something you did without us knowing you were doing construction inside without permits.

Q Well, this does not require a permit for your information because I was given the order to make the building safe and the cribs being built there is carrying the roof folds which made it possible for me to take the wall away which did not require a permit which identified the real problem which was a mass of concrete, tons and tons of concrete before the wall, behind the wall that was causing the wall to buckle. But we did not know that that was the cause of the problem why the wall was buckled. So, what I did there was --

Ms. Jones: I'm going to object that this is beyond the scope of direct.

Chair Truby: Right now, we're focused on three things. Three things, that's it. Okay?

Mr. Bediz: Okay.

Chair Truby: We're not talking about the condemnation; we're not talking about the structural integrity of the building. It doesn't matter for this case, okay?

Mr. Bediz: Yes, sir.

Chair Truby: Okay.

Mr. Bediz: I just wanted to show that – you know, when he says I'm working without a permit. I don't want it to be taken negatively because I did everything with engineer's drawings. I did everything right.

Chair Truby: Okay. The role of this Board is to vote on these three violations. Nothing to do with anything else, okay? All right. Do you have any more questions or are you done?

Mr. Bediz: One more question.

BY MR. BEDIZ:

Q You said you met with me several times and you did several inspections. The inspection that was done in December of 2018, right? Did you go inside the building?

A In 2018 it was done by a different inspector besides myself.

Q Okay, but there was a report filed saying that the cars were still inside the building and I was ordered to remove the cars, right?

A That is correct.

Q And I was fined. Do you have the numbers how much money I was charged?

A I do not make those fines, so I do not have those numbers.

Q Okay, that's fine.

Chair Truby: All right. Any questions from the Board? No, we don't have any. Ms. Jones?

Ms. Necas: Oh, I have a question.

Chair Truby: Okay, you better hurry up.

Ms. Necas: For the fireman. You mentioned you came there in 2017, did you discuss at the time with Mr. Bediz about the Change of Use at that time?

Mr. Schultz: At the 2017 inspection we told Mr. Bediz to – one of the violations was "remove all vehicles from the building, not to be used as storage." So we give him the opportunity to remove all the cars which then would not require a Change of Use because he is removing what we've asked him to remove from the structure to keep it as a factory.

Ms. Necas: I'm just wondering if you informed him at that time that if he wanted to do something different, he'd have to apply for a Change of Use.

Mr. Schultz: Absolutely.

Ms. Necas: You did?

Mr. Bediz: May I question?

Chair Truby: I think your questioning is done for this.

Mr. Bediz: But what he said is not true.

Chair Truby: When – I don't know. Is he going to be a witness too? Are you calling him as a witness, Mr. Bediz?

Ms. Jones: I wasn't planning on it. I assumed he wanted –

Chair Truby: No, I was just curious.

Ms. Jones: -- to testify on his behalf.

Chair Truby: But we can ask him question as a witness if we want to, correct?

Ms. Jones: Right.

Mr. Kelly: He's sworn in and you can ask him questions, yes. And Mr. Bediz if you think there are inaccuracies in testimony, just make sure that in your argument --

Mr. Bediz: In my statement then?

Chair Truby: Yes.

Mr. Bediz: Okay, all right.

Chair Truby: Okay. All right.

Mr. Bediz: I'm learning.

Chair Truby: Okay. Ms. Jones?

Ms. Jones: The City rests its case at this point.

Chair Truby: Okay. You're up.

Mr. Bediz: So now I can talk all I want.

Chair Truby: Well, you're first starting out as a – you can call witnesses.

Mr. Bediz: I see, okay. I don't think anybody --

Chair Truby: And you don't have to call witnesses. You can go -- we can go straight to the public comment and then closing arguments, if you'd like. That's up to you.

Mr. Bediz: Okay. I didn't bring any witnesses. I didn't bring any other documentation because I didn't want it to get out of proportion here. I just was going by what was presented in the mail to me and I think it's very obvious what is here. Just like you said, three issues.

Chair Truby: Save that for your closing arguments. So you don't want to call – what you said is you don't want to call any witnesses, correct?

Mr. Bediz: Yeah.

Chair Truby: Okay. Okay, that being said, that part's closed. Public comment. Is there anybody here in the audience that would like to speak on this item. Seeing none. All right, let's go to closing arguments. The City goes first and then you can have your time.

Mr. Bediz: Not mine. I understand.

Ms. Jones: Thank you, Mr. Chairman. I think more than the preponderance of the evidence shows that these violations do exist on the property. You've heard from 3 witnesses, 2 of which are eye witnesses to the condition of the property. That there were, at least at times, more than 20 vehicles on the property. And one of the ways of abating that violation is to reduce the number of vehicles down below 20. Now, you've also heard Mr. Kirkman's interpretation that when it says that in the UMU Districts, "no more than 20 vehicles may be stored on the premises at any one time." And again, Mr. Kirkman explained that his interpretation of premises means both inside and outside of any structures. It is the entire property. It is true that there are times when Ms. Rumley was only observing from the street and she said initially there were 19, then she counted 23, at one time she counted 25. These types of use violations can vary over time. You also heard the testimony of Mr. Stultz who indicated that there were times since 2018 where there were vehicles parked or stored inside of the building and that created a fire code violation which would require a Change of Use.

And again, the Appellant had options here. He could restore the property before the Change of Use and remove the automobile storage. If he removes the automobiles from the property then he doesn't have to use the opaque fencing. He doesn't have these problems. But he continues to keep vehicles on the property either inside or outside of the building. Now the testimony of Mr. Stultz indicated that there was a time when he moved the vehicles outside of the building. That solved one of his problems at the time, but unfortunately it did not abate the violation. Again, there were several things with the change of the zoning district. But despite what Mr. Bediz said in some of his questions, he was fully aware that there was a zoning change happening on the property and he, like a diligent property owner, asked questions of staff. But you have to take those questions in the frame of what they were. He asked for certain information and he was provided certain information. He was consistently told that there are district use standards associated with automobile storage. He was also told that some fences could remain but some fences couldn't and it depended on the condition of the fence. And again, Mr. Clegg did not say that I have examined your particular property; he states I don't know where your fence is on your property.

With respect to the testimony of Beth Benton, again, Mr. Kirkman explained she was not the zoning administrator at the time. She couldn't make a definitive determination about these other properties. That testimony shows that there was a distinction being made between whether vehicles could be stored on residentially zoned properties or they could be stored on commercial properties. And again, there is nothing in the record, nothing transmitted today that shows that he was ever given a zoning determination letter. He never had a Change of Use established. He never asked for a non-conforming use to be established. So all of the testimony you've heard today is that this violation has been occurring for some time. He concedes that there are vehicles stored both inside the building and on the exterior of the property. There's been no evidence to contradict those violations asserted by him. Now, there are interpretation questions that the Board has to determine. One could be, is this interpretation of premises correct. And I don't think there's any way you can read premises other than to include the entire property. Because as you know in Greensboro, there are improved properties with buildings on them and there are vacant lots with properties and both of them can be used for different things but they can't be used for everything at all times depending on what the property owner intends to do.

Again, you've heard from Mr. Kirkman that there's not a distinction between ownership and whether it's commercial. It's not, it's the use of the property. Clearly this property is being used for automobile storage and clearly this zoning district requires certain standards. One being a limit to the number of vehicles and the other requiring opaque screening. Mr. Bediz has been aware of those conditions for quite some time, since the property was rezoned in 2014 and he hasn't made an effort to completely bring the property into compliance. He's been told both from the Fire Department and Zoning that a Change of Use Permit is required for what he intends to do with the property of automobile storage and he continues to be in non-compliance. So, I would ask that the Board affirm and uphold the Notice of Violation that's been issued in this case. Thank you.

Chair Truby: Let's go ahead and hear the closing argument from Mr. Bediz and then we can ask a bunch of questions. Go ahead, sir.

Mr. Bediz: Okay. You may be wondering why I have all these automobiles there. I'm not a mechanic. I'm not in the business of selling cars. So, it's a good question. I'm an artist. I think I need to give you the background here which I believe is very relevant to what you are hearing here tonight. I had a vision of improving my community. Singlehandedly, I started purchasing these properties when the neighborhood was in full decay, with the sole altruistic motive to do good for my community. I was teaching at UNCG in the Architecture Department. I went to NC State. I'm a graduate of UNCG and the School of Design in Raleigh in Architecture. So I know my abilities, my talents, and I'm a romantic. I thought that I could do something. Buying 70 contiguous properties like that is no mean feat. I put my

whole being into this thing, since 50 years. Now what happened? In 2004, when I purchased this building, the City, for whatever reason, wanted to block my efforts in revitalizing this neighborhood. I had 5 building permits to work on 5 houses to completely rebuild them. I went to the City Public Information System, requested a form and got emails in my name about land use from the City Departments, from UNCG and everything. I just wanted to get to the bottom of why they were doing that, because up to that time, I was the poster child for the city. They made a video of me creative land use. I was doing beautifully. I had nothing but positive press. In 2014, there was a letter, an email, written by one of the City Inspectors, Code Enforcement Officer, Bill Black. He's quoting the Head of the Department at that time, Andy Scott. They are convinced that they have broken me, that I'm going to just give up and go. That email in one sentence says "May God have mercy on us all." That is referring to my demise. I didn't know about it until last year. All this time I was thinking, you know, why is the City not helping me because I was on my own trying to resurrect a neighborhood?

Now, you saw this map. Right here, all this area was my properties. I lost them to the University and to the City when I was in bankruptcy in 2008. The City saw their opportunity to file an application to Washington to get about five and a half million dollars to buy my properties to do a low-income housing where I was trying to resurrect all these homes. It's an unbelievable story but it's all on paper. I can document it fully. At that I approached the University and I gave them my plan. I said, look, this is a very valuable piece of land. It cannot go to low income housing. You need space to grow, the City needs space to grow because the City has Lee Street, High Point Road Corridor Reinvestment project, right? That was going to be an economic development area and the University was going to be the catalyst for that project. I said it's in your interest to partner with me. I can restore the houses and you can do the mixed use development. The very next day, the University went to the bank that had foreclosed on my properties and signed a deal with them, and then because they had those properties, they leveraged it to get other properties that I had in this area so they could start the first phase of that Spartan project.

Now, this is the background. If this is sufficed, if you understand what's going on. What I have here in the middle is still 40 properties that I own. It's right in the very center of the University development. The University and the City, in collusion, have tried all these years to find a way to get me to break down and say I give up. I'm stubborn, I'm still fighting. That is the reason why we are here today because 19 cars or 23 cars, when 20 is the limit. Baloney. The real reason here is, you know, they have their own ideas about what can be done in that area. Now, you won't believe this but the City has already demolished six of my properties. The demolition costs are taxed to me. I have 12 other properties that are under condemnation, a demolition order. If they are gone too, there is no more neighborhood left. Do you know that in this area where I had my properties in Glenwood, North Glenwood, the University tore down over 100 homes and all this time the City is saying we're against demolition, we'd rather do preservation. That's another baloney. So, I'm by myself standing and saying this is not right. This building was going to be the centerpiece of the artist community that I was trying to create right there on that block. I was going to have art studios, a meeting place, a coffee shop. I'm an idealist, you know. I could see that. I had drawn all the plans. The other commercial properties that I had on Lee Street --I even had the title for it. It was going to be the Art Space. It was a very beautifully thought out plan. What happened, the City -- and Mike Kirkman knows that very well because I argued with him over this subject -- they said that the University was a better investment if they came there and took over that area that would benefit the City more. How can that benefit the City more, the City is not getting a single cent in taxes in that area. That's owned by the State. That was going to be an economic development area. My story is voluminous. I'm having a documentary done and I'm going to expose all this wrong doing. I'm begging you to look at what is happening here with this background and see that all these allegations about my wrongdoing is bogus. It's not right. That's all.

Chair Truby: Mr. Bediz, could you just address the cars? Could you just tell us why the cars are there? Why can't you put up a screened fence at least until you can figure out what you're going to do so that it looks better? I think that's all this is about.

Mr. Bediz: Mr. Truby, I was forced to buy the cars, okay, together with a mechanic friend who was going to fix the cars and sell them so that I could generate some revenue so I could work on the houses. Now this is happening in 2008, 2009 when the economy was down and I was in bankruptcy. I couldn't go and get credit from the banks on real estate. Real estate was taboo, right? You know that. But on the automobiles, I could get credit. The University at the time promised me a car lot at the corner of Glenwood Avenue and Lee Streets, now Gate City Boulevard. It had a car lot. It had a sales office. It had the repair shop. They said you can have that. Put your cars there and sell them. Free of charge and it was adjoining my other commercial properties. Right on the block between Glenwood and McCormick. That was the reason I got into the car business. I have a good eye. I'm an aesthetic person. I know how to pick up cars. These were not junk cars. These were Cadillacs, BMWs, Jaguars, Mercedes Benz, okay? And I bought them all, the same model, same year, and the mechanic was going to work on them and then we are going to make some money and then I was going to fix up the neighborhood. The University reneged on that. Then I had to put the cars in that building. That's in 2011. I had to bring them and put them behind my houses on Lexington Avenue. You know what happened to those cars? Sixty of them were towed away by the City and auctioned off. Fascism, there's no other way to put it. Ms. Jones herself wrote an order giving the City full authority to go onto my property without following due process and pick the cars and take them out.

So, I'm here with a lot of grief, but I'm angry too because this lady here has been on my hind for many years. It's not right. I brought another place on I-29, a car place. I took most of my cars over there. Do you know what happened? The City somehow conspired in some way, one of the City Inspectors goes there and steals 7 of my cars and takes them to D.H. Griffin for salvage.

Chair Truby: Okay. Well, that's not relevant to what we're talking about.

Mr. Bediz: It is relevant because you asked me what I do with the cars. You see, I couldn't keep the cars over there because they are stolen by the City. I couldn't keep them in my backyard because they are stolen by the City. You tell me what you would do in my position.

Chair Truby: All right. So now we're on.

Mr. Bediz: One more thing. I want to finish with one more that's there. That map that you saw here, the area where my house is, I live right there. The 800 block of Lexington Avenue, Glenwood to the east and to the west. Three blocks mainly is a development area. Most of them are my parcels. I am now developing a development scheme to do something in that area. The City, they are well aware of what I am trying to do. The cars are not going to stay there. As soon as I get rid of my tenant in that place, I'm going to move them over there so I can go and build that right. And when you ask me what are you going to do with that building, I can do many things. But I would like to really go back to doing an art studio there and go back to being an artist.

Chair Truby: Okay. All right, I think we can go ahead and close the public hearing. Do I have a motion to close the public hearing?

Ms. Bowers: So moved.

Mr. Waddell: Second.

Chair Truby: I have a motion by Ms. Bowers and a second by Mr. Waddell. All in favor, say Aye.

(Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

Chair Truby: Now we can ask whatever questions we want to ask of anybody you want to ask.

Ms. Necas: I had a question for Mr. Kelly because he answered once --

Chair Truby: You can ask any questions.

Ms. Necas: Okay, one thing right at the beginning. To make a decision here to either uphold or overturn the Zoning Notice. What did you mean by a preponderance? What are we supposed to –

Mr. Kelly: And I was going –

Ms. Necas: -- conclude?

Mr. Kelly: -- to follow up because I know Ms. Bowers is an attorney. So preponderance means by greater weight of the evidence or another way to put it would be 51 percent versus 50. So as soon as the scale tips that way, they've met their burden. So if you don't think that he's proved that it would be more likely than not, then he's not met his burden. So, does that make sense?

Chair Truby: Thanks for asking that because I didn't know either. So it doesn't have to – I guess it's not like a murder trial.

Mr. Kelly: Yeah. It's less than a criminal –

Chair Truby: Beyond a reasonable doubt.

Mr. Kelly: Right.

Ms. Necas: We have to think then if we want to uphold it or return it. If we say uphold it, then we need to think the City is right 51 % basically? Like, as long as they're 51% correct in their evidence that they've shown, then we would uphold it. If we thought they were only 49%, then we need to overturn it?

Mr. Kelly: That's correct.

Ms. Necas: Okay.

Mr. Kelly: If you thought that the City was only 49% correct, then you would have been convinced that Mr. Bediz met his burden.

Ms. Necas: Okay. Thank you.

Mr. Ramsey: I also want to make sure I understand. I think we've talked about this before but although we're a quasi-judicial body, we are not a court of equity.

Mr. Kelly: You are correct.

Mr. Ramsey: Facts apply to it.

Mr. Kelly: You are correct.

Mr. Waddell: Explain what that means.

Chair Truby: Yeah, and I mean –

Mr. Ramsey: Okay, what that is it that – you'll see it on TV sometimes but – and this goes to what Mr. Bediz said at the end which is that there's a bigger picture here. And so you can – equity is when a Judge which would be like -- a Superior Court Judge can do this. They're a Court of Equity and they can say I really don't care what the law is, this is wrong. We are not that kind of a Court. We are limited to what the statute says, what we find the facts are, and how those facts are applied to that statute basically. And also this decision can be appealed to Superior Court, right?

Mr. Kelly: That's correct.

Mr. Ramsey: Okay.

Mr. Kelly: In fact, it's only – it's appealable to Superior Court.

Mr. Ramsey: Right, correct. Mr. Ramsey: I don't know. I've got a lot of stuff. Let me see if I can outline the City's argument just to make sure I've got it. Mr. Bediz buys his property in 2004. He stores personal stuff there. Probably – from what the testimony says somewhere I 2008 when he's in bankruptcy he decides to start buying cars because he can't get bank financing. So probably at that point that's when the cars started showing up. At that point it was Light-Industrial so it could be up to 100 cars; is that correct, Mr. Jones – or Mr. Kirkman, I don't know who gets it.

Mr. Kirkman: Right. It was Light-Industrial. That would have been under the Unified Development Ordinance, so there would not have been screening requirements and other things in 2008.

Mr. Ramsey: Okay, all right. So -- but you're required when you change the use of a property to get – to notify the City and get permission to do that so that they know what's going on, correct?

Mr. Kirkman: Yes, that's what we refer to as a Change of Use Permit.

Mr. Ramsey: Right.

Mr. Kirkman: Where you're making a difference in the uses on there and that can be triggered in a lot of different ways.

Mr. Ramsey: So Mr. Bediz never got a Change of Use Permit, so it's been listed as a factory since 1998, is that correct? Yeah, okay. And the zoning got changed in 2014 which put in the 20 cars on the premises and the sign – fence requirement.

Mr. Kirkman: The fence screen requirement came in 2010.

Mr. Ramsey: Okay.

Mr. Kirkman: That's the adoption of the City wide Land Development Ordinance. Then in 2014 when the zoning changed to University Mixed-Use, it restricted the number of vehicles. From a 100 at that point in time to no more than 20.

Mr. Ramsey: Okay, all right.

Mr. Oliver: Does the concept of grandfathering even come into play here?

Mr. Kirkman: In order to get what's called grandfathering – our ordinance refers to it as a nonconformity. You have to legally establish a use to start with before the ordinance changes go into effect and then you have to – you could not have a – the use could not cease for more than 12 consecutive months once that nonconformity is established or you lose the nonconformity rights. The other option – the other thing that occurs is if a legal use comes into the property, then you would lose any rights to go back to that nonconformity as well.

Mr. Ramsey: So – so why doesn't grandfathering apply?

Mr. Kirkman: We don't have -- based on the information we have that the use was legally established prior to the changes in both the Land Development Ordinance in 2010 and then further in 2014. There's no clear record that shows exactly when that use was established at the intensity of the use that it is currently. And that is why our determination is that the grandfather does not apply. You're welcome to disagree with that.

Mr. Ramsey: And so that's Mr. Bediz's burden of proof to show that he had that use then, right?

Mr. Kelly: Yes.

Ms. Jones: Yes.

Ms. Bowers: I have a question, if everybody is done. I don't want to interrupt.

Mr. Ramsey: I'm done now.

Ms. Bowers: Okay. For Mr. Kirkman, I think or – I understand the no more than 20 vehicles violation. I understand the opaque fence violation. I'm not sure I understand the first violation, Use in Violation. Can you explain that a little?

Mr. Kirkman: Sure. So our Ordinance speaks to the fact that when you change what is going on on the property, if there are requirements that you must meet – permits, development standards, etcetera. You have to meet those things in order to legally change in the use. I think the discussion here is that the property was established historically as a factory use, manufacturing type of use. In order to change it to the storage use, these development standards came into play and have not been met at this point in time. There are four. They have not done all the appropriate permissions to establish that new use. Does that make sense?

Ms. Bowers: okay, so that's what the –

Mr. Kirkman: That is our position.

Ms. Bowers: -- Change of Use Permit thing was about.

Mr. Kirkman: Right.

Ms. Bowers: Because it's a different fire code and all that – or a different fire – I think the testimony was there was a different fire code requirement for one versus the other.

Mr. Kirkman: Right. That's getting into the history of whether the use was decided auto, towing and storage as we find it now versus where it was historically.

Ms. Bowers: Okay, thank you.

Ms. Skenes: So just for clarification. The City's position is that all the records from the Fire Department going back to prior to 1998, it was tool and die. It was factory. And the first that you were aware that he moved to a car storage environment – yes, he had some conversations with staff and they were just talking generally. They had not physically looked at the property. They didn't know he was already storing cars there. In 2017, September of 2017 is when the Fire Department determined that it was no longer a factory, it was no longer tool and die. It was, in fact, car storage and there was no request for a Change of Use from factory, tool and die manufacturing to car storage. Is that kind of where we are?

Ms. Jones: Yes, and the testimony from Mr. Stultz was that he could get a Change of Use and continue the car storage or he could take the car storage – the automobile storage off the property. That would get him out of the fire code and perhaps building code problems.

Ms. Skenes: And that discussion was had regarding you either need to get in compliance with your use or get the cars off the property.

Ms. Jones: Correct.

Ms. Skenes: Yeah, okay.

Mr. Kirkman: And Zoning is typically going to a review point where a Change in Use Permit is submitted. So that's when the opportunity where we would have to come in and evaluate and see where we were at those discussions.

Ms. Skenes: There has not been a request made.

Mr. Kirkman: Correct.

Ms. Skenes: So you would have noted if there had been. All right.

Mr. Bediz: May I add something here?

Mr. Ramsey: Nope.

Mr. Bediz: To your question?

Ms. Skenes: No, it's the Board. We've closed the public hearing. The public hearing is closed.

Mr. Kirkman: So –

Mr. Bediz: Just to clarify. In 2009 when the building was condemned, the Inspector wrote in the system that the building could not be occupied. That's what is says on the sign but it can be used for storage, okay? Every year the Fire Department went and said I was in compliance. So it's not 2017 that they first noticed I was storing things there.

Chair Truby: All right, okay.

Mr. Bediz: I just wanted to get that.

Chair Truby: Okay, thank you.

Mr. Oliver: Okay, my question is if he reduces the number of cars to 20 or less and puts up an opaque fence, are you guys okay with it.

Chair Truby: And then he has to apply for a Change of Use.

Mr. Oliver: Have to apply for a change use also. So if he does those three things, is everybody happy?

Ms. Jones: Zoning will be happy. We're not speaking for Building Code and Fire Code. There's still some – as you saw in the photos, there's some still issues with the building. But, yes, that would abate the Zoning Notice of Violation.

Chair Truby: Or he could remove the cars, the fence could stay the way it is, right? And the building could stay and he wouldn't have to get a Change of Use. So we're talking about removing 19 to 22 cars.

Ms. Jones: He would need a Change of Use when he begins to occupy it again because it's not --

Chair Truby: Well, if he occupies it as a factory or something similar to that, then he wouldn't need a Change of Use, correct?

Mr. Schultz: That is correct. As long as he brings it back up –

Ms. Jones: From Fire. But his use has – if he removes the cars and ceases to use the property, he's not using the property for anything then he has to – when he establishes a use, he would have to make sure that that use complies. Now that use may comply and have no additional standards but it would have a zoning review at that point. As well as probably Building and Fire if he's going to occupy the building.

Chair Truby: So if he removes the buildings, technically at that point he doesn't have a use established at all, is what you're saying. If he removes the cars, what is the use of the building at that point?

Ms. Jones: Right now the use – the building is condemned so he cannot occupy for any use at this point. He's contending that he could store things in it but that puts him in a Fire/Building code problem. So at this point, he does not have a use of the building. He may have valid uses on the exterior of the property but not automobile storage at this time.

Chair Truby: Any other discussion?

Ms. Bowers: Discussion?

Chair Truby: I don't want a discussion. I'd love to get a motion but I –

Ms. Bowers: From my perspective as a lawyer, it seems to me our charge here to determine whether the appellant has met his burden to prove that we should reject the Notice of Violations that were issued, period. And he's not denied that there were more than 20 cars or that there was a chain link fence or of the other stuff but I heard the argument from Mr. Bediz was that this is a pretext. That this whole violation or zoning violation is a pretext. But I did not hear him deny that the conditions existed as noted. So, I just – if that provides any clarification for anybody for what it's worth.

Chair Truby: All right. I genuinely feel sorry for him but the violations are there and I don't see any other way but to uphold the Notice of Violation. That's the way I see it.

Mr. Oliver: So what happens – if we say that, then what happens?

Chair Truby: He can appeal to Superior Court or he can take care of the violations.

Mr. Kirkman: If the Notice of Violation is upheld then the next step in our process would be the issuance of civil penalties. And it starts at \$50 for the first violation, then \$100, then \$200 and \$500 and continues on in \$500 until the violations are addressed. We will, as we do with everybody, if there are attempts to try to come into compliance, provide the extra time for him to do so. We usually ask for some kind of date certain or give us some idea of when things are going to be accomplished so we can check when those are happening. If the violation is upheld, we will just follow our typical zoning enforcement process.

And if it's appealed, any further enforcement would be on hold until the appeal is held we see what happens there. Let's say that the Superior Court also upholds the City's position, then we continue on wherever we left off with the enforcement process.

Ms. Bowers: I have a motion. In case number BOA 20-06, at 800-802 Lexington Avenue, I move that we uphold the Zoning Notice of Violation. (1) The use in violation to erect, construct, reconstruct, alter, repaired, convert, maintain, or use any building or structure or use any land in violation or contravention of this ordinance or any other regulation made under the authority converted by this Ordinance. (2) In UMU Districts, no more than 20 vehicles may be stored on the premises at any one time. (3) a 6 foot tall opaque or wall must be provided around the vehicle storage area.

In support of the motion, I believe the Board will find the following facts: (1) that the property located at 800-802 Lexington Avenue is within the corporate limits of the City of Greensboro and subject to its jurisdiction and the application of its ordinances. (2) that the City of Greensboro Land Development Ordinance applies to the property and Sections relevant to this decision including Sections 30-5-1.4, 30-8-10-.4(C)(2) and Section 30-8-10.4(C)(4).

The Board accepts the following testimony in evidence as true in support of its decision. There has been testimony from the Zoning Enforcement Officer that she observed in excess of 20 vehicles on the property and that there was a chain link, which is not in compliance with the opaque fencing requirements. The testimony from Mr. Schultz, the Fire Inspector, indicated that there was no Change of Use Permit sought or issued and that the use was not in compliance with the ordinance. The greater weight of the evidence presented shows that the Zoning Notice of Violation is consistent with LDO Sections 30-5-1.4, 30-8-10.4 (C) (2) and Section 30-8-10.4 (C) 4.

Ms. Necas: Second.

Chair Truby: I have a motion by Ms. Bowers, a second by Ms. Necas. And all in favor say Aye. The Board voted 7-0 in favor to approve the motion and uphold the Notice of Violation. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

Chair Truby: That passes unanimously. Okay, we'll go to – we don't have any other business.

ACKNOWLEDGEMENT OF ABSENCES

There no absences.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 8:56 p.m.

Respectfully submitted,

Chuck Truby, Chair
Board of Adjustment

**MEETING MINUTES
OF THE
GREENSBORO BOARD OF ADJUSTMENT
May 4, 2020**

The meeting of the Greensboro Board of Adjustment was held on Monday, May 4, 2020 at 5:30 p.m. online via a Zoom meeting. Board members present were: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Ted Oliver, Leah Necas, and Deborah Bowers. City staff present were Shayna Thiel, Mike Kirkman and Luke Carter (Planning), and Andrew Kelly and Al Andrews (City Attorney's office).

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. He also provided additional details for the procedure of the online meeting. The Chair then 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 (February 24, 2020)

Mr. Waddell made a motion to approve the minutes, seconded by Skenes. The Board voted 7-0 to approve 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.

CONTINUANCES/WITHDRAWALS

No continuances or withdrawals.

OLD BUSINESS

No old business.

NEW BUSINESS

1. VARIANCES

a. BOA-20-07: 3710 BRADY STREET (Approved)

Ms. Thiel stated in case BOA-20-07, 2710 Brady Street, Ian McFadden for Thomas E. McFadden Living Trust, request a variance to allow an existing building to encroach 11 feet into a required 15 foot side setback. The building is 4 feet from the side property line.

Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 – 7. The Land Development Ordinance reference was Section 30-7-5.1, Table 7-14: In the O District, minimum side setback adjacent to RM-5, RM-8, and all R- Districts is 15 feet.

Background and Site Information: The subject lot is located on the south side of Brady Street, west of Bricker Street, and is zoned CD-O. Tax records indicate the lot contains approximately 13,068 square feet and the building was constructed in 1976. The subject lot and the adjacent lot at 1000 Bricker Street are both owned by Thomas E. McFadden Living Trust and are considered a zoned lot containing one structure. The existing building is considered nonconforming because the existing structure does not meet the required 15 foot side setback from the internal property line. The owner wishes to sell the lots

separately, which cannot be done if the nonconformity remains. If the variance is granted, the existing building will become conforming and the lots can be sold and developed separately.

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 and any other speakers to provide their name and address for the record.

The applicant, Ian McFadden, and real estate broker, Shelia Siler were sworn in.

Ian McFadden, 8159 Stonecrest Drive, Melbourne, FL, stated he is the trustee for his father's estate; which both properties are a part of. Mr. McFadden advised his father has become incapacitated due to illness. The property must be in compliance in order to sell it.

Chair Truby inquired if there were any questions. Mr. Oliver inquired what would the existing building be used for in the future.

Shelia Siler, 601 Summit Avenue, responded currently the building is empty and in poor condition. The building would be sold as is. Mr. Oliver asked if he was correct there was a contract for the Bricker Street lot and a 3 bedroom home would be built there. Ms. Siler responded that was correct. Mr. Oliver inquired if a house would be allowed to be built on the subject property since it is zoned for office. Mr. Kirkman stated the conditions for this property currently limited only to a daycare center and a church. The Office district in general allows for residential use, but this specific use currently is limited to only those uses based on the zoning condition. Mr. Oliver asked if the building was torn down and a home built there, they would need to have it rezoned. Mr. Kirkman responded that was correct.

The public hearing was closed by consent.

Having no further questions, Chair Truby requested a motion. Mr. Oliver moved that in BOA-20-07 at 3710 Brady Street, based on the stated findings of fact, 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 with the property by applying strict application of the ordinance because the applicant wants to sell the adjoining lot. Without this variance, the Bricker Street lot is much less attractive and there is a purchaser of the Bricker Street lot. 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 Brady Street is zoned CD-O and the building is so close to the property and makes selling the Bricker Street lot more difficult. These conditions existed prior to the applicant's ownership. The hardship is not the results of the applicant's own actions because the structure was built in 1976 before the current owners' acquisition. 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 if the variance is granted, the Bricker Street lot will have a new 3 bedroom two bath home built on it and will fill an empty lot and improve the neighborhood. Seconded by Waddell. The Board voted 7-0 to approve the variance requested (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

b. BOA-20-08: 3 VANHORNE COURT (Approved)

The applicant, Rajesh Shah and contractor, George Kranzler, were sworn in.

Ms. Thiel stated in case BOA-20-08-03, Rajesh and Rita Shah request a variance to allow an existing house and proposed addition to encroach 13.56 feet into a required 20 foot rear setback. The house and addition will be 6.44 feet from the rear property line. Zoning R-3 Cluster (Residential Single-Family); Section 30-7-3-2 – Table 7.2; Cross Street – Olde Salem Drive

Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance Reference Section is Section 30-7-3.2 – Table 7-2: Minimum rear setback is 20 feet in the R-5 District (as applied through the Cluster Development standards of Section 30.7-3.3B – Table 7-11).

Background and Site Information: The subject lot is located on the south side of Vanhorne Court, north of Olde Salem Drive, and is zoned R-3 Cluster. Tax records indicate the cul-de-sac lot contains approximately 43,560 square feet and the house was constructed in 2003. The recorded plat identifies the Spencers Trace subdivision as a cluster development, so R-5 District dimensional standards apply instead of R-3 District dimensional standards. Per the Land Development Ordinance, a rear setback is a setback from an interior property line lying on the opposite side of the lot from the front street setback. Based on that definition, the subject lot has two rear setbacks. The existing house is considered a nonconforming structure as it encroaches 13.56 feet into a required 20 foot rear setback. The applicants propose to construct a sunroom addition at the back of the existing house that would encroach into a required 20 foot rear setback, but not any more than the existing house. The applicants seek a variance to address the existing nonconformity and allow for the proposed addition.

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

Chair Truby requested the applicant to come forward and present his case.

George Kranzler, 212 Fiddlers Knoll Court, Kernersville, advised he would be speaking for Mr. Shah and stated if facing the back, the back door has a window on the left and on the right side the door. The proposal is to have a door between the two windows which would be approximately 18 feet wide and extend out 24 feet. The house is encroaching the backyard setback and this issue was not known until this project. The overall length could be shortened to move further away from the setback.

Chair Truby asked the Board for questions. Ms. Necas referenced Exhibit B and asked if there would a side setback and a rear setback. Mr. Kranzler responded that was correct. Ms. Necas inquired if there was an existing deck there previously that was removed. Mr. Kranzler responded there was one there previously. Ms. Necas stated it would be something added for value to the house. Mr. Kranzler responded that was correct. Chair Truby asked if any neighbors contacted them. Mr. Kranzler stated at the beginning, he went to door to door and spoke to each one of individuals surrounding Mr. Shah's home. It was approximately 8 to 10 homes. The four houses that are on Mr. Shah's back yard lines did not have a problem with it. A sign was posted and no one has said anything about the construction.

Chair Truby stated as there were no additional questions, asked if there was anyone present in opposition to this case. Ms. Thiel responded she had not heard of any opposition to this request. Mr. Kelly advised Chair Truby to close the public hearing before the motion.

Chair Truby stated he was closing the public hearing and requested a motion. Mr. Waddell moved that in BOA-20-08 at 3 Vanhorne Court, based on the stated findings of the fact, the Zoning Enforcement Officer be overruled and that the variance be granted based on the following: When unnecessary hardships result in carrying out the strict letter of the zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of the following. If the applicant complies with the provisions of the ordinance, unnecessary hardship will result to the property by applying strict application of the ordinance because due to the topography of the subject property, there is no alternative location that will satisfy the setback requirements. The hardship in which the applicant complains results from conditions that are peculiar to the property and unique circumstances related to the applicant's property because the shape of the lot is unique and involves two rear setbacks. The

location of the rear door is the most reasonable location for the sunroom. The hardship is not the result of the applicant's own action because the subject property was constructed in 2003 prior to the current owners who purchased the property in 2010. 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 granting of the variance does not endanger the safety of the public. In addition, the owners are using the existing similar style siding and windows that will help preserve the spirit of the neighborhood. Seconded by Ms. Skenes. The Board voted 7-0 to approve the variance requested (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

c. BOA-20-09: 3 GALLERIA COURT (Approved)

The applicants were sworn in.

Ms. Thiel stated in case BOA-20-09, Scott and Rhonda Welch request a variance to allow a proposed porch addition to encroach 8.5 feet into a required 20 foot rear setback. The porch addition will be 11.5 feet from the rear property line. Zoning R-3 Cluster (Residential Single-Family); Section 30-7-3-2 – Table 7.2; Cross Street –Westridge Forest Court.

Evidence provided by the applicant included Exhibits A-D. Supporting documentation from staff included Exhibits 1 through 9. The Land Development Ordinance reference section is Section 30-7-3.2 – Table 7-2: Minimum rear setback is 20 feet in the R-5 District (as applied through the Cluster Development standards of Section 30.7-3.3B – Table 7-11).

Background and Site Information: The subject lot is located on the west side of Galleria Court, south of Westridge Forest Court and is zoned R-3 Cluster. Tax records indicate the cul-de-sac lot contains approximately 8,712 square feet and the house was constructed in 2017. The recorded plat identifies the Westridge Forest subdivision as a cluster development, so R-5 District dimensional standards apply instead of R-3 District dimensional standards. The existing house is considered a nonconforming structure as a deck that is more than 4 feet above grade encroaches 8.5 feet into a required 20 foot rear setback. The deck was not included in the original building permit application #201714018 that was approved for new house construction in 2017. The applicants propose to construct a roof over the existing deck, making it a covered porch. There will be no change to the deck footprint. The applicants seek a variance to allow the proposed porch addition to encroach 8.5 feet into a required 20 foot rear setback. The porch additional will be 11.5 feet 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 requested the applicant to come forward and present his case.

Scott and Rhonda Welch, 3 Galleria Court. Mr. Welch stated they moved in the house approximately 2 years prior. There is a deck in the back which faces the sun in early evening and can be very hot. They would like to have a covered roof structure which will not change the footprint of the deck itself. Neighbors were contacted and no one expressed any issues. Letters expressing support were submitted prior to the Board meeting.

Chair Truby inquired if there were any questions for the applicant. Mr. Waddell asked if prior to the construction for the covering of deck was when it was discovered the deck was not included in the original footprint. Mr. Welch stated they purchased the home from the builder and did not have any knowledge that the deck was out of zoning. Ms. Necas asked if there was any proof that the deck was there when they purchased the house. Mr. Welch responded they have videos of before the house was closed on. Ms. Necas stated on the aerial map is from 2018 and asked if it was before they purchased the

house. She was asking because on the picture it was not obvious that the deck is present and appears before it was not finished and wondered if there was a date before that. Ms. Thiel responded she did not know when the aerials were taken in 2018. Ms. Necas stated she didn't see it. Mr. Welch responded there are two exit doors from the kitchen that go out onto the deck. Ms. Necas stated she was okay with it. No further questions. Chair Truby stated Mr. Welch did a good job with obtaining the letters from his neighbors and stated he did not have an issue with the covering.

Chair Truby inquired if there was anyone to speak in opposition to this request, Ms. Thiel responded there was no opposition expressed. Chair Truby closed the public hearing and made the motion.

Chair Truby moved that in BOA-20-09 at 3 Galleria Court, based on the stated findings of fact, 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 owner would not be allowed to cover the existing deck. 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 slope of the yard require the existing deck being build 11 feet above the ground. The unusual shape of the lot required the deck to be built in the setback. The hardship is not the result of the applicant's own actions because the deck was built by the original builder prior to the owner purchasing the property. The deck was not shown on the plot plans submitted by the builder when applying for the building permit. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety and welfare, and substantial justice because there will be greater privacy for the surrounding neighbors. The permanent covering will be safer than an umbrella or an awning. Seconded by Mr. Oliver. The Board voted 7-0 to approve the variance requested (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

d. BOA-20-10: 3907 GILMORE DRIVE (Approved)

Anny Gomez advised she was the daughter of the applicants, Ana Nunez de Gomez and Victor Manuel Gomez. Her parents do not speak English and Ms. Gomez will be translating on their behalf. All three were sworn in by Chair Truby.

Ms. Thiel stated in case BOA-20-10, Ana Nunez de Gomez and Victor Manuel Gomez request a variance to allow a proposed accessory dwelling to encroach 5.4 feet into a required 10 foot side setback. The accessory dwelling will be 4.6 feet from the side property line.

Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-8-11.2(D): Accessory dwellings must meet location and dimensional requirements of the principal structure. 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 south side of Gilmore Drive, east of Groometown Road, and is zoned R-3. Tax records indicate the lot contains approximately 39,640 square feet and the house was constructed in 1948. The applicants propose to convert an existing 672 square foot garage into an accessory dwelling. Per the Land Development Ordinance, accessory dwellings must meet the same required setbacks as the principal dwelling. If converted into an accessory dwelling, the structure will not meet the minimum required 10 foot side setback requirement. It will remain 4.6 feet from the side property line. The applicants indicate that the additional storage shown on the site plan at the back of the existing garage will remain separate and will not be included as part of the accessory 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 requested the speaker to state the plans and who would be living in the garage.

Anny Gomez, 3907 Gilmore Drive, stated herself and her partner would be move into the garage for privacy and to provide additional income to her parents to retain the property. It will also increase the value of the property.

Chair asked Board members if they had any questions for the applicant, and they did not. Chair Truby inquired if Ms. Thiel was aware of any opposition to this request. Ms. Thiel responded she did not receive any opposition to this request. Chair Truby closed the public hearing and asked for a motion.

Ms. Skenes moved that in BOA-20-10 at 3907 Gilmore Drive, based on the stated findings of fact, 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 hardships will result to the property by applying the strict application of the ordinance because the existing building, while meeting the LDO side line requirement as a garage, would not be in compliance as an accessory dwelling unit and could not be converted to an accessory dwelling unit. 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 would not meet the standard and maintain its footprint. The garage has been in place for a number of years and fits in with the neighborhood. The hardship is not the result of the applicant's own actions because the garage has been in place for a number of years and is a logical solution to adding additional living space to the property. The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirt and assures public safety, welfare, and substantial justice because there would be no change to the location of the foundation as an existing garage. The updated facility will not be a visual issue in the neighborhood and will add value to the subject property.

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

e. BOA-20-11: 2618 DEER PLACE (Approved)

The applicant was sworn in.

Ms. Thiel stated in case BOA-20-11, William Geter requests four variances: (1) To allow a proposed bathroom addition to encroach 2.2 feet into a required 10 foot side setback. The bathroom addition will be 7.8 feet from the side property line. (2) To allow a proposed carport addition to encroach 1.8 feet into a required 10 foot side setback. The carport additional will be 8.2 feet from the side property line. (3) To allow an existing house and proposed additions to encroach 11 feet into a required 52 foot front setback. The house and additions will be 41 feet from the front property line. (4) To allow an existing house to encroach 10.5 feet into a required 30 foot rear setback. The house is 19.5 feet from the rear property line.

Evidence provided by the applicant included Exhibits A, B and C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance References are Sections 30-7-3.2 – Table 7-1: In the R-3 District, minimum side setback is 10 feet, minimum rear setback is 30 feet, and maximum building coverage is 30%. 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 north side of Deer Place, east of Pinecroft Road, and is zoned R-3. Tax records indicate the lot contains approximately 13,068 square feet and the house was constructed in 1942. The existing house is considered a nonconforming structure as it encroaches 11 feet into a required 52 foot front setback and 10.5 feet into a required 30 foot rear setback. The applicant proposed to construct two additions to the existing house, consisting of a bathroom and carport which will encroach into the required 10 side setback along the west and east side property lines. The proposed bathroom addition will encroach 2.2 feet into a required 10 foot side setback and be 7.8 feet from the side property line. The proposed carport addition will encroach 1.8 feet into a required 10 foot side setback and be 8.2 feet from the side property line. Since the proposed additions will be aligned with the front of the existing house, they will also encroach 11 feet into a required 52 foot front setback and be 41 feet from the front property line. The proposed additions will not make the existing house any more nonconforming relative to the rear setback. But since the existing house already encroaches 10.5 feet into a required 30 foot rear setback, the applicant seeks 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 there were no applicable overlays or plans.

Chair Truby requested the speaker to present his case.

William Geter, 2618 Deer Place, stated as mentioned the house was built in 1942. Mr. Geter advised he has health issues resulting in the need for a handicap accessible bathroom which he considers as an extension from his master bedroom. For the carport he would like to place a shelter over the existing concrete. There are 10 foot setbacks on both sides of the house. Mr. Geter wants to stay in the house but needs to have the handicap features mentioned.

Chair Truby inquired if there were any questions for the applicant. Ms. Necas inquired if there were any neighbors that consented and are okay with it. Mr. Geter responded on both sides the neighbors are for it. Having no more questions, Chair Truby inquired if there was anyone in opposition to the request. Ms. Thiel responded there was not. Chair Truby closed the public hearing and requested a motion.

Ms. Necas moved that in BOA-20-10 at 2618 Deer Place, based on the stated findings of fact, the Zoning Enforcement Officer be overruled and the four variances be 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 current house does not include a handicapped accessible bathroom for the homeowner or visitors. (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 existing house is a nonconforming structure without a handicapped accessible bathroom and its addition is not feasible anywhere else. (3) The hardship is not a result of the applicant's own actions because the existing house was built in 1942 and is a nonconforming structure. (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 additions will not make the house any more nonconforming relative to the front and rear setbacks. The proposed carport is merely covering an existing concrete pad and the proposed additions will be in harmony with the existing neighborhood. Seconded by Waddell. The Board voted 7-0 to approve the variance requested (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

f. BOA-20-12: 2101 TEXTILE DRIVE (Approved)

The applicant was sworn in.

Ms. Thiel stated in case BOA-20-12, 2101 Textile Drive, Sergio De Luna and Cecilia Ramirez request two variances: (1) To allow a proposed house to encroach 20.42 feet into a required 35 foot thoroughfare setback. The house will be 14.58 feet from the side property line along North English Street. (2) To allow an existing accessory structure to encroach 29.4 feet into a required 35 foot thoroughfare setback. The accessory structure is 5.6 feet from the property line along North English Street.

Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance References are Section 30-7-3.2 – Table 7-2: In the R-5 District minimum thoroughfare setback is 35 feet. Section 30-8-11.1(B)(1): Accessory structures must be located behind the front building line of the principal structure, and are not allowed in a required setback. Section 30-2-4: Nonconforming Structures.

Background and Site Information: The subject lot is located on the north side of Textile Drive, east of North English Street, and is zoned R-5. Tax records indicate the lot contains approximately 9,583 square feet. The applicants propose to construct a single-family house on the subject lot and seek a variance to encroach 20.42 feet into the required 35 foot thoroughfare setback. The house will be 14.58 feet from the property line along West Florida Street, which is classified as a thoroughfare per the Greensboro Urban Area Thoroughfare Plan. An existing accessory structure on the lot encroaches 29.4 feet into a required 35 foot thoroughfare setback. The accessory structure is 5.6 feet from the property line along North English Street. The applicants plan no alterations to the existing accessory structure, but seek a variance at this time to bring it into compliance.

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 requested the applicant to present his case.

Sergio De Luna, 120 Eisenhower Avenue, advised there was a house there previously on the lot that was demolished. The first thought was to fix it up but due to the cost, he decided to tear it down and try to build a new home. The old house was only approximately 5 feet off of North English Street. Without the current variance there would only be approximately 10 to 15 feet of livable space with the setbacks. The new proposed structure would be in the back right corner, between the storage building and the next property. There will be a section that would interfere with the 30 foot setback. Mr. DeLuna is attempting to obtain the variance to have a livable house.

Chair Truby stated he could see on the aerial picture provided that the previous house appeared to be right on top of the road. Chair Truby asked Mr. De Luna if he was approximately 10 feet back from English Street than what the original home was. Mr. De Luna responded he is further back than the original house was on North English side and Textile Drive side. Chair Truby stated if Mr. De Luna was to honor the 35 feet, there would not be enough width to build anything habitable, as he saw it.

Chair Truby asked if the Board members had any questions for the applicant.

Mr. Ramsey asked if Mr. De Luna knew when the adjacent structure was built. Mr. De Luna responded the accessory structure appears to be original and thought it was about the same time as the house as it has plumbing drain in the ground. Mr. Ramsey asked when the house was built. Mr. De Luna responded he was not sure at the moment. Mr. De Luna thought it was about the 1950s or older. Mr. Ramsey stated he was trying to determine if it was before the current setbacks were done. Chair Truby stated the tax

card indicates 1958. Mr. Kelly stated that the property report for Building 2 says the year built was 1948 and the effective date was 1968. Mr. Kelly advised the Board to use 1948 for the accessory building.

Chair Truby inquired if there was anyone in opposition to this request. Ms. Thiel responded there was no opposition. Chair Truby closed the public hearing and requested a motion.

Mr. Ramsey moved that in BOA-20-012 at 2101 Textile Drive, based on the stated findings of fact, the Zoning Enforcement Officer be overruled and the variances granted based on the following: When unnecessary hardships will result in carrying out the strict letter of the zoning ordinance, the Board of Adjustment shall vary any of the provisions of the ordinance upon a showing of all of the following: (1) If the applicant complies with the provisions of the ownership, unnecessary hardship will result to the property by applying strict use of the ordinance because the applicant lot is so encumbered by setbacks that construction of a dwelling is impractical within the existing setback regime and the existing structure was constructed prior to the implementation of the setback regime. (2) The hardship of which the applicant complains results from conditions that are peculiar to the property and unique circumstances in light of the applicant's property because the applicant cannot construct a dwelling of consequence upon application of the current setback requirements and the existing structure was constructed prior to the implementation of the existing setback regime. (3) The hardship was not a result of the applicant's own actions because the setbacks were previously placed into effect without regard to the effect on this lot and the ability to construct a dwelling on this spot is very limited given the implantation and the existing structure has historically, previously infringed on the setback. 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 construction proposed by the applicant will be a positive improvement to the neighborhood and will render a partially vacant lot with a new structure.

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

OTHER BUSINESS:

No further business.

ACKNOWLEDGEMENT OF ABSENCES:

There were no absences.

ADJOURNMENT:

The meeting was adjourned by Chair Truby at approximately 6:39 p.m.

Respectfully submitted,

Chuck Truby, Chair
Board of Adjustment

MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
May 26, 2020

The meeting of the Greensboro Board of Adjustment was held on Tuesday, May 26, 2020 at 5:35 p.m. online via Zoom. Board members present were: Chair Chuck Truby, Mary Skenes, James Waddell, Vaughn Ramsey, Ted Oliver, Leah Necas, and Stephen Barkdull. City staff present were Shayna Thiel, Luke Carter, Mike Kirkman and Mike Cowhig, Alan Andrews, Chief Deputy City Attorney, and Andrew Kelly, Assistant City Attorney were also in attendance.

Chair Truby welcomed everyone to the virtual 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 MINUTES (May 4, 2020)

Mr. Ramsey moved 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 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 case.

CONTINUANCES/WITHDRAWALS

No continuances or withdrawals.

OLD BUSINESS

No old business.

NEW BUSINESS

1. SPECIAL EXCEPTION

a. BOA-20-13: 207 NORTH PARK DRIVE (APPROVED)

Ms. Thiel stated in case BOA-20-13, at 207 North Park Drive, the applicants, Matthew and Nicole Bergemann request a special exception to allow a proposed accessory garage to encroach 1 foot into a required 3 foot side setback and 3 feet into a required 3 foot rear setback. The accessory garage will be 2 feet from the side property line and 0 foot from the rear property line.

Evidence provided by the applicants included Exhibits A through C. Supporting documentation from staff included Exhibits 1 – 8. The Land Development Ordinance Reference is Section 30-8-1.1 (C)(2): Accessory structures less than 15 feet tall must be set back at least 3 feet from side and rear lot line; and Section 30-2-4, Nonconforming structures.

Background and Site Information: The subject lot is located on the north side of North Park Drive, east of Magnolia Street, and is zoned R-5. Tax records indicate the lot contains approximately 9,148 square feet and the house was constructed in 1912. The applicants propose to convert the existing carport into a garage. As part of the conversion, the storage area that is currently under the carport will be relocated to the outside, extending the footprint of the garage, and this extended area will meet the setback requirements. Per the submitted site plan, the proposed garage will be less than 15 feet tall. It will be located 2 feet from the side property line and 0 feet from the rear property line. The applicants have communicated with the City's Chief Building Inspector and plan to make the two walls of the proposed garage that are within 3 feet of the property lines non-combustible. Construction materials will be reviewed and inspected during the building permit process. On May 7, 2020, the Historic Preservation Commission approved a Certificate of Appropriateness for the conversion of the carport to a garage and recommended in favor a special exception for setback encroachments. Ms. Thiel then provided the land use and zoning for this property and surrounding properties and noted the applicable overlays and plans.

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

The applicants were sworn in.

Matthew Bergemann, 207 North Park Drive, stated this accessory building in its current state has quite a bit of damage and is not functional. Their intent is to close it in so it is cleaned up and more suitable for use. Currently, there is a lot of damage and they want to upgrade it.

Chair Truby inquired if there were any questions for the applicants. Mr. Waddell inquired if the neighbors are aware of the project or had they inquired about it. Mr. Bergemann responded that they had notified all of the surrounding neighbors and everyone is in support. Mr. Oliver inquired if the footprint of the garage was the same as the carport. Mr. Bergemann responded that was correct.

Ms. Necas asked staff a question about the last sentence of the applicants' response on the Board of Adjustment Special Exception application form, which said that "the Board may want to include a decision that allows this new structure to be attached to a non-conforming structure." Ms. Necas said that the storage was going further in on the property, not encroaching on the side or rear setback, and asked if the Board needed to include that language. Mr. Kelly stated that he thought what was happening was that even though the applicants are taking something out, the special exception requested is going to cover what they're doing, but since it is something new, they were advising you may want to address that. The Board recognized that that was what was happening. Mr. Kelly stated that in his opinion, the motion does not need to address that specifically, as the minutes will reflect the scope of the project and the Board understands that the applicants are going to add some new storage room on the side, and on the basis of what is submitted to the Board, the Board is making that motion to approve or deny the special exception. Another issue was asked about the Historic Commission statement, and if the Board should make a decision that there will need a building inspection or something like that. Mr. Kelly stated he thought the Board was okay, and that the special exception can be approved based on the project scope submitted by the applicants. Mr. Kirkman stated that originally he thought there was a question about the applicants adding something else to a structure that is not currently meeting standards and that there are some decision points the Board generally makes in that case. Here, if the special exception is approved, then the structure is considered conforming, and there would not be a need for additional language to address the current nonconformity. The action to approve the special exception will address the issue of a nonconforming structure and any alterations are covered.

Chair Truby inquired if there was anyone else wishing to speak in favor of the request. Seeing none, he asked if there was anyone wishing to speak in opposition to the request. Seeing none, Chair Truby requested a motion to close the public hearing. Mr. Kelly advised the public hearing would need to be closed and advised that there is a 24-hour period to submit written comments. Chair Truby closed the public hearing subject to Mr. Kelly's comment. Chair Truby inquired if anyone had a motion.

Ms. Necas moved that in BOA-20-13, 207 North Park Drive, based on the stated findings of fact, the Zoning Enforcement Officer be overruled and a 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 proposed accessory garage will use the footprint of an existing carport, adding additional storage only towards the interior garage without encroaching further on the side or rear setbacks. (2) The granting of the Special Exception assures the public safety and welfare and substantial justice because the new walls of the garage will be non-combustible on the side and rear and the garage design would comply with the intent of the architectural and historic guidelines and the relevant historical overlays. Seconded by Mr. Waddell. The Board voted 7-0 in to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Barkdull. Nays: 0.)

OTHER BUSINESS:

No other business.

ACKNOWLEDGEMENT OF ABSENCES:

No absences.

ADJOURNMENT:

The meeting was adjourned by Chair Truby at approximately 5:55 p.m.

Respectfully submitted,

Chuck Truby, Chair
Board of Adjustment

MEETING MINUTES
Greensboro Board of Adjustment
June 22, 2020

The meeting of the Greensboro Board of Adjustment was held on Tuesday, June 22, 2020 at 5:40 p.m. online via Zoom. Board members present were: Chair Chuck Truby, Stephen Barkdull, James Waddell, Leah Necas, Mary Skenes, Vaughn Ramsey, and Ted Oliver. City staff present were Shayna Thiel, Luke Carter, Steve Galanti, Alan Andrews (Chief Deputy City Attorney) and Andrew Kelly (Assistant City Attorney).

Chair Truby welcomed everyone to the virtual 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.

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

APPROVAL OF THE MINUTES (May 26, 2020)

Ms. Necas advised the adjournment time of 6:55 pm. was incorrect in the meeting minutes. The correct time was 5:55 pm. Mr. Barkdull made a motion to approve the minutes as amended, seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Barkdull. Nays: 0.)

OLD BUSINESS

No old business.

NEW BUSINESS

1. VARIANCE

a. BOA-20-14: 1000 DOVER ROAD (APPROVED)

Ms. Thiel stated in case BOA-20-14, at 1000 Dover Road, Jimmy Haynes, on behalf of David and Ashley Anderson request a variance to allow a proposed house to encroach 14.8 feet into a required 45.8 foot front setback. The house will be 31 feet from the front property line.

Evidence provided by the applicant included Exhibits A through F. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-7-1.4 (A)(1)(B): front setback calculations.

Background and Site Information: The subject lot is located on the north side of Dover Road, west of Hammel Road, and is zoned R-3. Tax records indicate the lot contains approximately 20,038 square feet and the existing house was constructed in 1963. The applicants propose to demolish the existing house, which is a nonconforming structure, and construct a new one on the lot that will encroach 14.8 feet into a required 45.8 foot front setback and be 31 feet from the front property line. If the variance is granted, the applicants will proceed with the building permit process for demolition of the existing house and construction of the new one.

Ms. Thiel provided the land use and zoning for this property and surrounding properties and noted the applicable overlays and plans. Ms. Thiel advised staff received some notarized letters from neighbors supporting the project that can be displayed on the screen when applicable.

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

Jimmy Haynes, representing David and Ashley Anderson. Also present were Graham Farless and Brey Curtis, neighbors in support of the request. Chair Truby advised if they were to speak, they would need to be sworn in. Mr. Haynes advised other than acknowledging their support, he did not think they had anything else to say.

Mr. Haynes stated this request is for a 14.8 foot variance into a 45.8 foot setback. The resulting setback will be 31 feet and be no closer to the front property than the home immediately next door which is 30 feet. The hardship for this property was except for this variance, the applicants would not be able to build the house. The house was purchased in 2008 and the existing home was a legal nonconforming house due the 2014 change to the Land Development Ordinance (LDO). The existing house is 5.9 feet from where the existing setback is located and the variance request is for an additional 8.9 feet from where the house currently exists. The topography slopes down and where the subject house is located it is a shotgun lot and almost twice as long as it is wide, sloping down toward the golf course. The existing home has a carport and the plans are to build a house that will be in compliance with the setback requirements on the east, west, and rear, and a large garage that would encroach into the front setback. This hardship did not result from actions taken by the applicant as the house was purchased in 2008. The applicants want to stay in this location as they love their neighbors and their family is growing. The requested variance is consistent with the spirit, purpose, and intent of the ordinance such that public safety is secured and substantial justice achieved. A memorandum was attached to the packets presented from 2014 referencing the application of the infill setback standards stating the intent for an average setback was to obtain relative consistency among the setback, not a precise line. Looking at the houses, each setback is different and unique to their property. This variance will be not be any closer to the property line and will comply with the R-3 25 foot setback. Mr. Haynes referred to the plans indicating the two-car garage. Plat Book 19-25 shows the lot having utility easements in the rear and eastern property line. Mr. Haynes stated the evidence does point to approval of the variance. Chair Truby inquired if there were questions for Mr. Haynes. Mr. Waddell requested to have the notarized documents placed on the screen.

Mr. Ramsey asked if there was opposition. Mr. Haynes responded he was not aware of any. Mr. Oliver asked what the average setback was for all the other houses. Mr. Haynes responded each one would be different because it is the average for each house, two on the left and two on the right. For 1000 Dover Road, it is 45.8, which sits back further than the 25 feet. The main house itself will be beyond 45.8 feet. Mr. Haynes did not have the exact measurement, but only the garage would encroach. Ms. Necas stated her concern was not actually about adding a garage, but approving an entire house that is going to be actually 14 feet into the setback, not 8 feet closer than the prior house. The old house can't be used in defense of building a new house on the same property. Ms. Necas stated that going by the four factors relevant to the issuance of a variance, she did not think this request was appropriate. Usually when approvals are made, it is for a house that was built in the 1960s, such as this one, and requesting an addition to a house that would not be moving. This variance is being asked for a new proposed home. Ms. Necas was concerned for how the variance would be written for this particular house. If the house is being moved, the Board should not be considering the house at all in the approval because the house is no longer going to be in existence. The Board is being asked to approve an entirely new setback for a new house. There is not enough leeway for the Board of Adjustment to approve the request just because the prior house was there. Mr. Haynes responded the house is within the setbacks as they exist. The footprint is almost identical. He said that only the garage will encroach and tried to distinguish between the house and the garage. The house was built in 1963, purchased in 2008. One of the points in favor of the variance is it was not until 2014 that the average front setbacks came into play. It was not until 2014 when the LDO required a front average setback that anything they would want to do now with this home would encroach into the front setback. Mr. Haynes stated it is very important to tailor the variance to exactly what is being asked for. This request is for an attached 2 car garage that will encroach 14.8 feet into a 45.8 front setback.

Chair Truby asked if there were any further questions for the applicant. Ms. Thiel shared the notarized letter from the Sherrills at 1006 Dover Road on the screen. Chair Truby asked where was the Sherrills home was

located in relation to the applicant's home. Ms. Thiel responded probably 3 houses down. Ms. Thiel shared a notarized letter from the Cokers of 1003 Dover Road who live across the street. Ms. Thiel advised there was also an email that was not notarized from Erica Procton at 912 Dover Road. Chair Truby asked if Ms. Procton would be speaking. Ms. Thiel responded it did not appear she was in the meeting. Chair Truby requested Graham Farless to state his name and address for the record. Mr. Farless was sworn in to provide testimony.

Graham Farless, 909 Dover Road. Mr. Farless supported the request. He had reviewed the plans and felt the setback as proposed and the proposal of the house would be consistent with the neighborhood. Mr. Farless did not see any issues from the neighborhood and street perspective at all.

Chair Truby requested the Andersons to speak. The Andersons were sworn in to provide testimony.

David and Ashley Anderson, 1000 Dover Road. Chair Truby asked the Andersons if they had communicated with the neighbors on the left and right of the them. Ms. Anderson responded that Brey Curtis is on Zoom and the neighbor directly on the other side, Erica Procton, sent the email that was not notarized. They are their direct neighbors. Chair Truby inquired if there were any complaints from any of the surround neighborhoods. Ms. Anderson responded they have not received any. Chair Truby inquired if any of the other Board members had questions for the owners.

Chair Truby inquired if the attorney had anything else to add. Mr. Haynes responded he did not. Chair Truby inquired if there was anyone wishing to speak in opposition to the request. Seeing none, Chair Truby requested to go to Board discussion.

DISCUSSION

Ms. Skenes, Mr. Waddell, Mr. Ramsey and Mr. Oliver felt this type of issue has been dealt by the Board since 2014. It is a relatively small adjustment and the adjoining property owners are in support of the project. Ms. Necas expressed her concern that if it was decided later on to build a house 15 feet in front of where the house is currently, the owners would be allowed to do that. Ms. Necas would like a way to make it specific that the plans submitted are the only ones being approved, as the neighbors living nearby are approving the proposed plan, not any change in the future. Chair Truby stated Ms. Necas brought up a good point. Chair Truby asked Mr. Kelly, Assistant City Attorney, if the Board granted the variance, could the applicants come back with a new plan and move the entire house up to the approved setback line. Mr. Kelly advised in theory the applicants could do that and reminded the Board that site or plan specific information comes before the Board with every case. The Board will approve a setback but in theory since the setback is being changed the house could be extended so that it is a square front or whatever type of façade the owners wanted. The Board does look at what the applicant is going to do and considers the neighborhood acceptance or opposition of the request. The applicant has the burden of proving that what they would like will meet all of the factors. The weight of the project may influence that particular decision. Mr. Kelly stated he did not know of a case where someone has asked for one thing and then did something substantially different. In theory, they would be allowed to do that. Conditions are what make the approval of the project appropriate and the granting of the variance appropriate. Mr. Haynes responded that what the application states and what has been submitted to the Board is for a proposed 2 car garage addition to the front of a new home. Mr. Kelly asked if the applicants would be okay with accepting conditions saying that based on the project as submitted. Mr. Haynes stated the plans have been put forward but have not been finalized as the variance needs to be in place. Mr. Haynes did not feel the applicants were opposed to it. If there was a real objection to the point where it would not be approved, a condition would be offered. Mr. Kelly stated the condition did not need to be plan specific, it is more project specific. Mr. Haynes stated in the application a variance was requested to allow a proposed 2 car garage addition in front of the new home to encroach. They did not petition for the entire house to encroach into a setback, only the garage. Ms. Thiel stated it was advertised as the proposed house because the garage is part of the house. The proposed garage is not separate. Mr. Kelly stated if there is concern, the Board does not have to approve the variance request. The Board could consider granting the variance for the 15 foot setback for the purpose of allowing the applicant to construct a 2 car garage addition. Mr. Kelly recommended the applicants accept any condition before the Board approves the variance. Mr. Ramsey asked if this should be continued to allow for the applicants to discuss the. Mr. Anderson stated if

the Board grants the variance, they would be able to move their entire house 31 feet from the street, but they are not going to. If they needed to provide a signed statement, they were happy to do so. Chair Truby asked if a condition was added into the motion stating the variance is being approved for the garage, would the applicants accept that as a condition to the variance approval. Mr. Anderson stated they would, but asked if that meant they would not be able to have an attic on top of the garage or a bonus room on top of the garage. Without talking to his attorney, he was not able to say yes. Mr. Anderson said that the plan set forth is what they are going to do if they are granted the variance and they are not going to move the entire house inside the setback. Ms. Anderson stated their next door neighbor (Brey Curtis) has not spoken but their garage would be further from the street than his by approximately a foot. Mr. Haynes stated carving out of what can and cannot go into the setback becomes closer to use and accessory uses versus a variance for the setback. Chair Truby stated based on the testimony and evidence, he was personally in support of the request and inquired if Mr. Barkdull had any comments, questions, or a motion.

Mr. Barkdull moved that in BOA-20-15, 1000 Dover Road, 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 the applicant would not be allowed to raze the existing house for new construction and add the requested garage addition. (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 this property has a significant slope in the topography in the rear that backs up to the golf course, building the garage in the front is the only viable option. (3) The hardship is not the result of the applicant's own actions because the applicant purchased the home in 2008 with a front setback of 25, subsequently the LDO changed setbacks to 45.8 feet. (4) The variance is in harmony with the general purpose and intent of this ordinance and preserves its spirit and assures public safety, welfare, welfare, and substantial justice because the intent of the standard is to maintain consistency in the setbacks along Dover Road. This setback will be in harmony with the average setback along Dover Road. Seconded by Mr. Waddell. The Board voted 6-1 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, and Barkdull. Nays: 1, Necas.)

b. BOA-20-15: 3602 BUFFINGTON PLACE (APPROVED)

Ms. Thiel stated in case BOA-20-15, the applicants request a variance to allow a proposed porch addition to encroach 19 feet into a required 30 foot rear setback. The porch addition will be 11 feet from the rear property line.

Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance Reference is Section 30-7-3.2 – Table 7-1: minimum rear setback is 30 feet in the R-3 District.

Background and Site Information: The subject lot is located on the north side of Buffington Place, south of Muirfield Drive, and is zoned R-3. Tax records indicate the cul-de-sac lot contains approximately 14, 810 square feet and the house was constructed in 1977. The existing house which includes an uncovered deck, is considered a nonconforming structure, as it encroaches 21 feet into a required 30 foot rear setback and also 1 foot into a 10 foot utility easement. The applicants propose to replace the existing deck with a covered porch at the rear of the house that will encroach 19 feet into a required 30 foot rear setback and will be 11 feet from the rear setback. The covered porch will have a smaller footprint than the existing deck and will be located outside of the utility easement. The applicants have applied for a building permit (#202003021) and if the variance is granted, will proceed with the permit process. If the variance is granted, the house will no longer be considered a nonconforming structure.

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 requested the applicant to come forward and provide their name and address for the record. The applicant was sworn. Chair Truby requested the applicant to tell the Board about his case.

Shayne Taylor, 3602 Buffington Place. He stated they would like to build an enclosed screened in patio that would replace the current deck. Mr. Taylor stated there is concrete on one side, a large slope on the left hand side. The house is set back on the lot where there is not much opportunity to do anything. Mr. Taylor said that the neighbors are supportive and provided 12 notarized letters. One of the letters was from the Cardinal Homeowners Association President.

DISCUSSION

Chair Truby inquired if there were questions from Board Members. Mr. Waddell stated he did not have questions but was very impressed by the applicant providing 12 notarized letters. Ms. Necas asked if the proposed porch was smaller than the current deck. Mr. Taylor responded that was correct. It will be moved outside of the utility easement to do the right thing. Chair Truby stated he did not have questions. Chair Truby inquired if there was anyone else to speak in support of the application. Seeing none, Chair Truby inquired if there was anyone in opposition to the request. Seeing none, Chair Truby inquired if there was a motion.

Mr. Ramsey moved that in BOA-20-15, 3602 Buffington Place, 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 topography of the lot and location of the current house and concrete slab make placement of a new deck into the setback as the only area to place the deck. The new deck will also no longer encroach into the utility easement. (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 current deck location was on the house when purchased by the applicant. (3) The hardship is not the result of the applicant's own actions because the current deck and concrete slab were in place when the applicant acquired the property (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 improvements will add to the value of the property and in harmony with the current neighborhood, moreover the proposed deck will have a smaller footprint than the current deck and not infringe into the utility easement and become a conforming structure. Seconded by Mr. Barkdull. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Barkdull, and Necas). Nays: 0.)

NO OTHER BUSINESS

No other business.

ACKNOWLEDGEMENT OF ABSENCES

There were no absences acknowledged.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 6:25 p.m.

Respectfully submitted,

Chuck Truby, Chair
Board of Adjustment

MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
JULY 27, 2020

The meeting of the Greensboro Board of Adjustment was held on Monday, July 27, 2020 at 5:31 p.m. online via Zoom. Board members present were: Chair Chuck Truby, Stephen Barkdull, James Waddell, Leah Necas, Mary Skenes, Vaughn Ramsey, and Ted Oliver. City staff present were Shayna Thiel, Mike Kirkman, Luke Carter, and Alan Andrews (Chief Deputy City Attorney).

Chair Truby welcomed everyone to the virtual 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 methods of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

APPROVAL OF THE MINUTES (June 22, 2020)

Mr. Barkdull 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, Oliver, Necas, and Barkdull. Nays: 0.)

OLD BUSINESS

No old business.

NEW BUSINESS

1. VARIANCE

a. BOA-20-16: 711 WESTLAND DRIVE (APPROVED)

Ms. Thiel stated in case BOA-20-16, at 711 Westland Drive, Mariam Stephan and Ibrahim Said Marei, request a variance to allow an accessory garage to use a separate meter when branching utility service from the principal dwelling is required.

Evidence provided by the applicant included Exhibits A through F. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference was Section 30-8-11.1(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 south side of Westland Drive, west of Lancaster Road and zoned R-3 (Residential Single-family). Tax records indicated the lot contains approximately 26,136 square feet and the house was constructed in 1955. The applicants propose to install a separate electrical meter on their existing accessory garage to accommodate two electric ceramic kilns. The applicants indicated Duke Energy suggested that the least invasive, destructive or damaging way to efficiently run power to the accessory garage would be to run a discreet line from the street utility pole along the existing driveway.

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

Chair Truby swore in the applicants, Mariam Stephan and Ibrahim Said Marei.

Mariam Stephan, 711 Westland Drive, said that they consulted two electricians and Duke Energy when considering power to the detached garage. The garage was one of the reasons why they purchased the house, as they needed more space to pursue their creative activities. The least invasive option that all three suggested was not only because there was not enough power on the utility box from the house, but because the previous owners exhausted that use from the box. To run a line in whatever way, their yard would experience extensive digging, and the cement and brick would have been dug up. Even though the garage is 20 feet from the home, the entrance to the garage is all brick and concrete. Duke Energy stated it would be easy for them to run a line directly from the street and up the side of the garage. They applied for a variance as they did not have a contractor. Ms. Stephen emphasized the reason for the request was due to the invasiveness on the yard's hardscaping and landscaping.

Chair Truby stated he did not have any questions. Mr. Waddell asked about the well pump that may impact the project. Ms. Stephen advised it was not in the application and was an oversight on her part. There is a well pump directly underneath the electric. Ms. Stephen assumed it would be navigated around if they had to or if they were forced to do something else. The well pump was another item in how the site was hodge-podge with construction in that area. Ms. Necas asked if there would be two electric ceramic kilns in the garage. Ms. Stephen responded that was correct.

Chair Truby inquired if there was anyone wishing to speak in opposition to the request. Seeing none, Chair Truby asked if there was a motion.

BOARD DISCUSSION

Mr. Waddell moved that in BOA-20-16, 711 Westland Drive, 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 granting utility service from the principal dwelling will require hardscaping of any area between the home and the garage creating a destructive option to the landscape. (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 this running electric from the principal dwelling following the ordinance is the most invasive option, where a less invasive alternative is available. (3) The hardship is not the result of the applicant's own actions because the applicant purchased the home in 2012 and installed with an underground irrigation system and well pump adjacent to the electrical panel on the primary dwelling. (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 owner selected the most efficient and reasonable method to continue the project. The property owners provided notice to neighbors within 150 feet of the property that is supported by notarized documents. Seconded by Ms. Necas. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Barkdull. Nays: 0)

b. BOA-20-17: 4622 HICONE ROAD (APPROVED)

Chair Truby swore in Benjamin Berry for testimony.

Mr. Ramsey requested recusal from this variance request. The Board voted 6-0 in favor of Mr. Ramsey's recusal. (Ayes: Truby, Skenes, Waddell, Oliver, Necas, and Barkdull. Nays: 0.)

Ms. Thiel stated in case BOA-20-17, at 4622 Hicone Road, SDP Greensboro 1, LLC, requests a variance to allow a proposed drive-through stacking lane to be 40.7 feet from a residential district when 50 feet is required.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1-8. The Land Development Ordinance Reference was Section 30-8-10.4(3)(a); Service areas and stacking lanes on lots abutting residential zoning districts must be set back at least 50 feet and landscaped in accordance with the type B buffer planting yard standards.

Background and Site Information: The subject lot is located on the south side of Hicone Road, west of Rankin Mill Road, and is zoned C-M (Commercial-Medium). Tax records indicate the vacant lot contains approximately 1.103 acres. The applicants propose to construct a Bojangles restaurant with a

drive-through facility. As proposed, the drive-through stacking lane will be 40.7 feet from a residential district when 50 feet is required. A type B landscape buffer is also proposed between the drive-through stacking lane and the abutting residentially zoned property. If the variance request is approved, the applicant will continue with the Technical Review Committee (TRC) review process as part of plan 2020-0769.

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

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

Nathan Duggins, attorney for the applicant, 100 N. Greene Street, referred to the site plan to indicate the hardship created by the 50 foot buffer requirement. The Housing Authority owns the adjacent residential property triggering the setback requirement mentioned by Ms. Thiel. Bojangles would be oriented east/west on the site. One of the reasons the store itself has to be pushed back on the site is there is a sidewalk and a third lane of traffic being installed by the developer on the north side of the site causing the site to push to the south and causing the drive through lane. The site plan says 43.7 feet, the distance is actually 40.7 feet from the property line. The hardship is the need for road improvements on Hicone Road and the sidewalks. This Bojangles will be a great addition to the neighborhood. Mr. Duggins indicated that other stores that will be constructed east of the site that will also be good additions. The type B buffer that is required and in the LDO section is being satisfied. The grade for the residential sitting behind this proposed development is lower than the subject site and there would be setbacks there. There has been no feedback and Mr. Duggins did not know if anyone was present in opposition to the request. All of the adjacent property owners have been notified as required. Mr. Duggins referred to Mr. Berry who will speak to the site plan and the need for the variance.

Benjamin Berry, 3555 Keith Street, Suite 109, Cleveland, TN, advised he was the civil engineer for the project. The hardship of the parcel is the narrowness of the site. There was a 50 foot setback on the front that is required and the same regulation regarding the stacking distance. Both requirements have been met. What was left was a 40 foot setback. Contributing to the narrowness of the property is that the developer dedicated a right of way for the road widening which was significant, as it was nearly 0.7 acres. Along with the right of way dedication, the developer of the project is funding the widening of Hicone Road, which is going to 3 lanes at the interstate on the west and 3 lanes east in front of the grocery store. Two lanes are currently in front of this site and the developer is funding road widening to 3 lanes and a sidewalk along the road. A rezoning process was completed and received no opposition. There is a good working relationship with the property owner to the south where the variance is being requested and they are supportive of the project.

Nathan Duggins stated the hardship is not being created by anything the developer has done, it is a consequence of the narrowness of the site. Mr. Duggins stated it is in harmony particularly with the landscape buffer being satisfied and is in harmony with the intent and spirit of the ordinance.

Chair Truby stated he did not have any questions and asked if any of the Board members had questions. Mr. Oliver asked the status of the residential area. Mr. Berry responded it was a development started several years ago with a lot of infrastructure in place, some pipes in the ground and curb and gutter. The original developer no longer owns the property. Housing Authority. The Housing Authority currently owns the property and plans to move forward with a project on that site and expects to start development in the near future. Ms. Necas asked Mr. Berry to describe a type B landscape buffer. Mr. Duggins responded there would be a canopy tree, an understory tree requirement of 3 per 100 linear feet and 5 understory trees per 100 linear feet and there must be 25 shrubs. Mr. Duggins referred to an illustrative drawing with the combination of trees and shrubbery in varying widths, the minimum being 40 and the maximum 45. Ms. Necas asked since the proposed buffer is 10

feet narrower, was any thought given in mitigating effects of noise or pollution from cars for future homeowners by making the shrubbery thicker or something to that effect. Mr. Barry responded that the 25 foot buffer is staying 25 feet and is an average width across both the AutoZone parcel to the east and approximately 28 feet on the Bojangles parcel. A large topography drop was taken into account on the multi-family property. It's a 3-to-1 slope going from Bojangles property line down to the developed part of their site. The land was cleared in 2008 and is now regrown with trees and vegetation and very thick. Their development, by the topography and existing nature, will be further away from the property line and more than what was contemplated by the ordinance under normal circumstances. Mr. Barkdull asked if fencing is involved with the type B buffer zone or planting standard to separate the properties. Mr. Barry responded no; it's usually just the landscaping.

Chair Truby inquired if there was anyone else to speak in favor of the request. Chair Truby asked Ms. Thiel if there was anyone in opposition to the request. Ms. Thiel responded she had not heard any opposition. Chair Truby inquired if there was board discussion.

BOARD DISCUSSION

Chair Truby stated that the 50 foot setback provision was really established more for menu boards and speakers than from the drive-through lane due to noise and other things. The menu boards and speakers are more than 50 feet away from the property line, and based on that he was inclined to support the request. Ms. Skenes advised that she was in support and if there was no further discussion was prepared to make a motion. The remaining board members indicated they were in support of the request.

Ms. Skenes moved that in case BOA-20-17, 4622 Hicone Road, 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 the lot is limited in depth. The developers are providing a 35 foot landscape buffer at the rear of the property, as well as a right of way for the additional lane on Hicone and sidewalks, limiting the depth even more. (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 is not very deep and property falls to the rear. (3) The hardship is not the result of the applicant's own actions because owner had to provide a right of way dedication on the front, as well as a sidewalk necessitating moving the building further to the rear. (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 property to the rear is below grade from the subject, plus a 25 foot landscape buffer provides additional screening. Seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Oliver, Necas and Barkdull. Nays: 0)

Mr. Ramsey rejoined the Zoom meeting in progress.

b. BOA-20-18: 2020 SAINT ANDREWS ROAD (APPROVED)

Chair Truby swore in Patrick Parr of Classic Construction and Jody Gordon, property owner.

Ms. Thiel stated in case BOA-20-18, at 2020 Saint Andrews Road, Amanda Hodiern, on behalf of Jody and Linda Gordon, requests a variance to allow a proposed accessory garage to encroach 7 feet into a required 10 foot side setback and 5 feet into a required 10 foot rear setback. The accessory garage will be 3 feet from the side property line and 5 feet from the rear property line.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1-6. 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 north side of Saint Andrews Road, east of Carlisle Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot

contains approximately 23,522 square feet and the house was constructed in 1957. The applicants propose to construct a detached accessory garage approximately 20 feet tall in their back yard. It will encroach 7 feet into a required 10 foot side setback and be 3 feet from the side property line. The proposed detached accessory garage will also encroach 5 feet into a required 10 foot rear setback and be 5 feet from the rear property line. Per the application, the proposed detached accessory garage will make use of the existing driveway and access points into the house.

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 tell the Board about their case.

Amanda Hodierna, attorney for the applicants, 804 Green Valley Rd, stated this is a request to accommodate the construction of a new detached garage that will be located at the end of an existing driveway where there is currently a parking apron. The Gordons purchased the property recently and quickly started renovations on the home. There are 3 young adult drivers at home and this detached garage is an important part of the renovation plans. The part of the plan triggering the variance request is that the proposed structure is over 15 feet tall. At almost 20 feet in height, the code requires those setbacks to be increased to 10 feet at both the rear and the side, when they would otherwise be 3 feet in the rear and 3 feet on the side. Ms. Hodierna stated the setbacks being requested are those that would be permitted by right were this structure 4-½ feet lower. The extra feet of height is important and worth the extra step as it would allow the Gordons to create some flexible bonus space in their new home. The primary structure is fully utilized and does not have extra room for guests to spend the night, hobby space, home office, exercise space, or any type of overflow storage. A detached garage or carport is a very common architectural feature in old Irving Park. Most of the homes in this area are 2 story, if not 3, with garages compatible to the home. The Gordons would be able to achieve their primary goal of keeping the renovation compatible with the neighborhood and to utilize the existing character and footprint of the home and the effect of granting the variance would be extremely minimal. Ms. Hodierna referred the Board to Exhibit 3 (pages 12 and 13) in their books, depicting photographs showing the heavy vegetation in the corner of the yard. Exhibit 2 (page 9) depicted the aerial overhead shot of all the lots to see how deep the lots are from front to back. The garage structure will be tucked away from the streetscape to avoid cluttering or extra massing of obstructions by the street and also will be tucked away from the usable living space of the next door neighbor. Letters were sent to the neighbors within the required notice range providing the details of the project and how they could contact Mr. Gordon if there were questions. There were no inquiries or contacts. Robert and Jean Rapp were contacted on the east side to make sure they were comfortable with the request. They were provided all the details and had no questions or concerns. Ms. Hodierna stated Mr. Parr had that conversation and turned the meeting over to him.

Patrick Parr, Classic Construction, spoke to the Rapps, who advised they were fine with the project. Over the weekend, he received a copy of the signed letter from the Rapps indicating they were fine with the project. Mr. Rapp was not able to have the letter notarized due to health issues, but the letter was signed.

Ms. Hodierna stated the impacted neighbor to the east is supportive and on board with the project. She went through each of the variance tests depicting each of the hardships related to the project and stated the request is in harmony with the general purpose and intent of the ordinance as it preserves its spirit within the neighborhood. The granting of the variance would assure public safety and welfare. There is substantial justice by allowing the property owners to invest in the home, modernizing it for today's family living and keeping the property viable and attractive in one of Greensboro's established neighborhoods. The proposed garage maintains the neighborhood character and minimizes impact. The granting of this variance would be consistent with the City's administration of the ordinance in these types of situations.

Chair Truby stated he did not have any questions and inquired if anyone on the Board had questions for the applicant. Mr. Waddell asked if there was any intent to actually use the garage as living space. Ms. Hodieme responded currently there is a second floor and the architect and owner are still attempting to discern how to divide that up and utilize it. But one of the ideas on the table would be for a bedroom with bath that would only be for the family's individual and private use. With no more questions, Chair Truby asked Ms. Thiel if anyone had advised of opposition to the request. Ms. Thiel responded she had not received any notice of opposition.

BOARD DISCUSSION:

Chair Truby stated the structure height is the problem and this request would not have had to come to the Board if it was 4 feet lower. Chair Truby felt the house would look silly if not as tall and supported the request. The remaining board members indicated their support of the request. Chair Truby inquired if there was a motion.

Ms. Necas moved that in case BOA-20-18, 2020 Saint Andrews Road, 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 the homeowners would be unable to add a garage while maintaining adequate driveway area for turning motions and the back yard for family use. (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 1957 without a garage. The new garage structure will make use of an existing driveway and access points into the house. (3) The hardship is not the result of the applicant's own actions because the house was built in 1957 prior to the homeowner's purchase. The existing conditions were all present at that time of purchase. (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 new garage will mirror the primary structure's gabled roof line and will maintain the neighborhood's character. The requested variance is minimal and is intentionally not deviating from the standard accessory structure setbacks in this zoning district of less than 15 feet. Seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Barkdull). Nays: 0)

2. SPECIAL EXCEPTION

a. BOA-20-19: 1201 ARDMORE DRIVE. (DENIED)

Chair Truby requested that the applicant and those in favor of the request to be sworn in. Then the opposition speakers, if any, will be sworn in at the time they speak. Mr. Sirmons, attorney for the property owner, advised Ms. Keshea Montgomery will also be speaking on behalf of the project. Both were sworn in for their testimony.

Ms. Thiel stated in case BOA-20-19, at 1201 Ardmore Drive, Trinity Consulting and Development, LLC requests two special exceptions. (1) To allow a proposed family care home to be 331 feet from another family care home located at 1215 Moody Street when 2,640 feet is required. (2) To allow a proposed family care home to be 1,208 feet from another family care home located at 2521 Pear Street when 2,640 square feet is required.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 9. The Land Development Ordinance Reference is Section 30-8-10.1(B)(1); No new family care home may be located within one-half 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: The subject lot is located on the east side of Ardmore Drive, south of Douglas Street, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 14,810 square feet and the house was constructed in 2018. The applicant wishes to

establish a family care home with a half-mile of two other existing facilities. A family care home, L&L Family Care Home, operates at 1205 Moody Street, 331 feet away. A family care home, Pear Manor, operates at 2521 Pear Street, 1, 208 feet away.

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

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

Ben Sirmons, attorney for the applicant, 7201 W. Friendly Avenue, advised that Trinity Consulting and Development, LLC would like to lease the property to TGH Behavioral. Mr. Sirmons referred the Board to Exhibit B in their books, which is a brochure depicting TGH, Behavioral Health Services and advised that Ms. Montgomery will expand on the brochure to some extent. Mr. Sirmons stated the reason they are here is because of the proximity of two other family care homes. Those family care homes are entirely different than the proposed facility at the Ardmore Drive location. The other two are adult care, and this would be an adolescent care home for teenage females. In this case, the ladies will be interacting with staff of TGH who will be on site 24/7 and will have cameras and window alarms. The focus will be on rehabilitation and therapeutic benefit for the residents. The likelihood that the residents or the residents from the other two family care facilities would interact would only be to the extent they may have some involvement with the proposed community garden that will be planted on the side of the property. The family care home on Pear Street is far more remote and crosses Gate City Boulevard and it is unlikely that seniors from that home would be crossing that area. Mr. Sirmons advised the home itself was constructed in 2018 as a transitional facility or an independent living facility. There are four separate bedrooms and bathrooms, community area in the middle, and a community kitchen. The house is well suited for exactly this purpose. Mr. Sirmons referred to the statute concerning clustering of homes and residents, which is the opposite in this case. The two homes have no interaction that could be conceived of other than to the extent they community garden would attract some of the seniors living in the Moody Street property. That issue and the others having to do with the care itself, Ms. Montgomery will address, along with the benefits to having this facility. Mr. Sirmons stated the general benefit is it is in harmony and the general purpose of the intent of the ordinance. It preserves the spirit of the ordinance in that these group homes will never congregate or cloister. Mr. Sirmons introduced Ms. Montgomery to speak on her role and the functions of the group home.

Keshea Montgomery, Consultant for Mental Health and Substance Abuse Services, specializing in QA and QI compliance on the local, state, and federal level. Ms. Montgomery helps agencies to develop programs and acquire licensure. Ms. Montgomery also develops the programs that the facilities use to hopefully redirect and encourage independent living for the residents. The program developed and proposed by Ms. Montgomery is preparation for adult living. The program will serve adolescent teenage girls, teaching them independent living skills so when they graduate from the program they can develop those skills taught. This is an "it takes a village concept" meaning that they encourage the residents in the community to be involved with their program by volunteering, if possible, or assisting with skills that could be taught to the young ladies. The program encompasses not only behavior issues but applies a holistic approach to ensure the girls will be productive as citizens within their community. This home will be a transitional home and will direct residents to focus their energies toward behavior issues. A full aspect of holistic, spiritual, mental, physical, financial, and independence will be used. If one of those are off balance, it usually results in a revolving door of individuals that are not successful, not contributing to their community, and are in and out of services. The goal is to prevent that. There are mindfulness approaches, cognitive behavioral therapy and art therapy. Ms. Montgomery introduced Ms. Nakesha Brown, a local artist, who has 3 published books and is also a playwright. Ms. Brown will be teaching art therapy and how to redirect any past trauma or emotional issues into positive ways. There are plans for a community garden to be used as a therapeutic method to help the young ladies with past trauma they may have endured and will teach them to give back to their community. The young ladies will be required to do 100 hours of community service to teach it is not all about them. The goal is to enable these girls to be positive contributors to the community where they will be living. Dr. Janique Washington-Walker from York, Pennsylvania and a licensed therapist in North Carolina, will be

providing telepsychiatry for all of the residents. This will be a full circle approach in working with the young ladies and assisting them to become independent. There are times when someone ages out of the program and are not equipped with the tools needed to be successful adults which can contribute to high crime rates, incarceration and drug use. This program is designed to prevent those things.

Chair Truby inquired if there were questions for the applicants. Chair Truby asked staff if the Board approves a special exception for a family care home, is it limited to what they're saying will be put in the home and if the special exception is passed, can it become any type of family care home. Mr. Kirkman stated staff has looked at this issue several times. There is no way to make a distinction between different populations in terms of how a family care home is addressed by the ordinance. There would be some description of what will be with the program, and there could be some level of conditions to discuss, but the Board cannot get into the actual populations that would live on the property. It must be separated from family care home facilities. Mr. Andrews added the Board should stay within the bounds of the Land Development Ordinance and Chapter 30-4-14. Specifically, Sections 14.4 and 14.5 provide the parameters and describe the conditions upon which the Board could grant or deny. Conditions could be applied that do not relate to the activities occurring within the facility and would deal more with location, design, construction, equipment, and some exterior type matters. Mr. Andrews stated it does not limit the activities happening within the family care home, only that it is a family care home. Chair Truby asked each Board member if they had questions for the applicant. Mr. Oliver asked how many residents would be within each of the locations, as one of the homes mentioned was a four bedroom home and could house four residents. Ms. Montgomery responded that was correct. Mr. Oliver asked how many are in the other locations nearby. Chair Truby stated that would be a question for Mr. Kirkman. Mr. Kirkman did not know if staff had the numbers and Ms. Thiel checked for information about those locations. Mr. Oliver asked where the community garden would be located. Ms. Montgomery responded the garden will be located on the property in the back to be used as the community garden. Ms. Necas asked Ms. Montgomery if she had experience running a family care home. Ms. Montgomery responded that her undergraduate degree is in criminal justice with a minor in psychology. Ms. Montgomery indicated that she is a certified trauma specialist, certified life skills coach, qualified mental health professional, qualified substance abuse professional, and qualified developmental disabilities professional. Currently, she assists with 3 additional properties that are located in Salisbury and Gastonia, North Carolina and will assist in opening a facility in South Carolina. All of the facilities are where her expertise lies. Ms. Montgomery designs and ensures that all of the licensure requirements for state, local and federal guidelines are met. Ms. Montgomery assists with developing their programs and running the programs remotely and will also be on-site occasionally. Ms. Montgomery stated she has been doing this for about 28 years. Mr. Barkdull asked if the other two facilities within the neighborhood had to obtain special exceptions for their operation and was a precedent being created within that neighborhood. Mr. Kirkman stated he did not think either one had to obtain special exceptions, but noted it would depend when they were in operation. City standards for separation have evolved over time and there may be situations, depending on how long they have been there, that they came under a different standard than the current facility would be under. Mr. Kirkman did not know in this particular situation to say for sure one way or the other. Mr. Barkdull asked if the R-5, single-family zoning of the area was being changed with the special exception. Mr. Kirkman responded a family care home is allowed in that district, subject to the separation requirements and there is a total cap of the number of people allowed in single-family as stated within the ordinance. None of that changes if the Board grants the special exception. Ms. Thiel stated that based on the North Carolina Department of Health and Human Services, both of the two family care homes within ½ -mile of the subject property can have up to 6 residents as that what they are licensed for. Ms. Skenes asked where the 24 hour caretakers would stay if there were four bedrooms and four occupants. Mr. Sirmons responded there was a fifth room, not considered a bedroom that could be an office and would be the headquarters for staff that changes every 12 hours. Ms. Montgomery responded the facility would be 24 hour, two staff on duty, in addition to her or Ms. Brown that will be on shift. There are three shifts. It is required that the third shift is an awake staff. The residence would be supervised at all times by an awake staff. Chair Truby inquired if there was anyone else to speak in favor of the request. Seeing none, Chair Truby inquired if there was anyone to speak in opposition to the request. Chair

Truby swore all of those in opposition to the request and advised they needed to be on video and to state their name and address for the record.

Ingrid Hooper, 1113 Ardmore Drive, stated in response to BOA-20-19, the residents of the Washington Park neighborhood were petitioning the Greensboro Board of Adjustment to deny the special exception under the Greensboro Development Ordinance, authorized by Section 30-8-10.1 (B)(1). Due to the language stated, it appears to safeguard the influx and regulate the number of home care facilities in a neighborhood. The neighbors feel the special exception request is not in harmony with the general purpose and intent of the ordinance, does not preserve its spirit, does not assure public safety and welfare, and does not provide substantial justice for the neighborhood. Ms. Hopper referred to paragraph 2 in the request. Ms. Hooper stated there are currently two family care homes in close proximity to one another and fall within the half mile rule. Allowing the inclusion of a third family care home based solely on serving a special group clientele with a different group format would inundate the neighborhood with additional family care homes. The neighborhood believes the request does not justify consideration for approval as a special exception. This additional facility would change the face of the neighborhood in a negative way. The two current home facilities within the neighborhood are L&L Family Care Home, 1215 Woody Street and Pear Manor, 2521 Pear Street. Mr. Stephens cannot assure that residents of all three home care facilities will not congregate with each other. Given the population to be served by this home care facility, the neighborhood is concerned with the safety and welfare of the neighborhood residents. A majority of the residents are elderly individuals accustomed to a quiet and settled environment. The length of stay of the home care residents is not defined with the request. The neighborhood is concerned with the number of possible resident turnovers at the facility. Not knowing how long they will be residing at the residence could lead to numerous individuals in and out of the facility and neighborhood which would be very discerning to the residents. According to the program description, the age group to be served would range from 12 to 18 years of age and are generally rambunctious. The group identified to be served by this facility has additional mental and behavior problems. The neighborhood was not insensitive to the needs of the young teens, but did feel this facility would not be a good fit for the neighborhood. Having another family care home within this neighborhood would lower home property values, increase foot traffic, and vehicular traffic congestion. The location of this facility on a corner lot raises concerns regarding parking for staff, residents, and visitors. The request references a community garden to provide healthy and fresh vegetables and fruits to underserved families in the community. The Washington Park Neighborhood took exception to the labeling of underserved. Under served is an understatement and not the reality for this neighborhood. The neighborhood is self-sufficient and self-sustained. The community garden initiative is not new to their neighborhood and has been an integral part of the neighborhood since the 1970s and continues to thrive. There are also farmers markets located within the community. Ms. Hooper addressed paragraphs 4 and 5 regarding community involvement and development. In 2018, when a tornado devastated the neighborhood, residents pulled together to assist one another in helping to rebuild the neighborhood. At that time, Mr. Stephens was in the process of building the structure at 1201 Ardmore Drive. Neither he nor his company offered or provided assistance to the rebuilding of the neighborhood. In 2019, Mr. Stephens attempted to have the subject property rezoned commercial for an adult day care center, which was denied by the Zoning Commission, and is now attempting to use the Chapter 30, Special Exception clause to circumvent the ½-mile rule. Prior to the construction of the building, there were no attempts to meet with the Washington Park Neighborhood residents to inform or discuss the intentions of the building use. If the Board approves the request, the residents feel it would open flood gates to allow other interested parties to request special exceptions based on their particular group need. The residents request the Board to enforce the original intent for the Building Inspections Department and the building permit, which is for one-family occupancy. If had been identified as a family care home, likely the building permit would not have been approved due to the ½-mile rule. It is questionable how this building permit

and occupancy approval was granted by the City of Greensboro's Building Inspections Division. The neighborhood feels Mr. Stephens has demonstrated only self-interest to this neighborhood in getting the building located at 1201 Ardmore Drive occupied by any means necessary. The residents of the Washington Park Neighborhood request that the Board of Adjustment adhere to the original, authorized ½-mile ordinance, Section 30-8-10.1(B)(1) and deny the special exception request.

Chair Truby inquired if any Board members have questions for Ms. Hooper. Seeing none, Chair Truby called on the next person speaking in opposition.

Ron Gillon, 1117 Ardmore Drive, read a letter written and submitted to the Board of Adjustment in response to the special exception request for the property located at 1201 Ardmore Drive. Mr. Gillon stated his home has been in the family since the 1950s and felt compelled to submit the letter in protest. The submission of the letter was to notify the Board of Adjustment that they are in agreement with the other 21 area homeowners opposed to granting this request. The change would allow for the future development of commercial properties implemented within the neighborhood and allow multi-family dwellings to prevail. In reviewing the notarized statements of support indicating there were no objections to the family care home, discrepancies were noted. According to the Guilford County Real Property Listing form, James McCormick at 1108 Ardmore Drive, is not the property owner. The property is owned by Robert Mantek. Tiffany Simpson at 725 Cole Street is not the owner of that property, and records indicate the property is owned by Ronald and Randal King. Also, Cole Street is not located within the immediate residential area of the requested exception. Based on that information, Mr. Gillon requested the Board to consider his letter and deny the special exception request. Chair Truby inquired if there was anyone else to speak in opposition to the request.

Regina Moore, 1200 Ardmore Drive, stated she signed the petition, agreed with the letter submitted and is in agreement that the special exception request be denied. Chair Truby inquired if there was anyone else speaking in opposition. Seeing none, Chair Truby asked if Mr. Sirmons would like 5 minutes of rebuttal. Mr. Sirmons deferred to Ms. Montgomery to address the concerns expressed.

Keshea Montgomery noted the concerns expressed by the neighborhood association, one of which was increased traffic, and advised there would not be more traffic than if a family moved into that particular property. There is no revolving door of staff and no incoming/outgoing of traffic. Individuals in their program stay typically for a year, at times longer. The connotation to a group home typically has a bad reputation. The idea that adolescents who have emotional behavioral issues is almost being used to indicate a specific type of element that would be introduced into the neighborhood, which is not the case. The individuals are screened with an intake process that usually takes about 14 days to ensure that the individuals approved for the program meet the needs of the program and the needs of the community. The use of the word "underserved" was not attached to any one particular resident or neighborhood. The goal is to use the community garden to serve those in need and if those are not in that community, it would not apply to them. The program would be used for families that are in need of healthy, sustainable meals with fresh vegetables. The teens would learn how to garden, to care for things and how to grow things of their own that are healthy. It is all about teaching dietary and sustainability. Ms. Montgomery stated she received letters of support. Ms. Montgomery did not know the history of the property owners or residents. Members of her staff involved the community and knocked on doors and spoke to individuals face to face to introduce the type of program they were interested in starting so they would not feel invaded. The neighborhood was invited to be a part of the program. Ms. Montgomery stated the other two family homes, whether grandfathered or not, are already in their neighborhood and it would take another special exception for another family care home to be placed in that neighborhood. The community would have the opportunity to vote on that and to speak again. The Board would determine if the neighborhood itself was being inundated with a particular element that would bring property values down for the homeowners. Ms. Montgomery feels

this home would increase property values because of the type of program being contributed to the community and how they are eliciting the community to be involved with them and grow the community. Chair Truby advised there was 5 minutes for rebuttal in opposition.

Ravonda Meachem, 1116 Ardmore Drive, stated that Ms. Montgomery said that she passed out brochures and rang doorbells, which occurred on Father's Day, June 16. Ms. Meacham did not receive a brochure and did not talk to her. Ms. Montgomery did not meet with the Washington Park community to discuss the plans. Ms. Meacham asked who would be the Director of the group home 24/7 to oversee the group home as Ms. Montgomery is a consultant. Ms. Montgomery responded she would be the Director of this program and onsite 7 days a week, more than likely. Ms. Meacham asked if as a consultant, she would be attempting to open more group homes in other areas and how would she be there 24/7. Ms. Montgomery responded she is a consultant for Mental Health and Substance Abuse agencies. Those individuals reach out to her. It is not only residential facilities that she assists in consulting and advised of the other facilities she has worked with one-on-one services and other services. Ms. Montgomery stated her contract specifically is for working from home with flexible hours. Ms. Montgomery has been a consultant doing this for approximately 10-12 years while having 4 consulting clients, has worked with Guilford County Schools as a substitute, finished a Master's degree program, all while consulting and being onsite and managing. This program was specifically developed for her, by her and is her baby. Ms. Meacham asked Ms. Montgomery to provide the definition of a level 23 group home, as that entails more than a regular group home for adolescents. Ms. Montgomery responded the program is a 1700 level group residential facility and is a 24 hours 365 days supervised program for whichever adolescent target population chosen. Currently, the need has been greater for adolescent females as opposed to adolescent males, which is why they have targeted their population to be where the need is the greatest. Ms. Meacham stated the application says level 3, 1700 family care. Ms. Montgomery responded that was the legal level for that program. There are levels, 1, 2, 3, and 4. Ms. Meacham asked why level 3 would be female. Ms. Montgomery responded the way the program rule is written out, they can have ages 12 to 18. The concept is treating others the way you want to be treated and does not take in violent or physically aggressive individuals that have a history of going AWOL or running away. They are looking for specific individuals coming from foster care homes or are not able to have foster care placement because there is no availability for them. These young ladies are typically left to the wayside and are typically aged out of programs without the skills needed. From previous experience, Ms. Montgomery knew that was a need within the community and there is a need for this particular population. It is where her heart is and why she developed the program as such.

Chair Truby opened the floor for discussion. Chair Truby did not have any questions and asked the other Board members if they had questions for the opposition or the applicant. No Board members had questions. Mr. Barkdull stated from the explanation provided by the applicant of who their clientele was, stated there are pathways created for referrals for these young women to participate in and asked if that was in place or does it happen at a later time. Ms. Montgomery responded there are pathways for referrals. Over the years, Ms. Montgomery has developed a strong network of individuals from the Department of Social Services, the Children's Home Society and the Department of Foster Care who are interested in referring young ladies to this program.

BOARD DISCUSSION

Chair Truby closed the public hearing and requested discussion among the board members. Chair Truby stated what Ms. Montgomery is attempting to do is a noble cause but the testimony related to what she would like to do cannot be used by the Board. The Board looks at the separation of family care homes, no matter what kind of family care home it is and no matter what kind of resident lives in the family care home. Mr. Sirmons' argument saying all homes would serve different types of people would help but cannot hold merit. Based on the advice received from staff and the City Attorney, the

Board cannot make their decision based on who will actually be in the family care home. Chair Truby stated that this area was a cluster of too many family care homes and felt the ordinance was written for a reason, to prevent that, and would not support the request. Ms. Skenes agreed with everything Chair Truby stated. Ms. Skenes did compliment the opposition for an excellent job of organizing their thoughts and stating their objections. Ms. Skenes stated she shared the same concerns of Mr. Gillon when looking at the distances of supporters. The neighborhood appears to be integrated with group homes. The ordinance was written for a reason to not have this clustering happen and was not in support. Mr. Waddell stated that group home care for 12-18 year-old young ladies is something the community is in desperate need of. Young women really need someone to go and have mentoring in place. On the advice of legal counsel, the Board cannot distinguish between the different types of residents that are placed in the homes. It could be a residence for young ladies now and then become for young men next. It sounded as though there were issues with the actual owner of the property. Mr. Waddell stated there are already two family care homes, and a third one that would inundate the small area of east Greensboro. Mr. Waddell stated the community desperately needs people like Ms. Montgomery to continue to mentor and do all the things she does. Mr. Waddell felt it was too much for this part of east Greensboro and would not be in support. Mr. Ramsey agreed with everything that Mr. Waddell said. It would be asking too much of the Washington Park Neighborhood on one hand, on the other hand it is desperately needed and hoped Ms. Montgomery can find another location where this could be done without needing a special exception. Mr. Ramsey would not support the request because it is asking too much within that area. Mr. Oliver echoed everything that has been said. It is a wonderful program and idea very much needed in the community, but the location does not work. Mr. Oliver drove past the property and thought it was very close to the others. Mr. Oliver would not be in support of this request. Ms. Necas agreed with all of the other Board members. It sounds like a wonderful project for young people, but the Board cannot make a distinction of what family care homes are for and would be so close to the one already there. There are too many people who live right next who would not be happy. It would be a major concern for the young ladies living there if they felt not welcomed. Mr. Barkdull stated all the comments have been good from everyone and added between the ordinance and what is trying to be done, there is an incongruence that is not working out. The program is supported, not the location. Mr. Barkdull would not be in support of the request. Chair Truby inquired if anyone had a motion.

Mr. Ramsey moved that in BOA-20-19, 1201 Ardmore Drive, based upon the findings of fact, the Zoning Enforcement Officer be upheld and the special exception denied based on the following: (1) The special exception is not in harmony with the general purpose and intent of this ordinance and does not preserve its spirit because the concentration of group homes in the area is in excess of the amount allowed and will disproportionately affect the neighborhood and is not in the best interest of the residential character of the Washington Park Neighborhood. (2) The granting of the special exception does not ensure the public safety and welfare and does not do substantial justice because, again, the concentration of group homes in the area in excess of the amount allowed will disproportionately affect the neighborhood and is not in the best interest of the residential character of the Washington Park Neighborhood. Seconded by Mr. Barkdull. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Barkdull). Nays: 0)

NO OTHER BUSINESS:

Mr. Kirkman advised the Board that City Council approved text amendments moving responsibilities amongst various Boards and Commissions as part of the implementation of the new Comprehensive Plan. The special use permit hearing process will officially be under the purview of the Board of Adjustment starting in September. Additional information will be provided as necessary.

Chair Truby inquired of any other comments from board members. Mr. Ramsey asked where the special use permits were previously handled. Mr. Kirkman responded that currently special use permits

are heard by the Zoning Commission. As part of the changes being made, they are trying to consolidate all the quasi-judicial hearings with the board that is best qualified and used to hearing them, which is the Board of Adjustment. Mr. Oliver asked for an example of a special use permit case. Mr. Kirkman stated a special use permit is basically where a use could potentially be allowed, but has to meet certain findings of fact. In some ways, it's like what is done with variances in terms of harmony and that it meets the intent of the Comprehensive Plan, the Land Development Ordinance and that a use makes sense. One example would be where there are tourist homes (bed and breakfast) in a single-family zoning. Another would be where certain heavy industrial activities may have high hazards associated with them and are required to have special use permits. Occasionally, there are special use permits related to the height of new cell tower structures. There are a few other things that trigger a special use permit and ask questions about how a use may be applicable in a certain areas. There is an additional level of discussion through a quasi-judicial proceeding, which the Board is very familiar with. This is very similar to how other jurisdictions functions across the State. Mr. Waddell asked what would happen with those board members on the other board that was being disbanded. Mr. Kirkman stated that the Planning Board will finish up in August with their last meeting and will basically be dissolved. There are a couple of slots open on the Zoning Commission as terms are expiring or members are resigning. City Council was advised to consider moving some Planning Board members the Zoning Commission, and that will be at the discretion of City Council. Mr. Ramsey asked if the hearings usually generated opposition more so than the Board of Adjustment normally would see. Mr. Kirkman responded that it would depend, as the hearings related to the cell tower height and industrial uses for the most part have not had opposition. There has been opposition on the tourist home, bed and breakfast special use permits, but that would depend on the location and aspects of the case. There may be cases where there will be significantly more opposition than the Board may be used to hearing, but will work through that as it comes up. Mr. Kirkman added there are typically not a lot of special use permit requests in a year's time, possibly 3 to 4.

ACKNOWLEDGEMENT OF ABSENCES

There were no absences acknowledged.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 7:24 p.m.

Respectfully submitted,

Chuck Truby, Chair
Board of Adjustment

MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
August 24, 2020

The meeting of the Greensboro Board of Adjustment was held on Monday, August 24, 2020 at 5:30 p.m. online via Zoom. Board members present were: Chair Chuck Truby, Mary Skenes, Deborah Bowers, James Waddell, Leah Necas, Vaughn Ramsey, and Ted Oliver. City staff present were Shayna Thiel, Steve Galanti, Luke Carter and Alan Andrews, Chief Deputy City Attorney.

Chair Truby welcomed everyone to the virtual 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 methods of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, are allowed a total of 20 minutes to present evidence. Board members may ask questions at any time.

APPROVAL OF THE MINUTES (July 27, 2020)

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

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

No continuances or withdrawals.

OLD BUSINESS

No old business.

NEW BUSINESS

1. VARIANCE

a. BOA-20-20: 1615 WEST GATE CITY BOULEVARD (APPROVED)

Ms. Thiel stated in case BOA-20-20, at 1615 West Gate City Boulevard, Britton Lewis on behalf of Grissom Properties, LLC, requests a variance to allow the lot size of a proposed (recombined) lot to be 12,174 square feet when at least 20,000 square feet is required.

Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance Reference was Section 30-7-4.1 – Table 7-13: In the AO District, minimum lot size is 20,000 square feet.

Background and Site Information: The subject lot is located on the south side of West Gate City Boulevard, west of Van Wert Street, and is zoned AO (Auto Oriented). Tax records indicate the existing lot contains approximately 12,197 square feet and the existing building was constructed in 1970. The subject lot is considered nonconforming as it does not meet the 20,000 square feet minimum lot size requirement of the AO District. The applicant owns this lot along with the adjacent one at 1008 Van Wert Street (under trust ownership), which is the subject of BOA 20-21. Per the application, the back corner of the subject lot is only accessible through the adjacent lot. At this time, the applicant wishes to adjust the property line between

the two lots to provide direct access to each lot individually. If the property line is adjusted, the proposed new subject lot containing 12,174 square feet, will still be considered nonconforming with respect to minimum lot size. If the variances are granted for the subject lot and the adjacent one, the applicant will proceed with the recombination process and both lots will become conforming.

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

Chair Truby swore in the applicant's attorney, Britton Lewis, on behalf of Mr. Grissom, representing both Grissom Properties LLC and the Eugene Thomas Grissom, Jr. Revocable Trust for the next matter, as well.

Britton Lewis, 235 N. Edgeworth Street, stated they are concurrently seeking variances for two adjacent lots under the two applications. Neither property conforms with the minimum lot size requirements. The Van Wert property, owned by the Trust, is also not in compliance with the lot line requirements. They would like to move the southern boundary of the Gate City property to cause a parking lot that is currently a portion of the property to become a portion of the property owned by the Trust instead to resolve an access issue. The southernmost portion of the property on Gate City Boulevard is only accessible across the Van Wert property. Nothing would be done to change the use as the properties are nonconforming, but the variance would make them conforming. There will be no physical changes to the use of either property, but we are attempting to address the boundary and access issues. Enforcing the ordinance may negatively affect the marketability of the properties, as there would be an access issue. There are no negative effects with granting the variance because the use would not change in any way. Granting the variance for both properties would be just and proper in this case.

Chair Truby asked how the problem was discovered. Mr. Lewis responded that in attempting to figure out how to address the issue, his client did not want to grant an easement across the southern property, but instead wanted to subdivide. In attempting to proceed with that process, he realized there was an issue with existing zoning requirements. Both parcels were acquired by his clients in their existing forms with this issue already in place. It is not something of his doing and he is attempting to resolve it. Chair Truby inquired if any Board members had questions for the applicant. Chair Truby asked if there was anyone to speak in favor of the request. Chair Truby asked Ms. Thiel if there was anyone to speak in opposition. Ms. Thiel responded she had not heard from anyone.

DISCUSSION

Chair Truby stated it appeared that the lots have been this way forever and the ordinances have changed over time and made these lots nonconforming. Chair Truby did not see any issue. With no further comments, Chair Truby requested a motion.

MOTION

Mr. Waddell moved that in BOA-20-20, 1615 West Gate City Boulevard, 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 if relief from the minimum size is not granted, it will impact use of the adjacent tract with the potential of hindering both lots. (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 adjacent tract provides the only access to the subject property. Original

deeds dated back to 1965, 1966, and 1970, predating current ownership. (3) The hardship is not the result of the applicant's own actions because restating findings of fact from (2), original deeds date back to 1965, 1966, and 1970, predating ownership of the subject property. (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 granting of the variance will allow for use of the property, allowing direct access to the subject property. Seconded by Mr. Ramsey. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

b. BOA-20-21: 1008 VAN WERT STREET (APPROVED)

Mr. Britton was previously sworn for his testimony.

Ms. Thiel stated in case BOA-20-21, at 1008 Van Wert Street, Britton Lewis on behalf of Eugene Thomas Grissom, Jr. Revocable Trust request two variances. (1) To allow the lot size of a proposed (recombined) lot to be 10,251 square feet when at least 20,000 square feet is required. (2) To allow the lot width of a proposed (recombined) lot to be 70 feet when at least 100 feet is required.

Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1-7. The Land Development Ordinance Reference was Section 30-7-6.1 – Table 7-15: In the LI District, minimum lot size is 20,000 square feet and minimum lot width is 100 feet.

Background and Site Information: The subject lot is located on the swest side of Van Wert Street, south of West Gate City Boulevard, and is zoned LI (Light Industrial). Tax records indicate the existing lot contains approximately 8,276 square feet and the existing building was constructed in 1966. The subject lot is considered nonconforming as it does not meet the 20,000 square foot minimum lot size or 100 foot minimum lot width requirements of the LI District. The applicant owns this lot along with the adjacent one at 1615 West Gate City Boulevard (under LLC ownership), which is subject to BOA-20-20. Per the application, the back corner of the adjacent lot is only accessible through the subject lot. At this time, the applicant wishes to adjust the property line between the two lots to provide direct access to each lot individually. If the property line is adjusted, the proposed new subject lot, containing 10,251 square feet, will still be considered nonconforming with respect to minimum lot size and minimum lot width. If the variances are granted for the subject lot and the adjacent one, the applicant will proceed with the recombination process, and both lots will become conforming.

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

Chair Truby asked if the applicant had anything to add as the cases are similar.

Britton Lewis, responded there was nothing to add from this previous statement on BOA-20-20. The analysis would be identical and the facts are the same.

Chair Truby inquired if any Board members had questions for the applicant. Hearing none, Chair Truby asked for a motion.

MOTION

Ms. Necas moved that in BOA-20-21, 1008 Van Wert Street, based on the Findings of Fact, the Zoning Enforcement Officer be overruled and both 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 adjacent lot is a parking lot, also owed by the applicant and is only accessible through this

subject lot. The owner wishes to alleviate the issue by recombining the lots. (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 width and size of the property were created in the 1960s and the 1970s, predating the current ownership. (3) The hardship is not the result of the applicant's own actions because the subject and adjacent lots' configurations were created in the 1960s and 1970s, predating the current ownership. (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 allow the harmonious use of existing improvements, including direct access to a portion of the property and the public right of way and does not cause any risk to public safety. 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.)

b. BOA-20-22: 1400 NAPPER DRIVE (APPROVED)

Ms. Thiel stated in case BOA-20-22 at 1400 Napper Drive, Kevin and Jean Reinert request a variance to allow a proposed porch addition to encroach 7.83 feet into a required 30 foot rear setback. The porch addition will be 22.17 feet from the rear property line.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1-7. The Land Development Ordinance Reference was Section 30-7-3.2 – Table 7-1: Minimum rear setback is 30 feet in the R-3 District.

Background and Site Information: The subject lot is located on the north side of Napper Drive, west of Bass Chapel Road and is zoned R-3. Tax records indicate the corner lot contains approximately 14,810 square feet and the house was constructed in 2004. The existing house meets the required 30 foot rear setback and includes an at-grade patio, which is allowed to encroach into required setbacks and is 22.17 feet from the rear property line. Based on the submitted site plan, the applicants propose to construct a screened porch in the same location and footprint of the existing patio. The screen porch may not encroach without a variance. The proposed screened porch will encroach the same 22.17 feet into a required 30 foot rear setback as the existing patio. If the variance is granted, the applicants will submit a building permit for the proposed work and proceed with the permit process.

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 swore in the applicant, Kevin Reinert.

Kevin Reinert, 1400 Napper Drive, stated there is an existing cement patio in the backyard facing south and west and the afternoon/evening sun make it very warm. He and his wife are getting older and cannot travel very much. They are spending more time at home and would like to spend more time in the backyard with a screened porch. All of the neighbors were contacted and had no problem with the request. It would not be a negative to the community in any way, shape or form.

Chair Truby confirmed the porch would not be bigger and would be the exact size as the existing patio. Mr. Reinert responded that was correct. Chair Truby inquired if any Board members had questions for the applicant. Hearing none, Chair Truby asked Ms. Thiel if there was anyone in opposition to the request. Ms. Thiel responded she had not received any opposition.

DISCUSSION

Chair Truby stated the applicant did a super job of getting approval from his neighbors.

MOTION

Mr. Oliver moved that in BOA-20-22, 1400 Napper Drive, 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 the applicants want to cover an existing patio. Without cover, the patio will not be able to be fully utilized. (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 concrete patio was already in place. The new structure will still be over 22 feet from the rear property line. (3) The hardship is not the result of the applicant's own actions because the house and patio were in place when the home was purchased. (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 applicants are only covering the existing patio slab and there will be no negative impact. Seconded by Ms. Bowers. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

c. BOA-20-23: 1346 SEMINOLE DRIVE (APPROVED)

Ms. Thiel stated in BOA-20-23 at 1346 Seminole Drive, Robert Cary and Nora Bird request a variance to allow a proposed deck addition to encroach 2.42 feet into a required 15 foot side street setback. The deck addition will be 12.58 feet from the side property line along Whilden Place.

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

Background and Site Information: The subject lot is located on the north side of Seminole Drive, west of Whilden Place, and is zoned R-5. Tax records indicate the corner lot contains approximately 10,454 square feet and the house was constructed in 1950. Based on the submitted site plan, the existing house meets the required front and side street setbacks. The applicants propose to construct a 32 square foot deck on the side of the house that will encroach 2.42 feet into a required 15 foot side street setback. The proposed deck will be 12.58 feet from the side property line along Whilden Place. If the variance is granted, the applicants will submit a building permit for the proposed addition and proceed with the permitting process.

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

Chair Truby swore in the applicants, Robert Cary and Nora Bird.

Robert Cary and Nora Bird, 1346 Seminole Drive, stated they are both getting older and suffer from various aging issues. With the increased risk of infection of COVID-19 in nursing home and senior residences, they have a goal of aging in their home. Doorways have been widened, the first floor is wheel chair accessible, a walk-in shower has been installed, and the washer and dryer were moved to the first floor. The only option for an outdoor grill is at the side back of the house, which would involve going out the front door, down the driveway, crossing uneven terrain and then going downhill. Mr. Cary stated he has not been able to safely use the

grill for two years due to those impediments. Their quality of their life will be greatly improved by the addition of the small deck off the front porch. Both understood and accepted the reasons for setback constraints in neighborhoods, but believe this request does not negatively impact the spirit of the setback ordinance. There are no neighbors on the east side of the house, as that property was acquired by the water company and the residence torn down. The proposed deck would not be visible at all to any nearby residences east, west, or north. The deck will be on the south side of the driveway and the view partially shielded by the trees in front and side yard. Granting this variance request will substantially improve their lives and there is no detriment to the public. The deck is within the property lines and represents no outside risk.

Chair Truby asked if any Board members had questions for the applicant. Ms. Bowers asked how the deck would be accessed. Mr. Cary responded the front porch will be enclosed to become a Florida room, and there will be a sliding glass door onto the deck. Ms. Bowers asked how they would access the deck from outside. Mr. Cary responded the only access to the deck will be from the front porch. Ms. Bowers asked if there would be a railing around it. Mr. Cary responded there would be. 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 of the request. Chair Truby asked Ms. Thiel if there was anyone to speak in opposition. Ms. Thiel responded there was no one.

DISCUSSION

Chair Truby stated he would make a motion, unless there were any other comments.

MOTION

Chair Truby moved that in BOA-20-23, 1346 Seminole Drive, based on the Findings of Fact, the Zoning Enforcement Officer be overruled and 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 applicants would not be able to construct the deck. (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 topography in the rear drops off too much to build a deck from the main level. The front cannot accommodate a deck without setback constraints. (3) The hardship is not the result of the applicant's own actions because the neighborhood was built in 1940, long before the current owners lived there. (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 cause no harm to the public and is located far away from any adjoining neighbors. 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.)

d. BOA-20-24: 3408 WHITEHURST ROAD (APPROVED)

Ms. Thiel stated in case BOA-20-24 at 3408 Whitehurst Road, Charles Winfree on behalf of Westover Terrace II, LLC request three variances. Variance 1: To allow a proposed special events facility to provide direct vehicular access to a sub collector street when direct vehicular access to a thoroughfare or collector street is required. Variance 2: To allow a proposed special events facility to provide off-site parking when all required parking must be provided on site. Variance 3: To allow outdoor seating areas of a proposed special events facility to be located 49.3 feet from residentially zoned property when 100 feet is required.

Evidence provided by the applicant included Exhibits A through E. Supporting documentation from staff included Exhibits 1-8. The Land Development Ordinance References were Section 30-8-10.4(P)(2): Special events facilities must provide direct vehicular access to a thoroughfare or collector street. Section 30-8-10.4(P)(3): Special event facilities must provide all required parking on site. Section 30-8-10.4(P)(5): Outdoor seating areas may not be located within 100 feet of residentially zoned property.

Background and Site Information: The subject lot is located on the north side of Whitehurst Road, west of Westridge Road, and is zoned C-H. Tax records indicate the vacant lot contains approximately 2.31 acres. The applicant proposes to use the property as an outdoor event area, which would be classified as a special events facility per the Land Development Ordinance. Special events facilities are permitted in the C-H District, but must comply with additional use requirements related to direct vehicular access, on-site parking and distances of outdoor seating areas to residentially zoned property. The proposed special events facility provides direct vehicular access to a roadway classified as a sub-collector, when access to a thoroughfare or collector street is required. The proposed special events facility does not provide all required parking on-site, as required. Instead, the applicant intends to share parking with the adjacent property, which is also utilized as a special events center. The applicant has submitted a proposed parking agreement, shown as Exhibit D, between the two properties. If the requested variances are granted, this agreement will be recorded with the Guilford County Register of Deeds (after approval by the City) and will be included with the site plan materials approved by the Technical Review Committee. Additionally, outdoor seating for the proposed special events facility will be 49.3 feet from residentially zoned property, when 100 feet is required. On November, 26, 2018, the Board of Adjustment approved variances to allow a special events facility to operate on the adjacent property at 3404 Whitehurst Road. The approved site plan is referenced as Exhibit E.

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

Chair Truby swore in the applicant's attorney, Chuck Winfree and Brad Semon, operator of Painted Plate.

Chuck Winfree, 100 South Elm Street, Suite 430, stated this is a follow-up case to one heard last year by the Board at 3404 Whitehurst Drive, the Painted Plate catering building adjacent to this property. Through an oversight, this property was not included in that request. The Board approved 3404 Whitehurst Road to be a special events facility and Mr. Semon runs the Painted Plate operations there. Because of COVID-19, people want outdoor events, and the adjacent vacant lot appeared to be the logical place to have those events, He is seeking variances to have that site made available. Mr. Winfree stated there would not be two different uses at the same time. If there was a wedding, the ceremony may occur on 3408 and then the reception held at 3404. Regarding this particular request, this site is 750 feet from Westridge Road, which is a collector, and he is seeking a variance to allow what was done with the adjoining property. There is some parking on 3408, but most will be shared with 3404. A shared parking agreement has been recorded. Mr. Winfree stated he and staff have different interpretations of residential. Staff's position is the side of Whitehurst is the beginning of residential property, and his position is that residential property is 49 feet off the right of way of Whitehurst Road. Looking over the different factors, the applicant did not create this problem

and is attempting to use the property. Mr. Winfree advised they believe this request is consistent with the spirit of the ordinance in allowing orderly development sites. There has been a lot of interest in having this facility available. Mr. Winfree stated the neighbors were invited through a Facebook page and a GoTo Meeting link to participate in discussions and receive updates on plans. Mr. Winfree advised that Mr. Semon would address the feedback and discuss any operational questions regarding the Painted Plate and the project's intent.

Brad Semon, 130 Broughton Drive, advised he placed a letter on the Painted Plate's Facebook page. Painted Plate functions as a wedding venue and has been a good neighbor with no issues. The people who chose to participate in the GoTo Meeting had questions on whether Painted Plate intended to do additional events or the same as what has been done. This will be the same as what Painted Plate has been doing. Mr. Semon did not know he was not allowed to use that space and a couple of events have already been held there. The Fire Department requested that the side lot next to the building and tent not be used to allow access all around the building for the parking lots. If people generally go to a ceremony on the gravel part of the lot, they usually go back into the building for the reception. There is no intent, and is actually not possible, to use it for two separate events. Event catering in the world of COVID-19 is exceptionally challenging. There are a lot of employees who depend on Painted Plate and would love to continue to serve the community in the safest way possible. There would not be a significant change to use the property. Mr. Semon appreciated the Board of Adjustment granting a variance for Painted Plate over a year and a half ago.

Chair Truby asked Mr. Semon about the feedback received from the neighbors across the street. Mr. Semon responded there was no negative feedback from the community. There were questions, and the biggest concern was if the property would be developed and would there be additional events causing congestion and parking issues on Whitehurst Road. The wedding business has never created a parking issue on Whitehurst Road. Mr. Semon assured the neighbors it would be the same events and was just an additional use of the space so ceremonies could be held outside. One of the callers was very complimentary on how the space has been maintained and the fact that it was a safe and good environment for the community. The site is attractive with a lot of rose bushes and vines. The back lot was cleared out as it was very unsightly and frequented by vagrants. Mr. Semon stated there is an elevated gravel area back about 60 feet from the curb. If a ceremony was held there, there would be a substantial separation distance. Mr. Semon did not think the neighbors knew anything was being done, as there have been no issues at all.

Chair Truby asked if Board Members had questions for the applicant. Mr. Oliver asked if the event itself with music would be kept inside. Mr. Semon responded the primary use of the site is for wedding ceremonies, but there can be music. If there was a wine festival, there may be music outside. There is no intention to use the area as two separate facilities or do something that would be primarily an outside event. Mr. Oliver asked if the apartments were included in the notification. One of the photographs did not show the apartments, but he noticed a very large apartment community back there. Mr. Semon responded it is an assisted living facility. Painted Plate had done events for them prior to COVID-19 and did not know if they were specifically notified by way of the Facebook posting. Mr. Semon felt they probably had access to the posting but did not reach out to him with questions. Ms. Necas stated that during his introduction, Mr. Winfree mentioned the special events facility listed in Variance 3, is located

49.3 feet from residentially zoned property and asked if that was referring to Exhibit 1, where that part of Whitehurst Road that is considered residential. Mr. Semon suggested it was much further away since he considered residential starting at the residential properties on the other side of the road. Mr. Winfree responded that the site plan he submitted had a scale indicating that the distance from Paint Plate's right-of-way along Whitehurst Drive to the very back of possible seating was 49.3 feet. Ms. Necas asked where the measurement was taken from. Mr. Winfree responded it starts at the right-of-way along Whitehurst Road. The curb is about 10 feet from the right-of-way. The residential area would be 10 additional feet to the curb along Whitehurst Road and then 50 to cross the road, which makes it over 100 feet the way he counted the residential property, but staff had a different interpretation. Mr. Oliver asked what about the different interpretation. Ms. Thiel responded that the way the ordinance reads, the measurement goes from the seating areas to residentially zoned property. In this case, Exhibit 1 showed that the residential property extends all the way across Whitehurst Road to the property line that starts at the subject property. The residential zoning includes all of Whitehurst Road, so the measurement starts right at the property line. Mr. Winfree stated in his determination, he did not think Whitehurst Road itself is residential and that the properties on the other side of the road are residential. Ms. Skenes stated the determination was that the asphalt on Whitehurst Road is residential. Mr. Winfree stated that was staff's interpretation. Ms. Bowers asked who made the interpretation. Chair Truby responded the city made the determination. Essentially, they are looking at the zoning map which takes the residentially zoned property to the subject property's side of Whitehurst Road, instead of being on the other side. Ms. Bowers asked if Whitehurst was a public road. Chair Truby responded it was, but still has zoning on it and is zoned residential. The City measures from the eastern or northern side of Whitehurst Road instead of measuring it from the other side where the residential uses technically start. Essentially, it's more than 100 feet to where the residential lots start on the other side of the road. Chair Truby asked if there were any other questions for the applicant. Chair Truby inquired if there was anyone else to speak in favor of the request. Seeing none, Chair Truby asked Ms. Thiel if there was anyone wishing to speak in opposition to the request. Ms. Thiel responded she had not heard from any opposition. Chair Truby asked if there were any comments, questions, or motions.

MOTION

Mr. Ramsey moved that in BOA-20-24, 3408 Whitehurst Road, 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 strict compliance would prevent the property from being used as an outdoor event area supporting an adjacent catering facility. (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 currently an empty lot and the current staff interpretation that the right-of-way is residential prevents use of the property when strictly applying the ordinance. (3) The hardship is not the result of the applicant's own actions because the interpretation of the right-of-way of the lot as residential was made by staff, causing a violation of the relevant 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 the

operation of the adjacent catering venue would decrease the problem of the vacant lot, which can then be fully utilized and enhance the area. The parking agreement will provide adequate parking on the property so there should be no parking issues. Mr. Ramsey verified the motion was for all three variance requests. Seconded by Ms. Necas. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Bowers. Nays: 0.)

e. BOA-20-25: 507 AUDUBON DRIVE (APPROVED)

Ms. Thiel stated in BOA-20-25 at 507 Audubon Drive, Bonnie Hallman requests a variance to allow a proposed carport addition to encroach 4.16 feet into a required 59 foot front setback. The carport will be 54.84 feet from the front property line.

Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1-8. The Land Development Ordinance Reference was Section 30.7-1-.4(A) (1): Front setback calculations.

Background and Site Information: The subject lot is located on the west side of Audubon Drive, north of Dogwood Drive, and is zoned R-3. Tax records indicate the lot contains approximately 17, 424 square feet and the house was constructed in 1953. Based on the submitted site plan, the existing house meets the required 59 foot front setback. The applicant proposes to add-on a 305.4 square foot open air/covered porch and 175 square foot carport to the front of the house. Per the Land Development Ordinance (LDO), an open air/covered porch is allowed to encroach up to 10 feet into a required front setback. Since the proposed open air/covered porch will encroach 4.16 feet into a required 59 foot front setback, it is allowed. A carport, however, cannot encroach into a front setback without a variance. The proposed carport will encroach the same 4.16 feet into a required 50 foot front setback and also be 54.84 feet from the property line. The applicant has submitted a building permit application 2002011861. If the variance is granted, the applicant will proceed with the permitting process.

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 swore in the applicant, Bonnie Hallman

Bonnie Hallman, 507 Audubon Drive, stated her builder, Steven Anton, provided a quote stating the proposed open carport will extend to the same point as the proposed open front porch that will be put on her house. It is not a garage; it is an open carport. The proposed open front porch does meet the zoning requirements and both will be even as the carport would not extend past the front porch. Ms. Hallman stated she is a retired Air Force Officer and a widow of an Air Force Officer. Ms. Hallman moved here 2 years prior and purchased this house with the idea of adding a garage at later time. She is adding a carport because the driveway is on the other side of her house and has to go from her car to the front door, which is currently not covered. This is a hardship when carrying things into the home during inclement weather. There is no other place for a carport and this is the reason she is asking for the variance. Ms. Hallman felt it would enhance the property. Her neighbors have signed notarized letters and a neighbor who would testify regarding the hardship was present. Mr. Anton, the builder, and a designer were also present for any questions.

Chair Truby inquired if the Board members had any questions for the applicant or the others that were available. Mr. Waddell stated Ms. Hallman did an excellent presentation. Chair Truby stated he did not know if he had ever seen so many notarized letters from neighbors. 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. Chair Truby asked Ms. Thiel if there was anyone in opposition to the request. Ms. Thiel responded there was no opposition. Chair Truby inquired if there was any discussion amongst the Board or a motion.

MOTION

Ms. Skenes moved that in BOA-20-25, 507 Audubon Drive, 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 without a variance the owner can build a covered porch but not the adjoining carport. (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 owner wants to create covered parking and have covered access to her house. This location achieves the goal and maintains front symmetry. (3) The hardship is not the result of the applicant's own actions because the house was built prior to the creation of the average front setback ordinance. The carport will be 54.84 feet from the front property lines. Prior to the new ordinance, the setback was 25 feet. (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 carport addition will lineup with the covered front porch addition and create symmetry along the front of the house. In addition, the owner has contacted surrounding property owners who have signed notarized documents stating they had no objection to the addition. 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.)

OTHER BUSINESS

No other business.

ACKNOWLEDGEMENT OF ABSENCES

No absences.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 6:40 p.m.

Respectfully submitted,

Chuck Truby, Chair
Board of Adjustment

**MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
September 28, 2020**

The meeting of the Greensboro Board of Adjustment was held on Monday, September 28, 2020 at 5:30 p.m. online via Zoom. Board members present were: Chair Chuck Truby, Mary Skenes, James Waddell, Leah Necas, Vaughn Ramsey, Ted Oliver, and Terry Savoy. City staff present were Shayna Thiel, Mike Kirkman, Luke Carter and Alan Andrews, Chief Deputy City Attorney.

Chair Truby welcomed everyone to the virtual 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 methods of appealing any ruling made by the Board. Chair Truby advised that each side, regardless of the number of speakers, were allowed a total of 20 minutes to present evidence. Board members may ask questions at any time.

APPROVAL OF THE MINUTES (AUGUST 24, 2020)

Mr. Savoy abstained from the motion to approve the minutes as he was not present.

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 Necas. Nays: 0.)

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

There were no continuances or withdrawals.

OLD BUSINESS

No old business.

NEW BUSINESS

1. VARIANCE

a. BOA-20-26: 3008 EAST BESSEMER AVENUE (APPROVED)

Ms. Thiel stated in case BOA-20-26, at 3008 Bessemer Avenue, Steven Foskett, on behalf of the Refuge, Inc. requested a variance to allow a proposed deck addition to encroach 15 feet into a required 25 foot side setback. The deck addition will be 10 feet from the side property line.

Evidence provided by the applicant included Exhibits A through F. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance References are Section 30-7-3.5, Table 7-12: Minimum side setback is 25 feet for nonresidential development in RM-18 District and Section 30-2-4: Nonconforming structures.

Background and Site Information: The subject lot is located on the south side of East Bessemer Avenue, east of Sykes Avenue, and is zoned RM-18 (Residential Multifamily). Tax records indicate the lot contains approximately 20,473 square feet and the building was constructed in 1960. The existing building in the back of the lot is considered a nonconforming structure because it encroaches into a required 25 foot side setback. As part of Building Inspections Plan 2020-0301 (Exhibit C), the applicant proposes to construct a deck addition at the front of the existing building in the back of the lot that will encroach 15 feet in to a required 25 foot side setback and be 10 feet from the side property line. Per the Land Development Ordinance, any enlargement of a nonconforming structure must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance. If the variance is granted, the applicant will continue with the building inspections permitting process.

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

Chair Truby swore in the applicant, Derrick Hawkins.

Derrick Hawkins, 3008 East Bessemer Avenue. Mr. Kirkman asked the attorney to introduce himself and acknowledge that he was working on the case.

Steven Foscett, 1111 West Friendly Avenue, stated that Mr. Hawkins would be presenting the case, but would be happy to answer questions.

Mr. Hawkins stated in 2018 the church was devastated by the tornado that hit the eastern side of Greensboro and has been out of its current location for over 2 years. The goal has been to get back into the building and ensure the community is served. The church is 360 degrees different from what it looked like before. The variance is requested so they can get back into service, serve the community, the church family, and those still impacted by the tornado. They hope this church will be a ray of hope for the community and surrounding neighbors.

Mr. Foscett asked Mr. Hawkins to address the existing deck and if it was approved by the City and ready to go. Mr. Hawkins responded to his knowledge that was correct. Mr. Foscett asked if the proposed deck would be added to that deck. Mr. Hawkins stated it would be in addition to what is currently there because of the pre-existing door. Mr. Foscett asked if the new deck, when constructed according to the plans submitted, would reach to the end of the building. Mr. Hawkins responded it would not. Mr. Foscett asked if the footprint of the building would be further out toward the property line than the deck. Mr. Hawkins responded that was correct. Mr. Foscett asked why the deck was built in the way that the architect had drawn. Mr. Hawkins responded that for the parents who bring their children, there needs to be access to a state of the art facility that will ensure their safety on the deck. Before the tornado, there was no access to enter the building. Because of the tornado, upgrades were made to ensure the building looks better and is more accessible and safe for the families and community. Mr. Foscett asked if the stoop and a door on the side of the building there currently would be removed. Mr. Hawkins responded the goal is to have it removed if the Board of Adjustment allows the additional deck can be added and extended. Mr. Foscett asked what was the building used for now. Mr. Hawkins responded currently the facility is not being used but he wants to use it for the children's church and an administrative building. It will house offices, but most importantly, a state of the art for church for neighboring children in the community. Mr. Foscett asked if the proposed new deck look like the existing deck. Mr. Hawkins responded it will look better than the existing deck. Mr. Foscett asked if the goal of the proposed deck standing out 10 feet from the side of the building is to have a rescue area for those in wheelchairs and allow fire and ambulance personnel to assist. Mr. Hawkins responded that was the goal. Mr. Foscett asked if that portion of the new deck would encroach the furthest into the setback. Mr. Hawkins responded that was a fair statement. Mr. Foscett asked if that portion of the deck would remain within the footprint of the existing building. Mr. Hawkins responded that was a fair statement. Mr. Foscett asked if the proposed deck has been approved by the building inspections portion of the City. Mr. Hawkins responded to his knowledge it has. Mr. Foscett if the zoning portion of the proposed deck has been the stopping point because of the setbacks. Mr. Hawkins responded that was true. Mr. Foscett asked if this variance was allowed, what would be the impact on the church and the community. Mr. Hawkins responded it would be a huge impact. Not being able to worship in their own facility for over 2 years has been a large challenge. Services were moved to the afternoon before and up to COVID-19. Currently, everything has been online. They want to get back into their building to worship. The goal and their heart want to serve the eastern Greensboro residents and the community. The proposed plan will be beneficial for the community. Mr. Foscett asked what the consequences would be if the proposed deck is not approved for the building. Mr. Hawkins stated if the building is not approved there will be no space for the children to worship or any administrative space. There is a CO for the front building, but the back building cannot be entered. Mr. Foscett asked if the way the ordinance is stated was causing a hardship with this building. Mr. Hawkins responded it was. Due to COVID, they have been meeting online. Children are not able to come back into the building because there is no space to house them. Mr. Foscett asked the way this ordinance is applied to the building with the setbacks, would that prevent adding this deck which is required by the City for safety reasons. Mr. Hawkins responded that was correct and is one of hardest things about it. They

only want to get back and serve. They are respectful and mindful of safety. They want their children back in the building the safest way possible. Mr. Foskett asked if the building was there when the property was acquired. Mr. Hawkins responded that was correct. Nothing was changed to the building on how it was built. Because the building was devastated by the tornado, they are understanding that things were grandfathered. Because the building was an older building, things were added for the upgrade and safety features and it was discovered that some things were no long grandfathered, and challenges have been faced because of that. Mr. Foskett asked if the ordinance is applied as written, could the deck be built. Mr. Hawkins responded no, it could not. Mr. Foskett asked if the deck was not built, the building would not be able to be used for the children's church. Mr. Hawkins responded that was correct. Mr. Foskett asked if anything was done to cause the hardship or was it the result of a natural disaster. Mr. Hawkins responded it was due to a natural disaster of a tornado in 2018 and was an unfortunate incident that affected everyone in the neighborhood. Mr. Foskett asked if the proposed deck would be in harmony with the property as it exists and with the surrounding properties. Mr. Hawkins responded it would be. Mr. Foskett asked if it was a fair statement that the main goal and placement of the proposed deck is to further enhance the safety of patrons, children, and staff of the church. Mr. Hawkins responded it is absolutely their goal to ensure the safety of every individual. Mr. Foskett asked if the addition of the deck and opening of that building would enhance the community. Mr. Hawkins responded absolutely. It would not only be the deck but the buildings as well. The buildings are a ray of hope for the community that has been devastated. Mr. Hawkins thanked the Board in considering the request and Ms. Thiel who has been very patient in answering questions.

Chair Truby stated he did not have any questions. Chair Truby advised the Board members that there is a requirement in the building code that if you have a required exit door, you either have an accessible route that would lead away from the building or an area of rescue assistance. The church elected to go with the area of rescue assistance which probably has to do with the elevations, and so forth, as that would be the only option they have. Basically, this is just a deck that if the building caught on fire or something like that, a disabled person could wheel out to this area of rescue assistance where the Fire Department could rescue them. It is a life safety thing to him. Due to the tornado, there are multitudes of factors why this is a classic variance case. Chair Truby inquired if any Board members had questions for the applicant. Ms. Skenes stated in looking at Exhibit 3, it appeared there was a small deck on the side of the building and another deck on the front of the building and asked if that would be an expansion of the deck already there. Mr. Foskett responded that was correct. On the one side of the building there is currently a stoop and a door. They will be removed, and under the window on the side of the existing deck, there will be a door inserted there. A deck will be added that has been approved and jut out slightly to have the assisted rescue area. Chair Truby suggested looking at Exhibit C and went through was depicted on that photograph. Ms. Skenes stated asked why it was 10 feet from the side line as opposed to going straight out and if the Board was approving a variance for the entire new deck or just the one section. Mr. Foskett stated the other deck has been approved and does not encroach. It would be the newly added deck shaded in gray on the exhibit that will be constructed to have the rescue assistance area and a deck for the new door. Ms. Thiel advised that the variance is for the entire deck and the 10 foot measurement was the closest to the property line. Chair Truby inquired if there were any further questions from Board members. Seeing none, Chair Truby inquired if there was anyone who wished to speak in favor of the request. Chair Truby inquired if there was any opposition. Ms. Thiel responded there was no opposition present.

DISCUSSION

Chair Truby stated he had nothing to add and asked other Board members if they had anything. Mr. Oliver stated he assisted after the tornado and understood the difficulty that part of town is going through and they need help. Ms. Savoy stated he drives through the area several times and was in favor of the request. Chair Truby inquired if there was a motion.

MOTION

Mr. Waddell moved that in BOA-20-26, 3008 East Bessemer Avenue, 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 if the deck is not allowed to be built, safe use of the rear of the building would be impacted. (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 prior use of the original structure was nonconforming. Damages caused the rebuilding of the deck to be in-line with the current code. Original deeds date back to 1965, 1966, and 1977 predating current ownership. (3) The hardship is not the result of the applicant's own actions because the property was impacted by a tornado in 2018. The building was originally constructed in 1960. (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 granting of the variance will allow for safe use of the subject property, in addition to safe access to the church, and provide an area of rescue assistance. Seconded by Ms. Necas. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

b. BOA-20-27: 6 GLENDALE COURT (APPROVED)

Ms. Thiel stated in case BOA-20-27, at 6 Glen Eagle Court, K. Porter Aichele and James G. Exum, Jr. request a variance to allow a proposed carport addition to encroach 20 feet into a required 30 foot rear setback. The carport addition will be 10 feet from the rear property line.

Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1-7. The Land Development Ordinance Reference is Section 30-7-3.2 – Table 7-1: Minimum rear setback is 30 feet in the R-3 District.

Background and Site Information: The subject lot is located on the east side of Gleneagle Court, south of Saint Francis Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the corner lot contains approximately 16, 988 square feet and the house was constructed in 1973. The applicants propose to construct an attached carport at the side and rear of the house that will encroach 20 feet into a required 30 foot rear setback and be 10 feet from the rear property line. Per the submitted application, the proposed carport will be located at the terminus of the existing driveway and will meet the required 15 foot side street setback. If the variance is granted, the applicants will submit a building permit application and proceed with the permitting process.

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

Chair Truby requested the applicants to present their case. The applicant, James Exum advised there were 3 speakers in favor of the application. Porter Aichele and Carl Myatt, architect, will also speak.

Chair Truby swore in the applicant, James Exum.

James Exum, 6 Gleneagle Court, provided background on how they got to where they are today. Ms. Aichele and Mr. Exum decided to buy a house where both could enjoy the rest of their lives. There were two requirements, that the house all be one floor and that they would have a carport. Mr. Exum is 85 and Ms. Aichele is 73, and both are fall risks. When this house was purchased, they knew it had no carport but was otherwise suitable. They were advised by their attorney at closing and by Mr. Myatt that a carport could be built. Two options were presented. It could be built at what they consider the only reasonable location for the carport which is on an already existing concrete pad at the end of their driveway in the backyard of their home and the only door. They would like to build an attached carport where the roof lines of the carport would meet the roofline of the house and give them protection walking into the house without experiencing the elements. Since the rear setback is 30 feet, an attached carport would encroach and need a variance. If it is built 5 feet from the house, it would need to be 5 feet closer to their neighbor's line, but would need no variance. Their choice was for the variance. Although it would encroach on the setback line, we felt it was far enough away from the Dunham's home that there would be no objection. Mr. Exum referred to Exhibit 2, an aerial view depicting their house and lot. Mr. Dunham's home is not adjacent to the carport in any respect. It sits back for some distance from the corner of the carport. Mr. Exum did not have a telephone number for Mr. Dunham but attempted many times to speak to him. Mr. Exum was able to introduce himself and explain what he wanted to talk about to Mr. Dunham. Mr. Dunham responded he understood what was being done, stated he was opposed to it, and had made his opposition known to the

Board of Adjustment. All of the other neighbors have been contacted on Gleneagle Court and St. Francis Drive with no one opposed to the carport. The neighborhood was canvassed within a two block area for other carports. There are approximately 17 carports with 10 unattached and 7 attached. The attached carport needed for this home cannot be built where it should reasonably be built without a variance. The house was built in 1973 and the parking pad has probably been there since then. Mr. Exum advised Ms. Aichele will speak more to this issue.

Chair Truby requested to hear from all the speakers first and have questions afterward and swore in Ms. Aichele for her testimony.

K. Porter Aichele, 6 Gleneagle Court, stated several months prior, both Mr. Exum and Ms. Aichele asked their architect, Carl Myatt, to design a carport that would be architecturally integral to their house and aesthetically in keeping with the rest of the neighborhood. The difficulty in designing and building a carport for them lies in the configuration of their property. It is a corner lot with a rear property line that slants toward the back door. Because of the slant, the existing parking pad is anywhere between 16.8 and 13.1 feet away from the rear property line. They do not have 30 feet to meet the setback requirement using the existing parking pad and driveway. They are located where they logically should be right next to the back door. Mr. Myatt had two solutions. The first requires a variance and would be an attached carport joined at the roofline to the home and cover only the existing parking pad. That is their preference as it provides a covered entry into the back door. If a variance is not received, there will be no choice other than to build a detached carport that would have to be 5 feet from their house and 5 feet closer to the rear property line. It would also require removing a good part of an underground irrigation system, taking out a bank of mature azaleas and pouring more concrete. Both Mr. Exum and Ms. Aichele presented their design plans to all of the immediate neighbors and with one exception all were in favor of the variance. Mr. Exum and Ms. Aichele are asking for the Board for approval to build a carport that will give them safe access to their back door and will be further away from the rear property line than the alternative solution.

Chair Truby swore in Carol Myatt for his testimony.

Carl Myatt, 213 North Park Drive, architect, referred to Exhibits C and D. There are two ways to place the carport, and the pad was at the shortest distance to the house. There is a door that comes almost directly into the kitchen at the pad. The carport sits right on the gray area depicted on the exhibit and attaches to the house. There were four options discussed. They are dealing with an accessory building or a carport, under 600 square feet, under 15 feet of height, and qualify for the 50 % coverage and can build 1,250 square feet and this would be 515 square feet. Option C indicates if you were to try to put the carport in the 30 foot setback, it would be on the far left side. The side of the carport could attach to the corner but would be entering a bedroom and have to come all the way around to the back door where the existing pad is. That idea was eliminated. Mr. Myatt referred to Exhibit D which depicted the attached carport with four squares that would be the four columns and parallel to the 10 foot property line. The double line on the site plan was a 20 foot variance and is the logical solution. If a detached carport, they could technically go within 3 feet of the common property line and 15 feet off of the street, which was not acceptable and not a good neighbor. The third option was a detached carport which would be 5 feet off of the building and approximately 8 feet off of the property line. Instead of 10 feet, it would be 8 feet and closer to the adjacent property. The fourth option was the one arrived at and makes more sense. The columns would be 10 square columns because anyone will be able to see through the carport. The columns would not be seen at 10 inches square. Mr. Myatt requested to correct one thing in Mr. Dunham's letter where he referenced a 23 foot variance as this request is only for a 20 foot variance.

Chair Truby inquired if any of the Board members had questions with any of the speakers in favor. Mr. Waddell asked if where the actual pad is located has been repaired or is new construction. Ms. Aichele responded the parking pad was very badly damaged. New concrete was poured on the exact same footprint. Mr. Myatt asked the Commissioners to look at Exhibit 3, the last photograph which displays the pad clearly. It is a two car pad with azaleas screening it, and Ms. Aichele would like preserved. There is an evergreen buffer already there and you cannot see the house next door. Chair Truby inquired if there were any questions for the applicants from Board members. Mr. Oliver asked if that meant the foliage would not be affected by the carport. Mr. Myatt responded that was correct. Ms. Aichele stated if they have to build an attached carport, move concrete would need to be

poured and the bank of azaleas would have to be moved. Ms. Necas asked Mr. Myatt if the carport was detached, he had said it could be 3 feet off the property line or was he talking about something else. Mr. Myatt stated with it being attached it would be 10 feet. If detached, a five foot minimum is only for a carport under 600 square feet, five feet away from the existing house. It would be approximately 8 feet off of the common property line. Ms. Necas stated she thought he had referred to something else that could be 3 feet away from the property line. Mr. Kirkman advised he could clarify that for her. When the carport is attached, the principal building setback is used. When it is detached, the accessory building setback is able to be used which is a much smaller setback. That is what the distinction is.

Chair Truby inquired if there were any further questions. Chair Truby inquired if there was anyone wishing to speak in opposition to this request. Chair Truby sworn in Mr. William Dunham for his testimony.

William Ross Dunham, 1605 St. Francis Road, read a letter that everyone had received to be an official part of the record which listed the reasons why the variance should be denied. The carports built within the neighborhood are well within their lot lines and built in the backyard. Each house on the street and in the neighborhood has been built to minimize impact on the lot and maximize spacing between the houses. This proposal does neither. As a contractor, variances are asked for at times, however they rarely ask for one if the encumbrance on the other property owner exceeded what was reasonable. Using 23 feet of a 30 foot setback is unreasonable. Mr. Dunham referred to Exhibit 1 which depicted the current property line. His bedroom window from the line. Exhibit 2 depicted the property line with the Azaleas referred to. On the right side are flags that Mr. Myatt had placed. These flags are currently 9' 4" off the property line and did not know if they were the footprint of the carport or something else. Mr. Dunham did not know if that 18" was the overhang of the hip carport or the footprint. Mr. Dunham referred to Exhibit 1 depicting the view from the street indicating the property line and the pink flags. Mr. Dunham requested the applicant's Exhibit 1. Ms. Skenes stated it is in the Board members booklet. The applicant's Exhibit 1 of the plat was depicted that showed the R-3 zoning. His house was shown in the lot. They are the second owner of the home and was the second lot that was built on in 1973 and was the prime spot on the street. Mr. Dunham stated they have a full view of the street from their bedroom window and front yard, and a view of the hip roof line will substantially impact their view from their window and their son's window and the front yard and decrease their property value. It will set a precedent for what can be built in the neighborhood when 15 other similar variance requests have been denied. It appears there are no objections, they are the ones most affected by the proposal for the carport. Their lot and values will be affected. Judge Exum referred to the carports in the neighborhood while canvassing the neighborhood. Mr. Dunham stated the ones attached were attached to the side of the house and did not protrude past the existing side line of the house. Judge Exum's house would be considerably out from the existing house and side line. Mr. Dunham referred to the applicants Exhibit 2 which depicted the full overhead view and provides an idea of the street layout, the curve of the road, and the view from their front yard or bedroom window. It will affect their property values, his more than anyone else on the street. Mr. Dunham stated he keeps hearing there would be more and more concrete needed for a detached carport, but would actually decrease their roof line and the foot print by approximately 20% than if it is attached.

Chair Truby inquired if the Board members had questions for Mr. Dunham. Ms. Skenes stated she was confused as the applicant is requesting a variance so they can build an attached carport that would be 10 feet off the property line. If they do not have a variance, they can actually build the same carport 5 feet off the line. Chair Truby believed if it was detached and because it would be under 600 square feet, they could get within 3 feet of the property line. Mr. Kirkman responded that was correct. Ms. Skenes stated without a variance this same carport would be 3 feet off of the property line that adjoins Mr. Dunham as opposed to 10 feet and much further away from Mr. Dunham's house. Ms. Skenes asked if she interpreted that correctly. Mr. Kirkman responded that was correct. The principal setback if it is part of the principal residence is 10 feet. If it is a detached structure and less than 15 feet and less than 600 square feet in size, can be 3 feet off the property line but at least 5 feet away from the house. Ms. Skenes asked if it was detached, a variance is not needed and it ends up being 3 feet off the property line instead of 10. Mr. Kirkman responded based on his understanding of what was being done, that was correct. Chair Truby inquired if there were any further questions for Mr. Dunham. Mr. Savoy asked if the attached carport will cover only the new concrete. Chair Truby responded that was his understanding. Ms. Aichele stated

it is only new concrete, concrete they had poured to replace the existing footprint of the parking pad that was cracked and rutted. Mr. Oliver stated Mr. Dunham had shown flags that appeared outside of the footprint of the current parking pad and asked if that is where the carport is supposed to go or something else. Mr. Myatt responded there were tall flags or posts with flags on them on the property line. The flag to the left is the property line and you can see the Azaleas and the pad where the column will be which is 10 feet off of the property line with it attached. What he placed was the ones approximately 18" and metal ones. The view Mr. Dunham showed you can see the pad and carport will be right on the pad. It straddles the pad. They can go within 3 feet and can move it over 3 feet off the property line if it is detached. Mr. Myatt confirmed the small flags are 8 feet off the property line and would be an option as a detached carport. They can go to 3 feet off the property line and approximately 8 feet off of the residence. They can go to 5 feet and it would be 8 feet off the property line. Mr. Exum thought the question was where the columns to the carport, if they will be on the pad. Mr. Myatt responded the columns will be just past the footprint of the pad because the footings are outside of the pad, still within the 10 foot. Mr. Myatt indicated for the Board members on Exhibit C where the squares were located and where the columns will be. The pad is shown and the four columns are right at the apex of the pad but still within the 10 foot distance from the property line. It was done that way because they did not want to break open the pad. The footprint is just past the pad on each corner. Mr. Oliver advised he understood and it made perfect sense to him. Chair Truby stated for clarification, the concrete pad is not getting any bigger, it is not being extended at all. It is the columns will be set right on the edge of the existing concrete pad. Mr. Myatt responded that was correct. Chair Truby inquired if any other Board members had any other questions. Seeing none, Chair Truby closed the public hearing portion and went into board Discussion.

BOARD DISCUSSION

Chair Truby did not have any comments and asked the Board if there was any discussion. Chair Truby asked if there was a motion.

MOTION

Mr. Oliver moved that in BOA-20-27, 6 Gleneagle Court, 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 the location appears to be the only place a carport would fit. It is where the driveway is now. (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 shape of the lot restricts where a carport could be put. The carport will only cover the existing pad and not go further out into the yard. (3) The hardship is not the result of the applicant's own actions because the placement of the house on the lot, along with the way the lot is configured, cause the hardship. (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 other homes in the area have carports, while this will encroach on the setback there still will be 10 feet, plus hedges, between the structure and the property line. Seconded by Mr. Waddell. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

c. BOA-20-28: 5794 HIGHLAND GROVE DRIVE (APPROVED)

Ms. Thiel stated in case BOA-20-28 at 5794 Highland Grove Drive, Eric and Gabriella Nicholson request a variance to allow a proposed fence located within 15 feet of a street right-of-way to exceed the maximum 4 foot height requirement by 2 feet. Zoning R-3 (Residential Single-Family); Section 39-9-4.6(A); Cross Street – Brookstead Drive. Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1-7. The Land Development Ordinance Reference is Section 30-9-4.6 (A): No fence or wall may exceed 4 feet in height within 15 feet of any public or private street right of way.

Background and Site Information: The subject lot is located on the north side of Highland Grove Drive, east of Brookstead Drive, and is zoned R-3 (Residential Single Family). Tax records indicate the corner lot contains

approximately 10,454 square feet and the house was constructed in 2019. The applicants currently have a 6 foot tall fence in their back yard and wish to move it closer to the side property line, enlarging the fenced area. The applicants propose to erect the 6 foot tall fence on the side property line along Brookstead Drive for enhanced privacy, safety, and maintenance. Per the Land Development Ordinance, the maximum height for a fence within 15 feet of a street right-of-way is 4 feet, so a variance is requested to exceed the height by 2 feet.

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 swore in the applicant, Gabriella Nicholson.

Gabriella Nicholson, 5794 Highland Grove Drive, read the letter into the record that was submitted along with her application requesting a variance to the fence height within 15 feet of public street right of way by allowing them to move their existing 6 foot fence up to their property line. The hardship experienced results from conditions that are peculiar to the property and unique circumstances related to the property because it is a corner lot that leads into a cul-de-sac that is subject to additional and increased pedestrian traffic within the community leading to further issues. They would like to move the fence to the property line as there is a privacy and maintenance burden. People have been loitering, walking and cutting across the yard within the staked property markings. Trash such as bottle caps, chicken bones, paper and plastic and animal droppings in the yard. One of our children, while playing in the affected area, picked up animal droppings with his bare hands, which was a bad scare and in itself a major health hazard. There is a small sign requesting people to be respectful of the property that has not been effective. These issues are not experienced on the front of their property, only on the side bordering Brookstead Drive. The variance requested for the fence height is due to several reasons. First and foremost, they have 2 small children, 6 and 2. Currently there is a \$500 deposit on a Great Dane puppy and felt it would be safer for their family and others maintaining a 6 foot fence height. A 4 foot fence is not consistent with the neighboring homes in the community who have 6 foot fences. Ms. Nicholson stated she canvassed the neighborhood and there is only one 4 foot fence in the entire neighborhood. A 6 foot fence is a more desirable style as it creates safety and privacy. If they were to sell their home, a lower fence may be seen as negative from potential buyers, especially compared to what is in the neighborhood now. There would be a significant cost burden to replace the existing fence with a 4 foot fence to follow the letter of the ordinance. Their neighbor behind them at 5402 Brookstead Drive indicated he did not have a concern with the moving of the fence. His driveway is on the same side as the back of the fence. They wanted to do additional research to ensure he would maintain the sight lines from his driveway. In doing research discovered the fence height would not affect the sight lines from his driveway. US car standards state "passenger vehicles cannot exceed 16.8 feet in length from rear bumper to front bumper and the width from windshield to windshield is 4.5 to 5 feet with the driver sitting back an additional 18 inches. This indicates there is approximately 10.96 distance between the driver and the rear of US passenger vehicles. The fence would begin at 12' 8" from the curb and the driver would still have full visibility of pedestrians and traffic coming from Highland Grove Drive in either direction that the car is facing come out of the driveway. The fence does not interfere with the sight triangles at the corner of the lot and there would be no sight obstructions turning on or off of the road. In addition, there is low vehicular traffic since the road ends in a cul-de-sac, allowing for additional safety. The hardship is not the result of their own actions because the ordinance itself does not allow for a 6 foot fence type within 15 feet of the right of way. If there was a four foot fence, they would not have this issue. They have a 6 foot fence and purchased the home with a 6 foot fence. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and assures public safety, welfare, and substantial justice because it does not interfere with the line of sight for safety of drivers and pedestrians and would maintain consistency with the neighboring fenced homes and would also help to ensure the privacy and safety of their family and that of their neighbors.

Chair Truby inquired if there were questions for the applicant. Chair Truby asked when they brought the house if the fence was there or was the fence put up. Ms. Nicholson responded the fence was already there when they purchased the home. Chair Truby inquired if there were any other questions for the applicant. Seeing none, Chair Truby inquired if there was any wishing to speak in favor. Chair Truby inquired if there were any in opposition. Ms. Thiel advised there was no one in opposition. Chair Truby closed the public hearing and requested Board discussion.

DISCUSSION

Chair Truby inquired if there were any comments from the Board. Mr. Waddell thanked the applicant for considering the sight of drivers driving through the neighborhood. Ms. Skenes stated this ordinance was created for a reason, i.e., the four foot height. Looking at Exhibit 3 and the neighbor's car in the driveway, 6 feet is taller than his car. Ms. Skenes appreciated Ms. Nicholson providing the dimensions, but the neighbor would have to pull all the way out to the end of the driveway with the backend of his car in the street in order to get sight lines at 6 feet. The ordinance was created for a reason at 4 feet and was for sight line purposes. Ms. Skenes stated she had a problem with the sight line. Ms. Nicholson responded that is the exact reason why they looked at the US car passenger standards to determine how far he would actually be out of his driveway if he were backing out to be able to see any incoming traffic or pedestrians were there. That is where there is approximately 10' 9.6" of distance between the driver and the rear of the passenger vehicle. That is for the length of a minivan, a car, an SUV, what have you. The fence would not start until 12' 8" into the curb. So the neighbor would actually be over a foot within his driveway and would not be backing out into the street to see any incoming traffic or pedestrians. Due to the fact that is a cul-de-sac, there is decreased road traffic. Mr. Oliver asked if the fence would be going all the way to the street or only 12 feet from the street. Ms. Nicholson responded essentially almost 13 feet from the street. They would be happy to move up more if that would help to grant the variance. They would like to reduce the burden that they have experienced living in this location. Chair Truby inquired if there were any other questions from the Board members. Ms. Necas stated she had the same concerns as Ms. Skenes regarding the 4 foot requirement. Ms. Necas understood the research owner did, but the 15 feet was set up by professionals who were worried about the safety of the community. If the neighbor doesn't have anything to say about it, then that plays in her mind also. Ms. Necas asked if the neighbors really don't mind putting the fence that at the end of the property line. Ms. Nicholson responded that was correct. The neighbor asked them a multiple of times when they were planning to do it. When the large sign was erected in their front yard, the neighbor was very surprised that they had to go through the trouble just to be able to move the fence. That was also the consensus within the community. The neighbor expressed he was completely fine with the request and had no issues. Chair Truby inquired if there was any other discussion. Seeing none, Chair Truby inquired if there was a motion.

MOTION

Mr. Ramsey moved that in case BOA-20-28, 5794 Highland Grove Drive, 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 the lot is uniquely placed on the corner which leads to a cul-de-sac and they will have privacy and safety issues with only a 4 foot fence. (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 property location, their privacy and safety concern given that people cut across the yard and leave trash and animal droppings creating safety and security issues that a 4 foot fence will not properly address. (3) The hardship is not the result of the applicant's own actions because the lot was set before the current owners for the property. (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 higher fence is consistent with the neighborhood and will increase property values and not create line of sight or safety issues. Seconded by

Mr. Waddell. The Board voted 6-1 to approve the motion. (Ayes: Truby, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: Skenes.)

d. BOA-20-29: 5409 FOXWOOD DRIVE (APPROVED)

Ms. Thiel stated in case BOA-20-29 at 5409 Foxwood Drive, Pamela Robertson, requests a variance to allow an accessory structure to use a separate meter when branching service from the principal dwelling is required.

Evidence provided by the applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1-8. The Land Development Ordinance Reference is Section 30-8-11.1(G)(1): Accessory structures to single-family, twin homes, duplexes, and traditional houses must take utility 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 south side of Foxwood Drive, east of Dolley Madison Road, and is zoned R-3 (Residential Single Family). Tax records indicate the lot contains approximately 30,056 square feet and the house was constructed in 1995. The applicant proposes to install a separate electrical meter on a recently permitted accessory structure for use as an art studio. The applicant lists the accessory structure's distance to an existing power meter. Its relationship to existing well water line and disturbance of existing hardscaping areas as conditions causing the hardship.

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

Chair Truby swore in the applicant, Pamela Robertson.

Pamela Robertson, 5409 Foxwood Drive, was seeking a variance from the City Ordinance 30-8-11.1G1. Specifically seeking a variance that will allow her to utilize a separate electrical power meter on a detached accessory building currently under construction. They have lived at the Foxwood Drive address for the past 25 years. In what they consider their early retirement planning, are in the process of constructing a small accessory building to the rear of their property to use for a painting and sculpture studio. The building is located in the southwest quadrant of the property. It is being constructed to an existing deck and substantial landscaping, including a hard surface sidewalk, other hard surfaces and considerable plant material. The location of the accessory building was depicted on the site plan on Exhibit C. Examples were shown indicating examples of the hardscaping on Exhibit D. Photographs were shown indicating the hardscaping and other landscaping between the existing power meter on the principal dwelling and the proposed location of the power meter on the new construction. A variance in this case is appropriate to avoid unnecessary hardship of navigating around or potentially having to destroy existing hard surfaces and substantial landscaping that lies between the current meter box on the principal dwelling and the anticipated location of the power box on the accessory building. Due to the location of the power on the principal dwelling on the southeast corner, substantial trenching would be required to run an electrical line to the power box requiring disruption and trenching through the hardscaping through the most direct route available from the existing power meter to the accessory building. Utilizing a direct access to the accessory building via an electrical line on the west property line from a transformer on an existing pole is a more practical and efficient solution and preserves the trees and other landscaping to the rear of the house. The proposed location for the separate line was shown on the site plan. It is basically a straight shot from the power line to as far as they would need to go and an easy trek across to the accessory building and proposed power box. They have been advised by electricians that the existing power box is nearly full and may be unable to accommodate the circuits that would be needed for the studio space. In addition to routine outlets and lighting in the accessory building, it is anticipated that two or more 240 voltage lines will be needed for heating, air conditioning and a future kiln. Even if the power box currently could accommodate the additional lines, there would not be any circuits left in reserve for any principal dwelling improvements. It imposes an unreasonable hardship to have to redo the existing power box entirely or to do without a circuit for their future anticipated need. The variance would not violate the purpose of the ordinance and would be in harmony with its spirit. If the variance is granted, installation of a separate line would cause no harm to the public and would do substantial justice by efficiently providing power to the accessory structure. No negative impacts from the variance request have been identified to the neighborhood. Ms.

Robertson communicated with adjoining property owners and to the best of her knowledge, there are no objections or concerns to this request. The need for this variance is not caused by any action on the applicant's fault. They did not create the hardships that exist. The request does not alter the residential character of the street if the variance is allowed and would help preserve the wooded character of the neighborhood by less disruption of tree root systems. Ms. Robertson respectfully requested the Board allow the application and permit the use of separate power box on the accessory structure. In connection with the request for the variance, a supplement to the application was submitted and referred the Board to that for further reference.

Chair Truby asked if any Board members had questions for the applicant. Seeing none, Chair Truby inquired if there was anyone else wishing to speak in favor of the request. Chair Truby inquired of Ms. Thiel if there was anyone to speak in opposition. Ms. Thiel responded there was no opposition present.

BOARD DISCUSSION

With no discussion, Chair Truby requested a motion.

MOTION

Ms. Skenes moved that in BOA-20-29, 5409 Foxwood Drive, based upon 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 the current meter box is near capacity and due to the location of the current meter box, extending a line to the new building would necessitate extensive destruction of existing hardscape and landscape. (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 excessive distance of the current meter box to the new building, well lines are in place and destruction of existing landscaping and hardscape makes adding on to the existing box difficult. (3) The hardship is not the result of the applicant's own actions because the applicant has owned the property since 1993 and the current house was built in 1995. The current meter box location has not been changed. The location the new box is based on topography and existing landscaping. (4) The variance is in harmony with the general purpose and intent of this ordinance, preserves its spirit and assures public safety, welfare, and substantial justice because being able to add the meter to the new studio is reasonable. It requires less disruption to the existing landscaping and hardscape and will have not visual impact to the neighborhood. Seconded by Mr. Ramsey. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

e. BOA-20-30: 1548, 1600 & 1602 MCCONNELL ROAD (APPROVED)

Ms. Thiel stated in case BOA-20-30 at 1548, 1600 and 1602 McConnell Road, True Homes, LLC requests three variances. Variance 1: To allow the lot width of a proposed (recombined) lot at 1548 McConnell Road to be 42.14 feet when at least 45 feet is required. Variance 2: To allow the lot width of a proposed (recombined) lot at 1600 McConnell Road to be 41 feet when at 45 feet is required. Variance 3: To allow the lot width of a proposed (recombined) lot at 1602 McConnell Road to be 41 feet when at 45 feet is required.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1-8. The Land Development Ordinance References are Section 30-7-3.2 – Table 7-7: In the RM-18 District, minimum lot width is 45 feet.

Background and Site Information: The subject lots are located on the south side of McConnell Road west of south O'Henry Boulevard, and are zoned RM-18 (Residential Multifamily). Tax records indicate the existing vacant lots contain approximately 16, 988 square feet. The applicant owns the three subject lots at 1548, 1600, and 1602 McConnell Road, along with the adjacent lot at 1604 McConnell Road. The three subject lots are considered nonconforming as they do not meet the 45 minimum lot width requirements of the RM-18 District. The applicant wishes to adjust the interior property lines to create lots suitable for the construction of new single-family homes as a learning experience for students in the NCA&T construction management program. If the property lines are

adjusted, the proposed new subject lots, with lot widths of 42.14 feet, 41 feet, and 41 feet, will still be considered nonconforming with respect to minimum lot width. If the variances are granted for the subject lots, the applicant will proceed with the recombination process, and the three lots will become conforming.

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

Chair Truby swore in the applicant, Jeffrey Guernier.

Nick Bacon, 2649 Breckenridge Center Drive, Monroe, NC, attorney representing True Homes, introduced Mr. Jeffrey Guernier, True Homes Operations Partner for the Greensboro/Triad area.

Jeff Guernier, 5313 Wayne Road, provided his background with True Homes. True Homes is a private company based in Monroe, NC and builds homes throughout the state and here in the Triad area. Over 1500 homes are built per year with approximately 300 per year here in the Triad. Mr. Guernier thanked all the members of the Board for their service. This variance request is to allow True Homes to build four affordable homes as field laboratories for construction management students at NCA&T. The proceeds from the sale of these homes will be used to expand True Homes' financial support of the construction management program at NCA&T. The four lots in this variance request are part of the partnership between True Homes and NCA&T to provide educational and financial support for the University as well as affordable housing in Greensboro. The variance request is to adjust property lines and allow for the resulting lots to be less than the current minimum lot width standard of 45 feet. Complying with the 45 foot minimum width standard would result in unnecessary hardship in that 3 of the 4 lots allocated to this program will be unbuildable without a variance. The hardship is the result of the size of the existing 4 lots. These lots were created long ago by a different entity and did not result from any action by True Homes. The resulting lot widths are very consistent with the existing widths of the 4 lots and most other lots in the neighborhood. Upon approval of the variance, True Homes will build all four field laboratories in support of the NCA&T Construction Management Program during the next two years. The homes will be consistent with other aspects of the current Land Development Ordinance.

Chair Truby inquired if the Board had any questions for the applicant. Mr. Oliver asked what happens to the homes after they are built, would they be sold for people to live in. Mr. Guernier responded they are for sale homes within the Affordable Homes Program. Ms. Necas stated it seem the adjustment of the lots is about the lot at 1604 McConnell Road, as that is the skinniest of the lot, and the other three lots were being adjusted to accommodate lot #4. She also asked if the reason why that lot is not included the variances is because that one will be over 45 feet and automatically be conforming. The variances are only asking for approval for the other three lots as they are non-conforming. Mr. Guernier responded that was correct. They are trying to fix lot #4 and make it buildable and allow it to have a useable rear yard. The result would be the other 3 lots become non-conforming if they are included in that process. Chair Truby inquired if there were any further questions for the applicant. Hearing none, Chair Truby inquired if there was anyone to speak in favor. Seeing none, Chair Truby inquired of Ms. Thiel if there was any opposition. Ms. Thiel stated there was no opposition.

Chair Truby inquired if there was Board discussion.

BOARD DISCUSSION

Chair Truby felt it was straight forward request. The lots were already substandard and this will bring it into compliance and help them be able to do what they want, which is a good program. Chair Truby was in support. Chair Truby inquired if there was any other discussion from the Board. Seeing none, Chair Truby requested a motion be made. Ms. Necas stated she was making a motion for all three variances.

MOTION

Ms. Necas moved that in BOA-20-30, 1548, 1600 & 1602 McConnell Road, based on the Findings of Fact, the Zoning Enforcement Officer be overruled and the three variances be 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 strict application of the ordinance because the four existing lots only allow for 3 homes to be built according to ordinance requirements. (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 existing lot lines are non-conforming and prevent one lot from being buildable with a reasonable rear yard. (3) The hardship is not the result of the applicant's own actions because the existing lots were plotted before the existence of the Land 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 the proposed recombination of the lots is in keeping with surrounding properties and will be used as a learning experience for NCA&T students in the Construction Management Program. Seconded by Mr. Ramsey. The Board voted 7- to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

OTHER BUSINESS**1. SPECIAL USE PERMITS**

Mr. Kirkman advised as of September 1, based on City Council actions adopted a few months ago, responsibilities were shifted between several Boards and Commissions. One of the changes was moving approvals for special use permits from the Zoning Commission to the Board of Adjustment. The logic being that the Board of Adjustment is the Board that primarily works with quasi-judicial proceedings. The Council consolidated all of the quasi-judicial proceedings just with the Board of Adjustment versus splitting those with the Zoning Commission. A special use permit is for some type of use that might be appropriate for a location but requires an additional level of scrutiny. Examples are commercial activities that are allowed in residential zoning but only as a special use permit. There are industrial uses that may be of greater intensity than found in an industrial area and require a special use permit. In some cases there are also things like heights for cell towers that can be beyond the base height and would need a special use permit. Ms. Thiel had provided the Board Members background information on the ordinance. Mr. Kirkman asked if Board members have seen the new Comprehensive Plan, GSO 2040, or have access to that plan. Mr. Kirkman advised a link would be sent to the Board members to become familiar with the plan. Mr. Kirkman suggested to the members to focus primarily on the six big ideas that are the driving forces of the Comprehensive Plan and there are maps referring to the future land use and the future built form of property that would provide guidance. There is a list of questions that are guides for considering zoning changes and some of the questions may also be applicable regarding how a particular change may fit the context of the area, is it generally in harmony with what is happening or what is anticipated to happen. Mr. Kirkman stated a special use permit will focus more on land use in many cases. A Special Use Permit being heard at the next meeting is not a land use necessarily but others will be. It will be different for this Board as this Board has not had the authority to deal with land use changes in the past. The area advertised for a special use permit is 600 feet from the property instead of the standard 150 feet for a variance or a special exception. Special use permits historically have been few and maybe 3 to 4 at the most per year. The Board of Adjustment is uniquely positioned because it is already familiar with the quasi-judicial proceedings. Mr. Kirkman advised the members to email staff if there is something after the meeting and would like clarification on in terms of processing. Mr. Ramsey asked if a form would be developed with the three findings that are needed to approve or deny to keep things moving along. Mr. Kirkman responded staff intends to do the same format used for the other types of requests. Chair Truby asked what was the case scheduled for the next meeting. Mr. Kirkman responded the request has to do with a cell tower being constructed and are asking for a greater height than the ordinance requires. The ordinance does add the option that if they want to go taller than what is allowed within the ordinance, they can request a special use permit.

Ms. Skenes asked if there was any chance the Board will be in person for the next meeting. Mr. Kirkman responded that will probably be up to the State to some degree. While an increased number of folks are allowed inside the building, the tricky piece would be having the seven members, plus three staff (10 total) before anyone else coming in. Mr. Kirkman stated the broader policy from City Council and the City Manager's Office was to try to continue hold meetings virtually at this point. Ms. Skenes stated her understanding was there are people holding their requests in abeyance because they are not comfortable with the remote presentation and the Board is looking at trying to catch up. The sooner we get back to in person meetings, the sooner the Board can clear up some of the backlog. Mr. Kirkman responded he was only aware of one particular case, where someone is appealing an action of an Enforcement Officer, and under state law, if they don't agree to the virtual hearing, the case cannot be heard. Mr. Kirkman did not think there were a lot of other cases at this point. Mr. Oliver asked if City Council intends to be virtual for the foreseeable future. Mr. Kirkman responded as far as he knew, at least through October meetings are anticipated to be virtual. Mr. Andrews reminded the Board these meetings are not limited as far as the number of people who represent items. The challenge is if there are 20 people who will participate in the meeting, how to handle that level of access with the spacing and other requirements, either having them outside the room or having them within the room. It is more a logistical challenge than people are aware. This evening a lot of people did not appear in person but there was a good amount of people. Council is struggling with 50 people that cannot fit in council chambers with the spacing. The challenge of letting one Board or Commission go live and the others that cannot is "sibling rivalry." Having a uniform standard versus picking/choosing certain bodies that can take the benefit of meeting in person is the challenge for management. Mr. Ramsey stated a lot less people come to the Board of Adjustment meetings than City Council meetings. Area seating is available outside where people could socially distance and can wait there for their case. Mr. Ramsey understood the issues of trying to do something different than others. Mr. Kirkman stated staff will talk with their managers and legal to see if there would be an option and would follow up with the Board. There are 8 cases next month, but staff does not know how many people will participate. Two are related to a special use permit and variance request. That's more cases than what was present at tonight's meeting, so it's hard to gauge what the numbers will be. Ms. Thiel also shared there has been very positive feedback regarding the Zoom meetings. Out-of-town applicants were able to participate more easily than coming in person to the Council Chamber. Mr. Oliver stated he liked Zoom meetings.

ACKNOWLEDGEMENT OF ABSENCES

There were no absences.

ADJOURNMENT

The meeting was adjourned by Chair Truby at approximately 7:43 p.m.

Respectfully submitted,

Chuck Truby, Chair
Board of Adjustment

MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
October 26, 2020

The meeting of the Greensboro Board of Adjustment was held on Monday, October 26, 2020 at 5:30 p.m. online via Zoom. Board members present were: Chair Chuck Truby, Mary Skenes, James Waddell, Leah Necas, Vaughn Ramsey, Ted Oliver, and Terry Savoy. City staff present were Shayna Thiel, Mike Kirkman, Luke Carter and Alan Andrews, Chief Deputy City Attorney.

Chair Truby welcomed everyone to the virtual 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 methods of appealing any ruling made by the Board. Chair Truby advised that each side, regardless of the number of speakers, were allowed a total of 20 minutes to present evidence. Board members may ask questions at any time.

APPROVAL OF THE MINUTES (SEPTEMBER 28, 2020)

Mr. Ramsey 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, Oliver, Necas, and Savoy. Nays: 0.)

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

No continuances or withdrawals.

OLD BUSINESS

No old business.

NEW BUSINESS

1. SPECIAL USE PERMIT

a. BOA-20-31: 2016, 2018, & 2022 West Vandalia Road (Approved)

Ms. Thiel stated in case BOA-20-31, at 2016, 2018, & 2022 West Vandalia Road, Communications Tower Group, LLC, requests a special use permit to allow a proposed wireless telecommunications tower to be 150 feet in height within 1,500 feet of a residential use.

Evidence provided by the applicant included Exhibits A through G. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance Reference was Section 30-10.2 (K)(2)(c): In all residential, O, PUD, TN, mixed use districts and commercial districts that are with 1,500 feet of a residential use, the maximum wireless telecommunication tower (other than attached concealed WTFs) height permitted is 100 feet. The maximum permitted height may be increased to 150 feet with approval of a special use permit.

Background and Site Information: The subject lots are located on the north side of West Vandalia Road, east of Pine Lake Drive, and are zoned R-3. Tax records indicate the lots contain approximately 3.26 acres, when combined, and the building was constructed in 1951. The subject lots are owned by Pincroft Baptist Church; one contains the church and parking lots, while two others are vacant. While the lots are considered a "zone lot" under common ownership, the church is in the process of recombining the three lots into one lot. The applicant intends to erect a wireless telecommunication tower on one of the vacant lots that will be 150 feet tall. Because the subject lots are in a residential zoning district within 1,500 feet of a residential use, a special use permit is required to erect the proposed 150 foot tall wireless telecommunications tower. The special use permit application was submitted in conjunction with a variance application that will be considered in BOA-20-32 to allow a proposed telecommunication tower to encroach into setbacks from the property lines, residential zoning districts and

buildings containing a residential use. If the special use permit and variance requests are approved, the applicant will proceed with the review process of the City's Technical Review Committee.

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 forward and be sworn in. The attorney did not need to be sworn in but anyone else planning to speak in favor of the request would need to be sworn in.

Tom Johnson, Attorney, Williams Mullen, 301 Fayetteville Street, Suite 1700, Raleigh, NC, requested the application and all associated documents be admitted into evidence in support of the special use permit. Chair Truby responded they have been entered into as evidence. Mr. Johnson advised this tower is on a vacant lot, wooded with large trees adjoining the church. The applicant is asking for a special use permit for a 150 foot tower because of the trees, some of which are over 100 feet tall creating interference with the use of the tower and the antennas on the tower. In this instance, it will be a monopine with branches on it to appear like a tree to blend in with the other trees. Mr. Johnson referred to photographs submitted depicting how it would blend in with the trees. There is a need for service in this area, and there is a lack of lots available to locate a tower in this area. Under the ordinance, it is limited to those types of specific uses such as religious facilities. There is commercial within the area and residential. Mr. Johnson referred to the certification by the company who designed the tower confirming the tower would not create any danger should it fall towards the adjoining properties. There is a need for more towers for Wi-Fi and cellular services, especially during COVID-19, where wireless service is relied on for Internet use and working remotely. This location is one of the few locations where the tower can be placed and provide coverage. The most important thing is a strong signal in the adjoining residential areas.

Chair Truby inquired if any Board members had questions for the applicant. Mr. Oliver asked who would actually be using this service. Mr. Johnson responded the tower would be available to rent to anyone who wanted space on it. T-Mobile is the carrier who requested the tower and the tower will be open for other carriers. Chair Truby asked if there would be lights on the tower. Mr. Johnson responded there would be no lights at all on the tower. Mr. Savoy asked what would happen when the trees surrounding grow above the tower. Mr. Johnson responded if they were to grow much higher it could potentially cause interference but the tower will be approximately 40 feet above the prevailing tree height. The trees are very mature trees and probably would not be growing much more. Mr. Savoy said it appears there are fake leaves on the tower and asked when fall and winter arrive and the leaves fall off the other trees what would happen. Mr. Johnson stated in the winter this a monopine tower will still be covered with the artificial vegetation. It is not an unusual tower, there are several throughout Greensboro. Mr. Waddell requested an explanation on how the tower would function in the event of a catastrophe. Mr. Johnson responded in the event of a catastrophe, the tower will be self-supportive with a generator and continue to operate. The wireless system has been proven to be extremely reliable in the event of a natural disaster and would continue to function. Mr. Waddell asked if it was designed for in-fall or would it fall forward. Mr. Johnson responded the tower is a monopole tower with artificial vegetation attached and designed for wind and ice. There is a designed weak point that if certain forces are exceeded, the tower would bend to where it would be limited and would not cover more than a 60 foot radius. Ms. Necas stated on Exhibit C a circle was depicted indicating a building perhaps 124 feet from the tower and asked if that was correct. Mr. Johnson stated that is one of the closest buildings. Exhibit F, was a letter from the manufacturer stating they were designing the tower so it will not go further than 60 feet and would not cause danger to the residence 124 feet away. It is a garage and a non-occupied structure; the house is further away. The engineer design firm mentions many natural catastrophes that have occurred to include numerous hurricanes, tornadoes, and has never experienced an in service failure of a communication pine due to weather induced overloading. Mr. Oliver asked if the Pinecroft Baptist Church would still own the land. Mr. Johnson responded the church will benefit from a ground lease entered into for the tower. Mr. Oliver asked how long was the lease and what would happen if this tower was obsolete in 8 or 10 years. Mr. Johnson responded the tower would be taken down according to the city ordinance within 90 days of when it was taken out of service. Chair Truby inquired if there were any further questions for the applicant. Chair Truby noted the tower appeared to be designed for 86 mph wind speed for a 3 second gust and 3 mile mph ice wind, and 3/4

inch of ice on the tower itself, which is probably standard throughout the country. Mr. Johnson responded it varies depending on the location.

Chair Truby inquired if there was anyone to speak in favor. Seeing none, Chair Truby inquired if there was anyone to speak in opposition to the request. Ms. Thiel advised there may be people who would like to ask questions. Chair Truby swore in Mary Eggleston.

Mary Eggleston, 2814 Pine Lake Drive, stated Mr. Finocchi provided answers. Her question was if this project would affect the property values. Ms. Eggleston stated she lived on Pine Lake Drive, across from the church and there are people who live behind the church who were concerned and their adult children were concerned if the property values would be in any way affected. Concerns also were if new buyers would have to know about the tower. Mr. Johnson stated nothing had to be disclosed because the tower will be there and can be seen.

Dale Finocchi, PlanTech Services, 2028 Walker Avenue, advised property would not be affected. With more and more people using Wi-Fi they want to have good quality wireless access within their homes. Research did not show a negative effect. Mr. Johnson depicted a simulated view from where Ms. Eggleston's property was to the tower depicting how the tower blended in with the topography and would still have improved service. Chair Truby inquired if there were any other questions or comments.

Chair Truby stated he was glad the proposed tower was a monopine as opposed to others that are unattractive. These towers are everywhere and if they affected property values, the Board would probably be hearing more about that. Chair Truby inquired if there were questions from the Board members for Ms. Eggleston. Seeing none, Chair Truby moved for discussion among the Board members. Seeing none, Chair Truby inquired if there was a motion.

MOTION:

Ms. Skenes moved that in BOA-20-31, 2016, 2018, & 2022 West Vandalia Road, based on the stated findings of fact, the special use permit be granted based on the following: (1) The proposed use will not be detrimental to the health and safety of persons residing or working in the vicinity, or cause injury to property, or infringements in the vicinity because the tower is being built to North Carolina Building codes and is designed to collapse sectionally if damage occurs. (2) The tower is designed to withstand strong winds and ice. The proposed use at a particular location provides a service or facility that will contribute to the general well-being of the neighborhood and the community because the tower will provide improved wireless coverage for this area of Greensboro not only for individuals, but for 911 emergency personnel. (3) The location and character of the proposed use will be in harmony with the area in which it will be located and in general conformance with the Comprehensive Plan because the tower will be a stealth monopine tree concealment tower with the antennas hidden within the branches of the tree. (4) The proposed area has other trees which will further conceal the lower portions of the cell tower. Seconded by Mr. Waddell. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

b. BOA-20-32: 2016, 2018, & 2022 West Vandalia Road (Approved)

Ms. Thiel stated in case BOA-20-32, at 2016, 2018, & 2022 West Vandalia Road, Communications Tower Group, LLC, request three variances. (1) To allow a proposed 150 foot wireless telecommunication tower to be setback 102.6 feet from all property lines when at least 150 feet is required. (2) To allow a proposed 150 foot wireless telecommunication tower to be setback 124.33 from property lines abutting residentially zoned property when at least 150 feet is required. (3) To allow a proposed wireless telecommunication tower to be setback 214.83 feet from a building containing a residential use when at least 300 feet is required.

Evidence provided by the applicant included Exhibits A through G. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance References were Section 30-8-10.2(K)(2)(b)(i): Wireless telecommunication towers (that are not attached concealed WTFs) must be setback a distance equal to the height of the tower from all property lines; Section 30-8-10.2(K)(2)(b)(ii): Wireless telecommunication towers (that are not attached concealed WTFs) must be setback from a property line abutting residentially zoned property, a distance equal to the height of the tower of 100 feet, whichever is greater; and Section 30-8-10.2(K)(2)(b)(ii):

Wireless telecommunication towers (that are not attached concealed WTFs) must be setback from a building containing a residential use a distance equal to two-time (2X) the height of the tower.

Background and Site Information: The subject lots are located on the north side of West Vandalia Road, east of Pine Lake Drive, and are zoned R-3. Tax records indicate the lots contain approximately 3.26 acres, when combined, and the building was constructed in 1951. The subject lots are owned by Pinecroft Baptist Church, one contains the church and parking lots, while the two others are vacant. While the lots are considered a “zone lot” under common ownership, the church is in the process of recombining the three lots into one lot. The applicant intends to erect a wireless telecommunication tower on one of the vacant lots that will be 150 feet tall which will encroach into required setbacks from all property lines and from property lines abutting residential use property and from buildings containing a residential use. The variance application was submitted in conjunction with a special use permit application that was considered in BOA-20-31 to allow a proposed telecommunication tower to be 150 feet in height within 1500 feet of a residential use. If the special use permit and variance request are approved, the applicant will proceed with the review process of the City’s Technical Review Committee.

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

Chair Truby asked the applicant to present his case.

Tom Johnson, Attorney, Williams Mullen, 301 Fayetteville Street, Suite 1700, Raleigh, NC, stated based on the conversation from the previous case, the traditional setbacks cannot be met due to the location. This site is one of the larger tracts in this area to provide wireless coverage. The tower is designed that if there were to be a complete failure, it would fall within a radius of 60 feet. The other advantage is it provides a wooded site with existing mature trees to provide coverage. This will also be a monopine tower. The first requirement was for the applicant to comply with the provision of the ordinance that states “unnecessary hardship would result from the strict application of the ordinance”. In this case, the tower can be designed eliminating the need for large setbacks required under the ordinance. The height of the trees helps to shelter the tower. The Tower is required be taller than the trees in order for the antennas to provide the coverage desired. The hardship results from conditions peculiar to the property such as location, size, and topography. The existing trees are one of the significant factors and coverage in the residential areas required a relatively large site to provide wireless coverage in this area. The hardship results from the application of the ordinance to the property. In this case, the strict application of the ordinance does not provide a location on the property where the requirements can be met that are needed to be met in terms of setbacks to provide wireless coverage to this area. There was not a better location that could meet the criteria and why the variance is needed. It is not a result of the applicant’s own action because it is due to the existing trees and the lack of locations in this area that are of a sufficient size to meet setback requirements. The request is consistent with the general purpose and intent of the ordinance and preserves its spirit. Due to the monopine application, it blends in with the surrounding area, including residential. The granting of the variance assures public safety and welfare and substantial justice because of the need for good wireless coverage for individuals relying exclusively on wireless coverage for their communications to the outside world and communication to emergency personnel is very important. Physical safety is ensured by engineering the towers so it will fall within a radius of 60 feet.

Chair Truby inquired if the Board members had questions for Mr. Johnson. Seeing none, Chair Truby inquired if there was anyone to speak in opposition to the request. Seeing none, Chair Truby inquired if there was Board discussion.

BOARD DISCUSSION:

Chair Truby stated his reasoning in granting a variance. Chair Truby asked if the Board members had any comments. Chair Truby asked if there was a motion.

MOTION:

Mr. Waddell moved that in BOA-20-32, 2016, 2018 & 2022, West Vandalia Road, based on the stated findings of fact, the Zoning Enforcement Officer be overruled and variances, 1, 2, and 3 be granted based on the following.

(1) If the applicant complies with the provisions of the ordinance, unnecessary hardship would result to the property by applying strict application of the ordinance because compliance with the ordinance would implicate the height of the tower, preventing the antennas from providing signal and acceptable coverage levels. (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 the ordinance requires a tower to be situated on property that is not residential, a large growth of hardwoods requires the tower to be larger than the ordinance permits. (3) The hardship is not the result of the applicants' own actions because the hardship results from pre-existing trees and lack of use of locations. The proposed location best meets the criteria and requires a minimum variance to comply. (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 intent is to ensure the protection of life and personal property. In the event of tower failure and in the event of a catastrophic event, the tower will collapse within the confines of the parcel. Seconded by Chair Truby. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

c. BOA-20-33: 2912 Shamrock Drive (Approved)

Ms. Thiel stated in case BOA-20-33 at 2912 Shamrock Drive, Marianne Kelsey requests a variance to allow a proposed carport to be in front of the front building line of a principal structure and to encroach 13.62 feet into a required 25 foot front setback. The carport will be 11.38 feet from the front property line.

Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance Reference is Section 30-8-11.1(B)(1): Accessory structures must be located behind the front building line of the principal structure, and are not allowed in a required setback.

Background and Site Information: The subject lot is located on the east side of Shamrock Drive, at the intersection of Trenton Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 12, 197 square feet and the house was constructed in 1955. The applicant proposes to erect a 252 square foot detached carport in front of the house on the existing driveway. Based on the submitted site plan, the proposed 21x12 carport will encroach into the required 25 foot front setback, but will meet separation and side setback requirements. If the variance is granted, the applicant will proceed with the residential building permit process

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 swore in the applicant, Marianne Kelsey.

Marianne Kelsey, 2912 Shamrock Drive, stated complying with the ordinance would mean forgoing shelter for her car. There is not enough space on either side of the property to allow the building of a carport or a driveway to be built in the back of the house. Building a carport directly in front of the home would conform with the neighborhood as there are houses within the neighborhood that have carports directly in front of the home that predate this ordinance. There are two large trees in the front yard which adds beauty to the neighborhood but constantly sheds debris onto vehicles. No street parking is allowed in front of her home due to a school zoning. Parking away from the trees would be approximately 80 feet from her home from any one direction for herself and any guests coming to her home, which poses a public safety concern with no sidewalks along the street. Complying with the ordinance would continue to pose a hardship. Currently, she parks at the end of the driveway and the entire driveway is covered by the tree debris.

Chair Truby inquired if any Board members had questions for the applicant. Chair Truby asked what materials the carport would be built of and what it would look like. Ms. Kelsey responded it would be a free standing carport, white in color with a green end gable. The trim on her home is white and would match. The green would blend with the house, and it would will have a metal or aluminum roof with metal legs coming down. Chair Truby asked if she has talked to her neighbors. Ms. Kelsey stated a couple of the neighbors were present at this meeting. Chair Truby inquired if there were any further questions for the applicant. Mr. Savoy asked if the carport would be

anchored into the ground. Ms. Kelsey responded it would. It comes with anchors and she also purchased additional anchors that would sustain wind velocities of over 100 miles an hour. Chair Truby inquired if there was anyone to speak in favor of the request. Chair Truby swore in Luke Vandall.

Luke Vandall, 2910 Shamrock Drive, stated he lived next door. Their driveways back up to each other and was in support of the request.

Chair Truby inquired if there were questions for the neighbor from Board members. Seeing none, Chair Truby asked if there was anyone else to speak in favor of the request. Chair Truby swore in Holly Hennessee for her testimony.

Holly Hennessee, 3007 Trenton Road, stated she was in support of the request. Chair Truby asked if she lived nearby the applicant. Ms. Hennessee responded she did.

Chair Truby inquired if there was anyone else to speak in support. Chair Truby inquired if there was anyone to speak in opposition to the request. Seeing none, Chair Truby inquired if Board members had any questions. Seeing none, Chair Truby closed the public hearing asked if there was Board discussion. Seeing none, Chair Truby requested a motion.

MOTION:

Ms. Necas moved that in case BOA-20-33, 2912 Shamrock 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 no shelter parking available that protects vehicles from being damaged by trees on 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 parking on the road to avoid the trees is prohibited near this property due to a school zone and intersection nearby. (3) The hardship is not the result of the applicant's own actions because the house was built in 1955 before the LDO and the current owner purchased in 2018. (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 carport's architectural will blend attractively into the environment. Seconded by Mr. Waddell. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy). Nays: 0.)

d. BOA-20-34: 2524 New Garden Road East (Approved)

Ms. Thiel stated in case BOA-20-34 at 2524 New Garden Road East, Jack Barrett, requests 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 applicant included Exhibits A through D. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-8-11.1(G)(1): Accessory structures to single-family, twin homes, duplexes, and traditional houses must take utility 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 west side of New Garden Road East, north of Lake Jeanette Road, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately 29,621 square feet and the house was constructed in 1953. The applicant proposes to install a separate electrical meter on a recently-permitted accessory structure used as a garage. As shown on the approved building permit, the applicant indicated that other existing accessory structures will be removed.

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 swore in the applicant, Jack Barrett.

Jack Barrett, 2254 New Garden Road East, stated the building is a 20x30 metal garage, built to code and has been permitted. The problem with coming from the house is that there is not enough power going to the house to be able to run power to the building. Mr. Barrett spoke to Duke Power and transformers would have to be changed as would a lot of things in the front of the street. There is a power box behind his neighbor's home. Duke Power could run the power underneath the ground, so nothing would be shown, and place a meter above. That is the easiest and best way to not disrupt anything in order to add power to the accessory structure.

Chair Truby asked if any Board members had questions for the applicant. Mr. Oliver asked how far the garage was from the house. Mr. Barrett responded approximately 100 plus feet. It is an odd lot and is .68 of an acre. Not wide, but very deep, and it runs deeper than either one of his neighbors. Mr. Oliver asked how far it was to the power box. Mr. Barrett responded approximately 30 feet to the power box. Mr. Ramsey asked staff why the Board of Adjustment receives these requests for separate meters. It appears to be a lot of overkill for having a quasi-judicial hearing over the placement of an electric meter. Mr. Kirkman responded the ordinance currently states that staff does not have administrative discretion to grant these. These rules have been on the books for many years to limit the potential for incompatible uses, businesses or other activities that would be difficult to track. Mr. Ramsey asked the applicant what was being done with the building. The house on the property is only 1000 square feet with a flat roof and no attic space, no storage area. Two old storage buildings are on the property that will be removed as soon as this building is completed. Mr. Barrett responded it will be mainly for storage but he does remodel old cars. The building would not be used for commercial use. Chair Truby inquired if there were any further questions for the applicant. Seeing none, Chair Truby asked if there was anyone in favor of the request. Chair Truby asked Ms. Thiel if there was anyone in opposition. Ms. Thiel responded she had not heard any opposition.

BOARD DISCUSSION:

Chair Truby asked if there was board discussion. Seeing none, Chair Truby requested a motion.

MOTION:

Mr. Oliver moved that in BOA-20-34, 2524 New Garden Road East, 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 a separate meter is the most efficient way to get electrical power to the garage. (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 location of the garage is near the power box currently. (3) The hardship is not the result of the applicant's own actions because the power box is already there. The garage is close and makes sense. (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 power line will be buried by Duke Power, nobody will see it. Seconded by Ms. Skenes. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy). Nays: 0.)

e. BOA-20-35: 4503 Southport Road (Approved)

Ms. Thiel stated in case BOA-20-35 at 4503 Southport Road, William and Tammy Blair, requests 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 through C. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance Reference was Section 30-8-11.1(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 south side of Southport Road, north of Starboard Drive, and is zoned R-3 (Residential Single-Family). Tax records indicate the lot contains approximately

10,890 square feet and the house was constructed in 1995. The applicants propose to install a separate electrical meter on a recently permitted accessory structure used for storage.

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

Chair Truby swore in the applicant, William Blair.

William Blair, 4503 Southport Road, stated he had the same exact circumstance as the previous case. His building is approximately 80 feet from the nearest point of his existing residence and approximately 95 feet from the current meter of the home. It is more accessible for them to go to the Duke Power energy box less than 10 feet away from the current detached structure. For cost effectiveness, it would cost 3 times the amount to run power from the current box to the accessory structure. Electrical companies have advised the whole entire system would have to be upgraded in the home. It is more feasible to go to the Duke Energy box that is less than 10 feet away. Chair Truby asked what the accessory structure would be used for. It will be storage, light repairs, furniture and woodworking. Chair Truby inquired if any Board members had questions for the applicant. Seeing none, Chair Truby asked of Ms. Thiel if there was anyone to speak in opposition to this request. Ms. Thiel responded there was no opposition.

BOARD DISCUSSION:

Chair Truby asked if there was any discussion between the Board members. Seeing none, Chair Truby made the motion.

MOTION:

Chair Truby moved that in case BOA-20-35 at 45023 Southport 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 hardships will result to the property by applying strict application of the ordinance because if the owner complies with the ordinance, they would not be allowed a separate meter. (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 existing transformer is much closer to the shed than the existing meter on the house. (3) The hardship is not the result of the applicant's own actions because the house was built in 1995 and the current owners purchased the property in 2012. They had no control over the placement of the meter on 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 placement of the meter on the shed will cost no harm to other properties in the neighborhood. Seconded by Mr. Waddell. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

f. BOA-20-36: 702 East Lindsay Street (Approved)

Chair Truby recused himself from this request. Mr. Ramsey moved that Chair Truby be recused from case BOA-20-36, seconded by Mr. Waddell. The Board voted 6-0 to approve the motion. (Ayes: Vice Chair Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Ms. Skenes assumed the chair's role for this case.

Ms. Thiel stated in case BOA-20-36 at 702 East Lindsay Street, University Park Apartments Holding Company, LLC request a variance to allow existing buildings to encroach 9.8 feet into a required 20 foot rear setback. The buildings are 10.2 feet from a proposed property line.

Evidence provided by the applicants, included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance Reference is Section 30-7-3.2(J)(2): In the RM-12 district, a setback of 20 feet plus one foot for each foot of building height shall be provided along the rear yard.

Background and Site Information: The subject lot is located on the south side of East Lindsay Street, east of Boyd Street, and is zone RM-12 (Residential Multi-Family). Tax records indicate the lot contains approximately 3.17 acres and the existing buildings were constructed in 1968 and 2005. To accomplish the sale of a portion of the subject property, to North Carolina A&T Foundation, Inc., the property must be subdivided and each portion must meet current setback requirements contained in the City's Land Development Ordinance. The applicant proposes to establish a temporary property line between the two existing buildings that would only allow for a 10.2 rear setback from the proposed line when 20 feet is required. In the submitted application, the applicant indicates that after the sale, the buildings on the portion of the property sold will be demolished and the subdivision line will be relocated to allow the full 20 foot setback on the remaining applicant property. If the variance is granted, the applicant will proceed with the subdivision process.

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

Vice Chair Skenes asked the applicant to state their name and address.

Katherine Wilkerson, Attorney, Banks Law Firm, 4309 Emperor Boulevard, Durham, NC, introduced Kim Cameron, Executive Director of the North Carolina A&T Real Estate Foundation and Bill Bivens, representative from University Park Apartments Holding Company, LLC, the current owner of the property.

Vice Chair Skenes swore in Ms. Cameron and Mr. Bivens for their testimony in the case.

Bill Bivens, 818 E 20th Avenue, Denver, CO. Ms. Wilkerson asked Mr. Bivens if he would testify that the application is accurate and correct and would request it be submitted as a part of the record. Mr. Bivens responded it was accurate and correct. Ms. Wilkerson stated the first finding is if unnecessary hardships would apply if the applicant complied with the provisions of the ordinance. Mr. Bivens stated the University is developing the property adjacent to its property. A property line going straight down would cut through an existing building, which is a violation of the codes. It was proposed is to go around the buildings for the short term and once the building was demolished would re-adjust to meet the codes. This is a temporary situation. Ms. Wilkerson stated the buildings are currently vacant on the land purchased by the Foundation, but a subdivision line cannot go through the building because it violates state building codes. The buildings will not change immediately and are in the same location they have always been in. Ms. Cameron was present and would provide the best explanation of the hardships being a result of the particular conditions of the property.

Kim Cameron, Executive Director of the North Carolina A&T Real Estate Foundation, stated they are purchasing the older portion of the property. The solution is to grant a temporary variance until the buildings are demolished. The North Carolina A&T Real Estate Foundation will purchase this property, go through the North Carolina State Property Office and sell the property to the State. The State then will hold several hearings and then sell it to the University. Once the University has ownership of the buildings, they will tear them down. That process can take up to 9 to 10 months. The hardship results from the current zoning requirements that will not allow the University to take possession of the property and tear the buildings down without violating several zoning setback requirements.

Mr. Wilkerson stated the hardship is not the result of the applicant's actions. The buildings the University purchased have been there since the 1960s and the new ones since 2005. This will only be a line between the buildings. There have been numerous meetings with the City to draft the line to be as minimum a setback violation as possible. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit. The line will not change anything on the property but need the setback line in order to create the variance. Everything will be the same and when the buildings are demolished, the setback line will be relocated. It will allow for a 20 foot setback and any new development the University undertakes on that property will deal with the setback issues then because they will have vacant property. The granting of the variance assures public safety and

welfare and does substantial justice. They are trying not to violate public safety or building code. Ms. Cameron stated if this was denied there would be no benefit to the public because there are no public safety concerns associated with the variance and no changes to the site. The buildings would remain in the current locations. Ms. Wilkerson stated basically they want to have this put in place for 9 to 10 months to be able to facilitate the transfer and allowed to file a recombination plat with the City to put the line back where it should have been in the first place. Mr. Oliver stated he drove through the property and when turning off Lindsey Street, there are two new buildings on the right side and asked if those would remain intact. Ms. Cameron responded that was correct. Mr. Oliver asked if the older buildings in the back were the buildings that would be demolished. Ms. Cameron responded that was correct. Mr. Oliver stated there are similar buildings beyond that and asked if they were part of the issue on Stedman Street. Ms. Wilkerson responded that was correct. There is more property being purchased, but is not a part of this variance request because there is not a setback issue. Mr. Oliver asked if the buildings that are replaced will be similar to the two newer buildings, closer to Lindsey Street. Ms. Wilkerson responded they would be.

Vice Chair Skenes swore in Andrew Perkins for his testimony.

Andrew Perkins, Jr., Associate Vice Chancellor for Facilities, NCA&T University, stated the University is in strong support for several reasons. Mr. Perkins stated this area is referred to as F area and the University has been purchasing these properties since 2000. Currently the University owns approximately 55-60% of the properties in the area. This property will allow them to continue to purchase all of properties in this area in order for the University to exercise their approved master plan approved by the Board of Trustees in 2010. The goal is to turn the entire area into a global village, a combination of recreational facilities, soccer fields, and more. Currently before the State Property Office are 27 properties purchased through the Foundation and will be approved in November and then deeded back to the University once they are closed so the University can continue to develop the F area. The plan is to continue to enhance the University properties adjacent to the University and properties in the east area to continue to build and support the continued economic development in the eastern part of Greensboro.

Vice Chair Skenes inquired if there were any questions of Mr. Perkins from the Board members. Vice Chair Skenes inquired if there was anyone else to speak in favor of the request. Seeing none, Chair Skenes asked Ms. Thiel if she was aware of any other speakers. Ms. Thiel responded she was not aware of any other speakers in support or opposition. Vice Chair Skenes asked if there were questions for the applicant or their speakers. Seeing none, Vice Chair Skenes inquired if there were any questions or discussion. Ms. Necas stated all the speakers specifically mentioned they really only need a temporary variance and asked if the Board added a time limit to the variance would that be an unnecessary encumbrance to keep track of all the things being done or was it something desirable. Mr. Perkins responded it was an unnecessary encumbrance to them because there are two Boards they meet with. First is the Board of Governors that come under the University system to be aware of what was being done. Second, the State Property Office would have to concur in everything that was being done relative to their development. Third, the University would have to go before the Council of States, headed by the Governor for his approval. The meetings are not routine and can take some time to be scheduled. Mr. Perkins preferred to not have a time limit and will expeditiously move forward when all of the properties have been acquired to develop the master plan that was approved in 2010. There is a project designed in the F area for a new residence hall for approximately 60 million. They want to continue the momentum for the F area to become part of the university in terms of the programs and student housing going forward.

Vic Chair Skenes inquired if there were any further questions or discussion from the Board members. Seeing none, Vice Chair Skenes closed the public hearing and advised she was prepared to make a motion.

MOTION:

Vice Chair Skenes moved that in case BOA-20-36 at 702 East Lindsay 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 hardships will result to the property by applying strict application of the ordinance because the property could not be subdivided and could not be sold to the North Carolina A&T Foundation for future University expansion. (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 is due to the location of older buildings on the property. The buildings cannot be demolished until after the sale of the properties closes. (3) The hardship is not the result of the applicant's own actions because the buildings were already in existence when the property was purchased. (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 graft of the sub-division line has the lease deviation from the current LDO. The buildings requiring the variance will eventually be torn down for university expansion. Seconded by Mr. Waddell. The Board voted 6-0 to approve the motion. (Ayes: Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0. Recused: Truby.)

Chair Truby resumed his seat on the dais.

g. BOA-20-37: 800 DOVER ROAD (Approved)

Ms. Thiel stated in case BOA-20-37 at 800 Dover Road, William and Patricia Mclvor, request a variance to allow an existing house and garage with proposed covered patio addition to encroach 4.9 feet into a required 10 foot side setback and 25 feet into a required 30 foot rear setback. The existing house with the proposed covered patio addition will be 5.1 feet from the side property line and 5 feet from the rear property line.

Evidence provided by the applicants 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 – Table 7.1: In the R-3 district, minimum side setback is 10 feet and minimum rear setback is 30 feet.

Background and Site Information: The subject lot is located on the north side of Dover Road, west of Cleburne Street and is zoned R-3 (Residential Single-Family). Tax records indicate the corner lot contains approximately 15,246 square feet and the house was constructed in 1936. The connecting patio addition would be in line with the existing garage and make it part of the principal dwelling and be subject to the R-3 setback requirements, which are more restrictive than accessory structure setbacks. The existing house and covered patio addition would encroach 4.9 feet into a required 10 foot side setback and 25 feet into a required 30 foot rear setback. If the variance is granted, the applicants will submit a residential building permit application and proceed with the permit process.

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

Chair Truby asked requested the applicant to present their case. Chair Truby swore Mr. and Mrs. Mclvor in for their testimony.

Marc Isaacson, Attorney, 804 Green Valley Road, on behalf of William and Patricia Mclvor, advised both were standing by to address any questions. Mr. Isaacson stated this variance application is a plan for the owners to add a covered patio on the side of the existing house and connect to the existing garage at the rear of the lot. Establishing the covered patio triggered the application of the setback ordinances on the side and rear lines. This house was built in 1930s and those structures were in place when the Mclvor's purchased the property in 1998. These houses were built on Dover Road long before any zoning regulations were in place in the city of Greensboro. Mr. Isaacson referred the Board members to the application for the variance and read the tests and stated why the variance should be granted. Mr. Isaacson advised letters were sent to all of the property owners within the

radius identified on the City's notification list. The McIvors' had conversations with the most likely affected neighbors to the west and north of their property who were not opposed to the variance application. Ms. Isaacson stated this variance application was a very conventional issue with one of the oldest areas in the city and is the result of matrixing over a new ordinance on older properties. Having a covered patio will be consistent with the other homes in the area. Having a covered patio to enjoy outdoor space is appropriate and reasonable for a home such as this. Mr. Isaacson respectfully requested the Board to approve the variance.

Chair Truby inquired if any of the Board members had questions for Mr. Isaacson or the applicants. Seeing none, Chair Truby asked Ms. Thiel if there was anyone in opposition to the request. Ms. Thiel responded she had not heard any opposition. Chair Truby inquired if anyone was prepared to make a motion.

Mr. Ramsey moved that in case BOA-20-37 at 800 Dover 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 hardships will result to the property by applying strict application of the ordinance because the house was built in 1936 with slanting sidelines that the strict of the application would force the design of the proposed covered patio create an architectural anomaly that the ordinance seeks to avoid. (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 and garage on the property were built in the 1930s and the unique slant of the eastern side of the applicant's lot restricts the area of development. (3) The hardship is not the result of the applicant's own actions because the house and garage were built in the 1930s before the adoption of the existing ordinance and the lot lines were set before the applicants acquired the property. (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 presents the least possible deviance from the existing ordinance and will be in harmony with other houses in the neighborhood and will allow the applicant to move fully use their property and align the existing house and garage. Seconded by Ms. Skenes. The Board voted 7-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

h. BOA-20-38: 706 WOODLAKE DRIVE (Approved)

Ms. Thiel stated in case BOA-20-38 at 706 Woodlake Drive, Paula Adamson and Stephanie Adamson, request 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 through C. Supporting documentation from staff included Exhibits 1 through 8. The Land Development Ordinance Reference is Section 30-8-11.1(G)(1): Accessory structures to single-family, twin homes, duplexes, and traditional houses must take utility 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 south side of Woodlake Drive, west of Woodbluff Drive, and is zoned R-5 (Residential Single-Family). Tax records indicate the lot contains approximately 16,998 square feet and the house was constructed in 1973. The applicants propose to install a separate electrical meter on a recently permitted accessory structure.

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

Chair Truby requested the applicant to come forward and was sworn for testimony.

Stephanie Adamson, 706 Woodlake Drive, stated they were in the process of building an accessory building in the back and discovered the panel was not big enough to run power to their home. There are mature trees in the background and two electricians advised the roots would be a major problem in attempting to run the power from the existing home. A suggestion was made to use the transformer on the neighbor's property to the new addition,

which would be the easiest and safest way. Duke Power viewed it and stated the same thing. Ms. Adamson advised she did speak to the caregiver of the neighbor who approved it but was not the home owner, but advised that the home owner has dementia and was okay with them running the power line.

Chair Truby inquired if the Board had questions for the applicant. Mr. Ramsey inquired what was being done with the accessory structure that was being built. Ms. Adamson responded since she works from home currently, it would be used as her office, storage and home school for daughter. Chair Truby inquired if there were any further questions for the applicant. Seeing none, Chair Truby inquired of Ms. Thiel if there was anyone in opposition to the request. Ms. Thiel responded she had not heard any opposition. Chair Truby inquired if there was Board discussion. Hearing none, Chair Truby advised he was prepared to make a motion.

Chair Truby moved that in case BOA-20-38 at 706 Woodlake 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 hardships will result to the property by applying strict application of the ordinance because if the owner complies with the ordinance, they would not be allowed a separate meter. (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 current panel on the house will not support the load of the accessory building. (3) The hardship is not the result of the applicant's own actions because there are mature trees with large roots between the home and the accessory structure making running this line difficult and expensive. (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 placement of the meter on the accessory building will cause no harm to other properties in the neighborhood. Seconded by Mr. Ramsey. The Board voted 7-0 in favor to approve the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

OTHER BUSINESS:

Mr. Ramsey asked if this was a State ordinance or a City ordinance regarding the separate meter requests. Spending time on the meter issues was somewhat silly in his opinion. Mr. Kirkman advised they are just moving everything through the process. If the Board felt comfortable with it, staff could look at this issue and provide options to address. Chair Truby stated he would strongly suggest it. Ms. Skenes suggested that the requests be a staff mandated issue rather than coming to the Board of Adjustment. Mr. Ramsey asked if the applicant was not happy, if they could appeal staff decision instead of coming to the Board. Mr. Kirkman responded it probably could be done on staff level with certain factors staff to consider, and if disagreed, the Board of Adjustment would be an option. That Board agreed that was a good option.

Chair Truby advised he would be on vacation the week of Thanksgiving and not be present for the November meeting. Ms. Skenes asked if there would be any in person meetings in November. Mr. Kirkman stated at this point City Council would not be meeting in person until the end of the year at least. Mr. Kirkman did not have a definite answer one way or the other. Attorney Andrews stated there was a spike and would be surprised if there would be any in person meetings before April 2021. Ms. Necas asked in the future, even in person, if there would be a way for those who could not be present would be able to do a Zoom meeting. Mr. Kirkman responded it was an interesting question. The setup typically allows members to call in and participate because the meetings are run via the Greensboro Television Network. This is not an option for the Board of Adjustment because the meetings are not televised. There is a bigger concern in trying to determine that all the Board members are visible during the deliberations and very clear on who is speaking, asking questions and obtaining evidence. Counsel Andrews stated he did not think legally it could be done. There is precedent in doing that but the challenge is how to assure real time/same time and back-up provisions for electronics. There will probably be a product that will come out to make it easier in the future.

ACKNOWLEDGEMENT OF ABSENCES:

There were no absences. Chair Truby advised he would be on vacation and unable to be present for the November meeting. Ms. Thiel inquired if there was anyone else who could not make the November 23rd meeting.

ADJOURNMENT:

The meeting was adjourned by Chair Truby at approximately 7:43 p.m.

Respectfully submitted,

Chuck Truby, Chairman
Greensboro Board of Adjustment
CT/cgs

MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
NOVEMBER 23, 2020

The meeting of the Greensboro Board of Adjustment was held on Monday, November 23, 2020 at 5:30 p.m. online via Zoom. Board members present were: Vice Chair Mary Skenes, James Waddell, Leah Necas, Vaughn Ramsey, Ted Oliver, Terry Savoy and Deborah Bowers. City staff present were Shayna Thiel, Mike Kirkman, Luke Carter and Alan Andrews, Chief Deputy City Attorney.

Vice Chair Skenes welcomed everyone to the virtual meeting and advised of the policies and procedures in place for the Board of Adjustment. Vice Chair Skenes further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Vice Chair Skenes advised that each side, regardless of the number of speakers, were allowed a total of 20 minutes to present evidence. Board members may ask questions at any time.

APPROVAL OF THE MINUTES (OCTOBER 26, 2020)

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

SWEARING IN OF STAFF

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

CONTINUANCES / WITHDRAWALS

Ms. Thiel advised that a continuance was requested for case BOA-20-42, and Marc Isaacson would be speaking.

Marc Isaacson, 804 Green Valley Road, requested a continuance to the December meeting for BOA-20-42 as he only recently learned of opposition. There is no time crunch on this item, and he would like to discuss all concerns with the neighborhood in an attempt to resolve them and be able to come before the Board in unity. Mr. Isaacson did not feel this would prejudice anyone regarding this request.

Mr. Oliver made a motion to approve the continuance, seconded by Ms. Necas. The Board voted 7-0 in favor of the motion. (Ayes: Skenes, Oliver, Necas, Savoy, Waddell, Ramsey, and Bowers. Nays: 0.)

OLD BUSINESS

No old business.

NEW BUSINESS

1. VARIANCE

a. BOA-20-39: 1020 McRae Street. (APPROVED)

Ms. Thiel stated in case BOA-20-39, at 1020 McRae Street, Mark E. Gray Sr., requests a variance to allow a proposed house to encroach 7.8 feet into a required 20 foot rear setback. The house will be 12.2 feet from the rear 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 Reference was Section 30-7-3.2 – Table 7-2: In the R-5 District, minimum setback is 20 feet.

Background and Site Information: The subject lot is located on the west side of McRae Street, east of Willow Road, and is zoned R-5 (Residential Single-family). Tax records indicate the lot contains approximately 6,970 square feet. Building permit #200624557 was issued on November 21, 2006 for the construction of a principal detached residential dwelling and a detached garage on the subject property. After the permit was issued, the detached

garage was constructed, but the principal dwelling was not. As such the garage is now considered the principal structure on the property and the use is considered an illegal nonresidential storage use. The applicant now proposes to convert the detached garage into a residential dwelling, but it does not meet the rear setback requirement for principal dwellings in the R-5 district. The proposed house encroaches 7.8 feet into the required 20 foot rear setback and is 12.2 feet from the rear property line. If the variance is granted, the applicant will submit a new residential building permit application and proceed with the permit process.

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

Vice Chair Skenes requested the applicant to come forward and be sworn in.

Mark E. Gray Sr., 2101 McRae Street, advised he was back before the Board requesting to make the detached garage a residential dwelling. Mr. Gray received a permit for a house and detached garage in 2006, but could not obtain financing to complete all of it, so he only built the garage. In 2009, Mr. Gray tried again and was unable to obtain financing. In 2012, Mr. Gray attempted to complete the project and was unable to obtain financing a third time. Mr. Gray is now requesting to convert the garage into a residential single-family dwelling.

Vice Chair Skenes inquired if any Board members had questions for the applicant. Seeing none, Vice Chair Skenes inquired if there was anyone else present to speak in favor of the request or in opposition. Vice Chair Skenes swore in the speaker.

Bonita Casterlow Mittman, 1012 McRae Street, stated she was in favor of the request on behalf of Gilpa and Associates Inc.

Vice Chair Skenes inquired if there were questions for the applicant or the speaker. Seeing none, Chair Skenes inquired if there was any discussion. Seeing none, Vice Chair Skenes requested a motion to close the public hearing. Mr. Ramsey made a motion to close the public hearing; seconded by Mr. Oliver. The Board voted 7-0 in favor to approve the motion. (Ayes: Skenes, Waddell, Ramsey, Oliver, Necas, Savoy and Bowers. Nays: 0.)

Chair Skenes inquired if there was any Board discussion, comments or a motion. It was the general consensus of the Board that the request was straight forward. Mr. Waddell stated if there was no further discussion, he did have a motion.

MOTION:

Mr. Waddell moved that in BOA-20-39, 1020 McRae Street, based on the stated 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 strict application of the ordinance because the attached garage was constructed, but the principal dwelling was not, causing the garage to be considered as the principal dwelling structure. (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 location of the foundation is the most logical place for the dwelling. The existing building was permitted, but the project was not completed due to financing. (3) The hardship is not the result of the applicant's own actions because the permitting and construction issue caused the garage to be considered as an illegal residential storage use. (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 granting the variance will not detract from the character of the neighborhood. The applicant will submit a new residential permit application and proceed with the permit process. Seconded by Ms. Bowers. The Board voted 7-0 in favor the motion. (Ayes: Skenes, Waddell, Ramsey, Oliver, Necas, Savoy and Bowers. Nays: 0.)

b. BOA-20-40: 1200 Hill Street, Natalie Alexander and Graham Moore request two variances. (APPROVED)

Ms. Thiel stated in case BOA-20-40, at 1200 Hill Street, Natalie Alexander and Graham Moore request two variances. (1) To allow a proposed accessory dwelling to encroach 18.6 feet into a required 20 foot rear setback.

The accessory dwelling 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 provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance References were Section 30-8-11.2(D): The accessory dwelling must meet the location and dimensional requirements of the principal structure; Section 30-8-11.2 (E): The heated floor area of accessory dwelling must be at least 400 square feet in area, but may not exceed 30% of floor area of the primary dwelling; and Section 30-7-3.2 – Table 7.2: In the R-5 District, minimum rear setback is 20 feet.

Background and Site Information: The subject lot is located on the east side of Hill Street, north of Northwood Street, and is zoned R-5 (Residential Single-family). Tax records indicate the corner lot contains approximately 10.019 square feet and the house was constructed in 1928. The existing 324 square foot accessory structure is considered a nonconforming structure as it encroaches into the required 10 foot rear setback for accessory structures taller than 15 feet in height. The applicant proposes to convert the existing accessory structure into an accessory dwelling in the same footprint. Accessory dwellings must meet the same setbacks as principal dwellings. 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 property line along Northwood Street. In addition, at only 324 square feet, the proposed accessory dwelling does not meet the minimum 400 square foot of heated floor area requirement. The Board of Adjustment approved variances (BOA-19-25) to allow for the conversion of the accessory structure into an accessory dwelling on July 8, 2019, but those approvals expired as construction did not commence within 12 months of the granting of the variances. If the variances are granted, the applicants will submit a residential building permit application and proceed with the permit process.

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

Vice Chair Skenes requested the applicants to present their case. The applicants were sworn for their testimony.

Natalie Alexander and Graham Moore, 1200 Hill Street. Mr. Moore became aware of the setbacks last year. Materials were obtained for the dwelling but due to COVID-19 restrictions, workers would not come to their home. Currently, the original 100 plus year old carriage house is being used as storage. Mr. Moore has obtained the same type of brick used in the original building to use in the restoration, if needed. They are requesting to be able to make the building more functional and create a workshop and a small living space, as it a beautiful two-story building. Vice Chair Skenes asked if there were any questions for the applicants. Ms. Bowers asked if Mr. Moore was the owner of the building. Mr. Moore responded his wife was the owner. Ms. Alexander advised she was the owner and Mr. Moore was her husband. Mr. Savoy asked what the use for the building was prior to Ms. Alexander's purchase of the property. Mr. Moore stated he would guess it was used as a carriage house or storage but did not know for sure.

Vice Chair Skenes inquired if there were any further questions by the Board. Hearing none, Vice Chair Skenes asked if there was anyone to speak in support of this request. Seeing none, Vice Chair Skenes asked if there was anyone to speak in opposition to the request. Seeing none, Vice Chair Skenes requested a motion be made to close the public hearing. Mr. Ramsey made a motion to close the public hearing. Seconded by Ms. Bowers. The Board voted 7-0 in favor of the motion. (Ayes: Skenes, Ramsey, Waddell, Oliver, Necas, Savoy and Bowers. Nays: 0.) Vice Chair Skenes advised that the public hearing was closed. Vice Chair Skenes asked for discussion, questions or a motion from the Board. Ms. Bowers stated if there was no discussion, she had a motion.

MOTION:

Ms. Bowers moved that in BOA-20-40, 1200 Hill Street, based on the stated Findings of Fact, 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 opportunity to refurbish and make use of an almost 100 year old original carriage house will be lost and it cannot currently be used for anything except storage. (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 carriage house was originally built at the same time as the main house, in the 1920s, and is a solid brick building built on a slab so it cannot be moved. Again, the current ordinance prevents any true restoration of the building beyond use for storage and it is just a fancy place for mice and squirrels to hang out. Enlarging the building to comply with the 400 square foot requirement for heated space would not allow the building to remain true to its original size when built. (3) The hardship is not the result of the applicant's own actions because the applicant did not construct the building, it was built at the same time as the original 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 exterior will not be changed except for window replacement. The applicant has found old brick from the 1920s that can be used in the restoration repair if needed. Restoration and repair of the original carriage house exterior and improving the interior for use as a workshop and living space will add value to the property and enhance the neighborhood. Also, the variance was previously approved by the Board of Adjustment in 2018. Seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Skenes, Waddell, Ramsey, Oliver, Necas, Savoy and Bowers. Nays: 0.)

c. BOA-20-41: 1609 BEECHTREE ROAD (APPROVED)

Ms. Thiel stated in case BOA-20-41 at 1609 Beechtree Road, James Wall, requests a variance to allow a proposed addition to encroach 18.4 feet into a required 30 foot rear setback. The addition will be 11.6 feet from the rear property line.

Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference was Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum rear setback is 30 feet.

Background and Site Information: The subject lot is located on the south side of Beechtree Road, east of Lafayette Avenue, and is zoned R-3 (Residential Single-family). Tax records indicate the lot contains approximately 16,988 square feet and the house was constructed in 1973. The applicant proposes to add a three car garage at the rear of the house that will encroach 18.4 feet into the required 30 foot rear setback and be 11.6 feet from the rear property line. The proposed garage will replace an existing two car open carport and allow for an enclosed boat storage. If the variance is granted, the applicant will submit a residential building permit application and proceed with the permit process.

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

Vice Chair Skenes swore in James Wall, Jr., Stephen Jobe, and James (Jimmy) Wall.

James Wall, 213 Fields Street, stated that Stephen Jobe and James Odell Wall will also be speaking on behalf of this request.

Stephen Jobe (architect), 3314 Watauga Drive, stated the existing house has an attached two car carport. The plan is to add a third bay and enclose the carport. Access to the carport will be from Lafayette Street. The third bay will be for boat storage and will be enclosed. Across the back property line is a utility easement that will not be disturbed. The house was constructed 40 plus years ago and cannot be moved. Access to the garage will need to be from the side street and there is no other direction to go but back. The easement will be maintained. A similar structure was added directly behind this property on the side street with a similar existing condition.

Vice Chair Skenes asked if there were questions from the Board. Mr. Ramsey asked if this house was built before the setback ordinance currently being applied was in effect. Mr. Jobe responded that he believed it was built before the ordinance. The existing house and carport are within the R-3 zoning setbacks. If the boat storage is

added there is no way to do it outside of the 30 foot setback. Mr. Ramsey asked if Mr. Wall was the original owner of the house. Mr. Wall responded that is his grandfather's house, who passed in April.

James Odell Wall, 5900 Stoneleigh Place, responded that the property is in a trust in his name and that he was in charge of whatever happens to it.

Vice Chair Skenes inquired if there were any further questions. Seeing none, Vice Chair Skenes asked if there was anyone else to speak in support of this case. Seeing none, Vice Chair Skenes asked if there was anyone to speak in opposition to the case. Seeing none, Vice Chair Skenes closed the public hearing and asked if there was Board discussion. Seeing none, Vice Chair Skenes requested a motion be made to close the public hearing. Mr. Ramsey made a motion to close the public hearing. Seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Skenes, Waddell, Ramsey, Oliver, Necas, Savoy and Bowers. Nays: 0.) Vice Chair Skenes inquired if there was discussion, questions or a motion from the Board. Mr. Ramsey stated if there was no discussion, he did have a motion.

MOTION:

Mr. Ramsey moved that in BOA-20-41, 1609 Beechtree 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 will be unable to store his vehicles and boat in a closed space without the granting of the 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 house was built in 1973 and access is limited to a side street and there is nowhere to with the dwelling except backwards. (3) The hardship is not the result of the applicant's own actions because the position of the house and the lot was not determined by the applicant. (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 be consistent with other dwellings in the neighborhood and will increase the value of the property. Seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Skenes, Waddell, Ramsey, Oliver, Necas, Savoy and Bowers. Nays: 0.)

OTHER BUSINESS:

No other business.

ACKNOWLEDGEMENT OF ABSENCES:

Vice Chair Skenes acknowledged the absence of Chuck Truby.

ADJOURNMENT:

Ms. Bowers made a motion to adjourn, seconded by Mr. Waddell. The meeting was adjourned by Vice Chair Skenes at approximately 6:23 p.m.

Respectfully submitted,

Mary Skenes, Vice Chair

Greensboro Board of Adjustment

MS/cgs

MEETING MINUTES
GREENSBORO BOARD OF ADJUSTMENT
DECEMBER 14, 2020

The meeting of the Greensboro Board of Adjustment was held on Monday, December 14, 2020 at 5:30 p.m. online via Zoom. Board members present were: Chairman Chuck Truby, Mary Skenes, James Waddell, Leah Necas, Vaughn Ramsey, Ted Oliver, and Terry Savoy. City staff present were Shayna Thiel and Mike Kirkman of the Greensboro Planning Department, and Alan Andrews, Chief Deputy City Attorney.

Chairman Chuck Truby welcomed everyone to the virtual meeting and advised of the policies and procedures in place for the Board of Adjustment. Chairman Truby further explained the manner in which the Board conducts its hearings and methods of appealing any ruling made by the Board. Chairman Truby advised that each side, regardless of the number of speakers, were allowed a total of 20 minutes to present evidence. Board members may ask questions at any time.

APPROVAL OF THE MINUTES (DECEMBER 14, 2020)

Chair Truby recused himself from this item as he was not present at that meeting.

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

SWEARING IN OF STAFF

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

CONTINUANCES/WITHDRAWALS

None.

OLD BUSINESS

a. BOA-20-42: 2100 LAWNDALE DRIVE (Approved)

Because of conflict, Mr. Ramsey requested recusal from this request. Ms. Skenes moved that Mr. Ramsey be recused from BOA-20-42, seconded by Mr. Oliver. The Board voted 6-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Oliver, Necas, and Savoy. Nays: 0.)

Ms. Thiel stated in **BOA-20-42, 2100 Lawndale Drive**, Saperstein Real Estate, requests a variance to allow a proposed outdoor advertising sign to be 240 feet from a residential zoning district when at least 300 feet is required.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference was Section 30-14-9.5(B): No outdoor advertising sign may be erected, affixed, or otherwise installed within 300 feet of any residential zoning district or property containing a religious assembly use.

Background and Site Information: The subject lot is located on the east side of Lawndale Drive, north of Sunset Drive, and is zoned C-M (Commercial-Medium). Tax records indicate the lot contains approximately 20,473 square feet, and the buildings were constructed in 1950 and 1987. The applicant proposes to install an outdoor advertising sign that will be 240 feet from a residential zoning district when at least 300 is required. The applicant cites that the subject property's size and layout, and the location of residential property to the east are reasons that the spacing requirement cannot be met. Per the applicant, the proposed outdoor advertising sign will be no taller than 40 feet, the overall number of parking spaces on the property will not be reduced by the sign's installation, and the existing freestanding sign will be removed.

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

Chairman Truby inquired of Mr. Isaacson if the applicants would be speaking. Mr. Isaacson advised that Taylor Dick and Chris Dunlap were present and would possibly speak. Chair Truby swore in Taylor Dick and Chris Dunlap for their testimony regarding this application.

Marc Isaacson, 804 Green Valley Road, advised that this item was on the last meeting's agenda when it was brought to their attention that one person who was outside of the notification radius and expressed concern and potential opposition to this request. The opposition has since been withdrawn and the concerns have all been resolved. This is a unique property built in the 1950s when the city was expanding northerly along Lawndale and Battleground. It is a unique shopping center, as each commercial parcel is owned individually. A convenience store with fuel pumps and a dry cleaner were depicted on the site plan in Tab 1 of the booklet provided. The proposed sign will replace the on-premise advertising sign for the convenience store and gas prices for the fuel pumps. There is a 300 foot spacing requirement for an outdoor advertising sign to the nearest residential district. To the northeast, two residential rental properties back up to the commercial property. Dawn Chaney owns property closest to the commercial property and provided a notarized support letter for the application. Mr. Isaacson presented aerial photographs depicting the property from different angles and various views of the current sign. Mr. Isaacson presented a slide showing where the updated sign would be located. The sign will indicate the businesses located within the shopping center and other off-premise businesses and will be considered to be outdoor advertising. Currently, the sign is 240 feet away and needs to be 300 feet away which is the reason for the variance request. Two different letters were sent: one to the commercial property owners along Lawndale and one to the residential property owners in area per the city notification list. There was one concern voiced that revolved around lighting and the orientation of the sign. Both have been resolved. Dick Broadcasting will be leasing the space for the sign and will use blackout technology minimizing light travel. Dick Broadcasting agreed to orient the sign to Lawndale and Battleground. Advertising and marketing for these retail businesses would provide a great opportunity to increase business. Mr. Isaacson stated the purpose of the ordinance is to allow for the effective use of advertising and minimizing potential adverse effects of the advertising on nearby residential properties. The strict compliance with the ordinance spacing restriction would prohibit the use of this commercially-zoned property as a means in promoting local businesses via the use of the sign. The sign will be a digital sign and in the event of an emergency could post messages in connection and coordination with the Greensboro Police Department. Not granting the variance would prohibit an appropriate use of the property. The location of the sign would not negatively impact residential properties. Mr. Isaacson reviewed the factors for a variance and stated they have been met by this request. Mr. Isaacson advised there were two other individuals present who could also answer any questions of the Board.

Chairman Truby inquired if there were questions for the applicant from any Board members. Mr. Waddell stated he had two questions. First, in relation to the construction of the new sign, Mr. Waddell asked if there had been any type of survey completed to ensure there are no obstructions regarding the current traffic coming around the corner. The second question was if there was any dimensional information for the new sign compared to the existing sign. Mr. Isaacson responded they did look at the size and the height and positioning of the new sign. It was determined the sign would not block the view of any commercial business or anything along the roadways in the area. The sign would have a single pole and a sign head which would be high enough. Dick Broadcasting wants to make this appropriate in scale and in context. An on-premise sign could block the view of those commercial stores along the thoroughfare. The ordinance allows for a higher sign, but Dick Broadcasting agreed with the individual who had expressed a concern to reduce the height of the sign head, so it will not be too high. Chairman Truby inquired if there were any other questions for Mr. Isaacson. Ms. Necas asked about the size of the current sign on the property. Mr. Isaacson responded the current sign was not measured exactly but could

be 40 feet high. Dick Broadcasting has limited their height to 35 feet with a goal of keeping it at 30 feet. Ms. Necas asked Mr. Isaacson if the sign would be taller than the current sign. Mr. Isaacson responded it will be slightly taller, by possibly 5 to 7 feet, but not significantly. Chair Truby asked how many different businesses would be on the sign. Mr. Isaacson responded it is planned to be a digital sign and the message would be rotating. There could be any number of businesses advertising on the sign. Dick Broadcasting intends to provide a favorable way for the businesses to advertise and market their stores. There will be a changing message that will be paced to be aesthetically pleasing. Mr. Savoy asked if it was a smaller type billboard. Mr. Isaacson responded that was correct, but technically considered an outdoor advertising sign because it is marketing stores not located on that property. The property is unique in that each business has their own individual owner. Chair Truby inquired if there were any further questions. Seeing none, Chairman Truby asked if there was anyone else to speak in favor of the request. Seeing none, Chair Truby inquired of Ms. Thiel if there was anyone in opposition to the request. Ms. Thiel responded there was no opposition expressed. Chair Truby asked to close the public hearing.

BOARD DISCUSSION:

Chairman Truby inquired if there was any Board discussion, comments or a motion. Ms. Necas advised she was ready to make a motion.

MOTION:

Ms. Necas moved that in case BOA-20-42 at 2100 Lawndale Drive, based on the stated Findings of Fact, that 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 strict application of the ordinance because the applicant will be unable to use any portion of the property for purposes of installing an outdoor advertising sign. (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 it abuts residential property to the east while also abutting similarly zoned Commercial-Medium property to the north and south and is on a major thoroughfare creating a unique situation with commercial and residential zones in close proximity (3) The hardship is not the result of the applicant's own actions because the property was created in 1950 and 1987 prior to current ownership and the ordinance limits spacing to such an extent that no area on the property could allow for sign installation. (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 represents the least possible deviation from the ordinance's general purpose and intent, as the sign will not negatively interfere with the surrounding residential properties. Two existing commercial structures stand between the signs proposed location and the closest residential property, and the sign will encourage the effective promotion of local businesses and organizations. Seconded by Mr. Waddell. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Oliver, Necas, and Savoy. Nays: 0.) Chair Truby stated it passed unanimously, with one recusal.

Mr. Ramsey resumed his space in the Zoom meeting

NEW BUSINESS

1. VARIANCE

a. BOA-20-43: 5003 & 5007 HUNTMASER TRAIL (Approved)

Ms. Thiel stated in **BOA-20-43, 5003 & 5007 Huntmaster Trail**, Virginia Sykes, requests two variances. (1) To allow a proposed principal dwelling at 5003 Hunt Master Trail to encroach 21.9 feet into a required 30 foot front setback. The principal dwelling will be 8.1 feet from the front property line. (2) To allow a proposed principal dwelling at 5007 Hunt Master Trail to encroach 28.15 feet into a required 30 foot front setback. The principal dwelling will be 1.85 feet from the front property line.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance Reference was Section 30-7-3.2 – Table 7-1: In the R-3 District, the minimum front setback is 30 feet.

Background and Site Information: The subject lots are located on the south side of Hunt Master Trail, west of Stanley Road, and are zoned R-3 (Single-Family Residential). Tax records indicate the vacant lots contain approximately 77,537 square feet. The applicant proposes to subdivide the existing lot into two lots, 5003 and 5007 Hunt Master Trail, which will meet the R-3 lot width and area requirements. The applicant indicates that the portion of property taken for NCDOT right-of-way for Painter Boulevard and the existing stream buffer limit the buildable area of the proposed lots. The applicant proposes to construct principal dwellings on each lot that will encroach into a required 30 foot front setback. The principal dwelling proposed at 5003 Hunt Master Trail will encroach 21.9 feet into a required 30 foot front setback and be 8.1 feet from the front property line. The principal dwelling proposed at 5007 Hunt Master Trail will encroach 28.15 feet into a required 30 foot front setback and be 1.85 feet from the front property line. If the variances area granted, the applicant will proceed with the subdivision and building permit process.

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

Chairman Truby swore in Wiley Sykes and Virginia Sykes for their testimony in this application.

Wiley A Sykes, 110 Elgin Place and his mother, Virginia Sykes, 6100 West Friendly Avenue, Apt 3206. Mr. Sykes advised this property was purchased by his father in 1995 with the intent to hold for a period of time and develop 4 single-family lots when the time was right. NCDOT purchased a portion of the land for the Painter Boulevard right-of-way, leaving him with what he believed to be 2 to 3 viable lots. The lots are indicated in the NCDOT plans that are part of the exhibits. Mr. Sykes did not believe that NCDOT and his father realized expanding a portion of the Huntmaster Trail right-of-way, which they purchased, would make the remaining lots unbuildable because it pushed the building envelope up against the stream buffer in the rear of the property. The expanded part of the right-of-way was used as a slope and construction easement during NCDOT's creation of the cul-de-sac on Huntmaster Trail, but currently serves no purpose. This expanded part of the right of way varies from 0 feet at the east end to 54 feet at the west end, beyond the distance that a typical right of way would be for this type of street. Ms. Sykes is asking that the setbacks on the two proposed lots be treated as if the right-of-way has typical dimensions that follow the shape of the cul-de-sac as shown in Exhibit B. This would place the front of the houses between 46 and 64 feet behind the edge of the asphalt. A typical setting for an R-3 zoning would have the front of the houses approximately 40 feet behind the asphalt or curb. House setbacks are measured from the right of way, not the edge of asphalt and 30 feet is required in the R-3 zoning. They were asking to be allowed to have a reduction on the setback varying from 30 feet on the eastern portion of lot 2 down to approximately 1 foot setback on the western side of lot 1. The Guilford County Tax Department has valued the parcel at \$31,500 for several years, which is slightly higher than the value placed on the neighboring lots. Close to \$15,000 has been paid for property taxes on this parcel over the past 25 years. Without this variance, this parcel is unbuildable because it does not contain enough area required by the City of Greensboro for even a single family house, resulting in the value to be considerably less than what the Tax Department has assigned.

Chairman Truby inquired if there were questions for Mr. Sykes. Seeing none, Chairman Truby inquired if there was any discussion. Chair Truby asked if there was anyone wishing to speak in favor of the request. Seeing none, Chair Truby asked Ms. Thiel if there was anyone in opposition to the request. Ms. Thiel advised that Ms. Karen Johnson was present to speak in opposition.

OPPOSITION:

Chair Truby swore in Karen Johnson for her testimony in this case.

Karen Johnson, 5002 Huntmaster Trail, stated she has lived at that address for 30 years. The houses are brick and with large yards. Ms. Johnson stated she talked with Mr. Sykes after letters were sent to neighbors. The

letter stated Mr. Sykes had applied for a variance from the Board of Adjustment to reduce the front building setback for the two lots of 5003 and 5007 Huntmaster Trail to allow for new homes to be built on that property. Ms. Johnson reiterated what Mr. Sykes had stated regarding the purchase. Ms. Johnson stated her concern was a possible change in the characteristics of their neighborhood, what everything would look like and what the value would be. NCDOT was very good to work with and provided a large number of trees to act as a sound barrier in place of a concrete sound barrier, resulting in less noise. Ms. Johnson felt the stream made the lots very muddy. All of her questions were answered by Mr. Sykes, who had advised the lots would be sold and the homes would be approximately 1,700 to 2,100 square feet two-story homes, with two-car garages. At that time, Mr. Sykes was unsure if the homes would have a stone or brick front and the rest probably siding. Mr. Sykes provided a telephone number to call James Boykin, owner of RAM Homes. Mr. Boykin did not respond or return her calls. Ms. Johnson sent emails to Mr. Sykes, who provided her with maps and an original drawing of his father's plan for the land. Pictures depicted the spacing of the homes currently from the street. Ms. Johnson felt one single-family ranch style home would be the most appropriate in keeping with the character of the homes currently. When looking at the site plan, it indicates no yard and would not be inviting to a family. Ms. Johnson was concerned regarding the treatment of the property and being compatible with the houses currently there. Ms. Johnson felt because of the water issue and no yard, it would be a lesser value home.

Chair Truby inquired if any Board members had questions for Ms. Johnson. Seeing none, Chair Truby inquired if Mr. Sykes would like to respond in rebuttal.

Wiley Sykes stated in response to the size of the yards, Ms. Johnson was correct that the front yards are smaller out of necessity. Overall the yards are quite large. The majority of the yard is behind the houses and going back to the creek and beyond. Mr. Sykes guessed the yards were approximately 150 feet to 175 feet behind the houses. Lot 2 has a large side yard in addition as useable space, but not as buildable space. Mr. Sykes realized there was a lot of rain resulting in a very muddy picture and presumed that the builder would bring in fillers to elevate the lot and have his landscaper drain the water away from house to the creek behind there. It should be very easy to make a positive drainage toward the creek given the topography of the land. Chair Truby inquired of Ms. Johnson if there was anything further she would like to discuss. Ms. Johnson responded she did not. Her concern was the drainage could go behind but nothing can be placed on the stream area and was not sure if families would really be able to do that. Ms. Johnson stated the builders can do a lot, but it would come down to what the builder will really do.

Chair Truby inquired of Ms. Thiel if there was anyone else in opposition. Ms. Thiel responded there was no other speakers. Chair Truby closed the public hearing.

BOARD DISCUSSION:

Chairman Truby inquired if there was any Board discussion, comments or a motion. Mr. Oliver stated he was unsure about the setbacks as one would be very close to the property line and asked how far it was from the actual concrete or asphalt. Chair Truby stated it was 50 or 55 feet from the front of the house to the actual pavement. Chair Truby stated normally in sub-divisions, the right-of-way runs about 10 feet from the pavement or curb line. This right-of-way was totally different than anything he was familiar with. Chair Truby referred to Exhibit B indicating the line running next to the pavement and stated that normally was where the right of way would be running. Chair Truby referred to another line at an angle indicating where the right-of-way actually was recorded. In theory, the 30 feet back from the dark heavy line would put the setback almost in the stream buffer. It would not be a buildable area. Chair Truby stated this is a unique circumstance in the way the right-of-way runs and the way it is normally done and it appears to be very tight. Chair Truby inquired if there were any further questions from the Board members. Mr. Savoy asked if the flooding was something the Board should consider. Chair Truby responded the Board was only to look at the front setback requirements. The flooding is outside of their purview and would be a builder requirement. The question for the Board is if a variance can be granted that would take the front setback down to one foot, but this was a very unique circumstance. Mr.

Ramsey stated he felt cul-de-sacs seem to create special issues regarding setbacks. If this was a straight road, it would be different. Chair Truby felt there was a very big burden on the property owner in this case because when the property was purchased in 1995, the stream buffers probably did not exist. All of the new regulations and so forth have placed a hardship on this property owner. Chair Truby inquired if there were any further comments from the Board members or if someone would like to make a motion. Mr. Ramsey stated he had a motion.

MOTION:

Mr. Ramsey moved that in BOA-20-43, 5003 & 5007 Hunt Master Trail, based on the stated 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 strict application of the ordinance because the property will be unbuildable and of no value due to the unusually large NCDOT right-of-way. (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 the creation of the property with its current boundaries was the result of an NCDOT condemnation proceeding that gave the cul-de-sac right-of-way and pushed the property toward a stream bed. (3) The hardship is not the result of the applicant's own actions because the boundaries of the property were created by an NCDOT condemnation proceeding. (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 without the construction on the property, increasing its value and utility. Seconded by Ms. Skenes. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

b. BOA-20-44: 4517 Highberry Road (Approved)

Ms. Thiel stated in **BOA-20-44 at 4517 Highberry Road**, James Nemeti, requests a variance to allow a proposed accessory structure to encroach 8.63 feet into a required 15 foot side street setback. The accessory structure will be 8.63 feet into a required 15 foot side street setback. The accessory structure will be 6.37 feet from the side property line along Charlottesville Road.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1-7. The Land Development Ordinance Reference was Section 30-8-11.1(B)(1): Accessory structures are not allowed in a required street setback.

Background and Site Information: The subject lot is located on the south side of Highberry Road, east of Charlottesville Road, and zoned R-3 (Single-Family Residential). Tax records indicate the corner lot contains approximately 16,117 square feet and the house was constructed in 1973. The existing accessory structure on the lot is considered a nonconforming structure as it encroaches into a required 15 foot side street setback. The applicant proposes to remove the existing structure and construct a new accessory structure in the same location that is larger in size but does not get any closer to the side property line than the existing accessory structure. The proposed accessory structure will encroach 8.63 feet into a required 15 foot side street setback and be 6.37 feet from the property line along Charlottesville Road. The applicant indicates that the topography, lot size, and pool location limit the placement of the accessory structure. If the variance is granted, the applicant will submit a building permit application and proceed with the permit process.

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

Chairman Truby swore in James Nemeti for his testimony.

James Nemeti, 4517 Highberry Road, stated he would like to replace an outdated structure. Mr. Nemeti moved to Greensboro in 2010 and found plans that indicated the shed was built with other renovations from a previous owner in 1994 and were present when the home was purchased in 2010. Mr. Nemeti would like to replace the current structure with brick that would match his home. The structure would not go out on Charlottesville Road

any more than the current structure is now but would likely be wider by approximately 10 feet. Mr. Nemeti advised it would be a single-story structure.

Chairman Truby inquired if there were any questions by members of the Board for the applicant. Hearing none, Chairman Truby asked if there was anyone else to speak in favor of this request. Seeing none, Chairman Truby inquired of Ms. Thiel if there was anyone to speak in opposition to the request. Ms. Thiel advised she had not heard of any opposition. Since there were no questions for the applicant, Chairman Truby closed the public hearing.

DISCUSSION:

Chair Truby stated it appeared to be a straight forward request. Mr. Waddell said if there was no discussion, he would make a motion.

MOTION:

Mr. Waddell moved that in BOA-20-44, 4517 Highberry Road, 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 due to the topography of the land, size of the lot, and the location of the pool, there is no other viable option for replacement of the new structure. (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 moving the structure further away from the road and closer to the pool will limit the usability of the structure. (3) The hardship is not the result of the applicant's own actions because the current structure was built in 1994, the current owner purchased the home in 2010. (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 current structure is 26 years old and the new structure would add value and increase safety. Seconded by Mr. Ramsey. The Board voted 7-0 in favor of motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy Nays: 0.)

c. BOA-20-45: 302 KEMP ROAD WEST (Approved)

Because of conflict, Mr. Ramsey requested recusal from this request. Ms. Waddell moved that Mr. Ramsey be recused from BOA-20-45, seconded by Mr. Oliver. The Board voted 6-0 to approve the motion. (Ayes: Truby, Skenes, Waddell, Oliver, Necas, and Savoy. Nays: 0.)

Ms. Thiel stated in BOA-20-45 at 302 Kemp Road West, Randall and Kathy Manning request a variance to allow a proposed fence located within 15 feet of a street right-of-way to exceed the maximum 4 foot height requirement by 1 foot.

Evidence provided by the applicant included Exhibits A through C. Supporting documentation from staff included Exhibits 1 through 6. The Land Development Ordinance Reference is Section 30-9-4.6 (A): No fence or wall may exceed 4 feet in height within 15 feet of any public or private street right-of-way.

Background and Site Information: The subject lot is located on east side of Kemp Road West, north of Starmount Drive, and is zoned R-3 (Single-Family Residential). Tax records indicate the lot contains approximately 92,783 square feet and the house was constructed in 1972. Currently, a low, split-rail wooden fence sits on the front property line along Kemp Road West. The applicants propose to replace the existing fence with a 5 foot high fence along the existing fence line to enhance security and minimize disruption to existing vegetation. Per the Land Development Ordinance, the maximum height for a fence within 15 feet of a street right-of-way is 4 feet, so a variance is required to exceed the height by one foot.

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

Mr. Isaacson advised that Mr. Kaplan was online and available for questions.

Marc Isaacson, 804 Green Valley Road, stated the records indicate that this house was built in 1927. Fairly new regulations require a setback for a new fence. The proposed fence would replace an existing 4 foot high fence with a 5 foot high fence. The new fence within 15 of the right-of-way of Kemp Road West triggers the application of the ordinance and is the reason for the variance request. An architect was retained by the applicants to design an updated perimeter fence. The proposed fence is a much needed renovation that will increase the property value and provide for overall safety and security for the applicants. Mr. Isaacson provided a site plan prepared by the architect for this project. Mr. Isaacson noted a smaller right-of-way than typically seen in new subdivisions, which is a factor to consider. Mr. Isaacson referred to dots on a submitted drawing that indicate existing landscaping and explained there are different types of landscaping of real value and utilization for the property. A second site plan detailing the types and amounts of landscaping was shown that are very important to the applicants and the property. A series of photographs were shown supplementing the pictures in the staff report. The pictures depicted the visualization of the natural fit of the existing fence line along the road and the ability to retain that fence and not disturb the extensive landscaping on the property that has been there for decades. A photograph was depicted indicating a portion of the existing fence which was largely obscured from view by the vegetation. There would be a 1 foot increase in the height of the fence that would have a negligible impact on visibility for travelers along Kemp Road West. A photograph was depicted indicating nearby property on Kemp Road West indicating an existing perimeter wall located within 15 feet and was 4 feet or higher. The proposed new fence by the applicants would be consistent with other properties along the same street. A copy of the letter sent out to the property owners on the City's notification list was shown. The letter explained the purpose of the variance request and invited the owners to contact them if there were any questions or concerns. There were several letters of support and no opposition. An affidavit prepared under oath was provided by Mr. Kaplan, along with support letters. An email message from the adjoining property owner who would be most impacted, if at all, by the fence indicated their support. Mr. Isaacson reviewed the purpose of the ordinance for the Board members and factors for the hardship under the ordinance.

Chairman Truby inquired if there were questions for Mr. Isaacson. Mr. Oliver asked what the fence was made of. Mr. Isaacson responded it was black wrought iron and would be in keeping with what the ordinance states. Chair Truby inquired if there were further questions for Mr. Isaacson. Seeing none, Chairman Truby inquired if there was anyone else to speak in favor of this case. Seeing none, Chairman Truby asked Ms. Thiel if there was anyone in opposition to the request. Ms. Thiel advised there was no opposition expressed. Chairman Truby requested board discussion or a motion.

MOTION:

Mr. Oliver moved that in BOA-20-45, 302 Kemp Road West, 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 wants to erect a 5 foot fence for security when 4 feet is allowed. The current fence offers no security. A 5 foot fence will provide the desired security. (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 to erect a 5 foot fence would require placing the fence in a different location on the property. This would make it necessary to remove mature trees. (3) The hardship is not the result of the applicant's own actions because the existing split rail fence is 80 years old and was on the property prior to the current owners' purchase. (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 fence is not solid and can be seen through. The proposed fence will provide and enhance security and not disturb existing vegetation, or interfere with the motorist sight line. Seconded by Ms.

Skenes. The Board voted 6-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Oliver, Necas, and Savoy. Nays: 0.) Chair Truby advised the motion passed 6-0, with one recusal.

d. BOA-20-46: 505 SOUTH REGIONAL ROAD (Approved)

Mr. Ramsey resumed his seat at the Zoom meeting.

Ms. Thiel stated in case **BOA-20-46 at 505 South Regional Road**, Vital Triad Holdings, LLC, requests a variance to allow a proposed fuel pump canopy to encroach 13 feet into a required 15 foot street setback. The fuel pump canopy will be 2 feet from the property line along South Regional Road.

Evidence provided by the applicant included Exhibits A and B. Supporting documentation from staff included Exhibits 1 through 7. The Land Development Ordinance Reference is Section 30-7-5.1 – Table 7-14: In the C-M District, the minimum street setback is 15 feet.

Background and Site Information: The subject lot is located on east side of South Regional Road, north of Burnt Poplar Road, and is zoned C-M (Commercial-Medium). Tax records indicate the lot contains approximately 30,056 square feet and the building was constructed in 1967. The applicant proposes to construct a new fuel pump canopy to replace the previous one destroyed by a natural disaster. It will encroach 13 feet in a required 15 foot setback and be 2 feet from the property line along South Regional Road. The applicant indicates that fixed objects, such as the pump islands, support columns, and convenience store building, have been in place for over twenty years. The applicant states that placement of these fixed objects and the 100 foot right-of-way along South Regional Road limit the options for the canopy's placement. If the variance is granted, the applicant will proceed with the Building Inspections plan review process.

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

Chair Truby requested the applicant to come forward.

Marc Isaacson, 804 Green Valley Road, advised that Pinakin Oza was online and can answer any questions. Mr. Oza could be sworn in if necessary. Mr. Isaacson stated the report by Ms. Thiel covered the main issues. Mr. Oza has owned this property for several years. In the last year, the canopy was damaged to such an extent by a tornado or storm and other things and had to be removed. It has taken time to determine things with insurance, other regulations and construction in the middle of a pandemic, while attempting to get everything organized. This is a straight forward request to allow the owner to only replace the canopy over the fuel pumps that had been there for decades. It is the canopy over the fuel pumps at a convenience store in a very busy, heavily traveled and popular area. The canopy is needed for security, safety, and convenience of the patrons at this store. We request that the owner be allowed to replace the canopy exactly where it was for many years. The lot is zoned Commercial-Medium and is suitable for this particular commercial business. The existing buildings, fuel pump islands, canopy support, poles and so forth have been in place for many years that cannot easily be moved or adjusted. Mr. Isaacson referred to photographs depicting the damage. Letters were sent to the adjoining commercial property owners, and Mr. Isaacson received no communications. Mr. Isaacson reviewed the purpose of the ordinance and the factors of the hardship that would be created.

Chairman Truby inquired if there were questions for Mr. Isaacson from the Board members. Seeing none, Chairman Truby asked if there was anyone to speak in opposition to the case. Seeing none, Chairman Truby inquired if Ms. Thiel was aware of any opposition to this request. Ms. Thiel responded there was none. Chair Truby closed the public hearing.

DISCUSSION:

Chair Truby inquired if there was discussion or a motion. Ms. Skenes advised if there was no further discussion, was prepared to make a motion.

MOTION:

Ms. Skenes moved that in BOA-20-46, 505 South Regional 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 there had been a canopy that was destroyed due to a natural disaster. If the variance is not granted, the canopy cannot be replaced. (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 100 foot right of way on South Regional Road prevents replacing a canopy that had been in place for over 20 years. (3) The hardship is not the result of the applicant's own actions because the original canopy was destroyed by a natural disaster, leaving the pumps, gas islands, and customers exposed to the elements. (4) The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit and ensures public safety, welfare, and substantial justice because the applicant is only seeking to replace a previously destroyed canopy. The new canopy will protect equipment, pumps, and customers. Due to the height of the canopy, no sight lines will be impacted. Seconded by Mr. Waddell. The Board voted 7-0 in favor of the motion. (Ayes: Truby, Skenes, Waddell, Ramsey, Oliver, Necas, and Savoy. Nays: 0.)

OTHER BUSINESS:

Ms. Thiel advised this was the last meeting of the year and wished everyone happy holidays. Ms. Thiel stated that the next meeting will be on January 25, 2021.

ADJOURNMENT:

The meeting was adjourned by Chairman Truby at approximately 7:13 p.m.

Respectfully submitted,

Chuck Truby, Chair
Board of Adjustment
CT/cgs